

DECLARATION OF PROTECTIVE COVENANTS

FOR

DAUPHINAIS-MOSELEY SUBDIVISION, FILING #1

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DAUPHINAIS-MOSELEY CONSTRUCTION, INC., a Colorado Corporation ("Declarant"), is the record and beneficial owner of all of the Subdivision located in Eagle County, Colorado, the final plat of which was recorded August 23, 1990 in Book 536 at Page 221, of the records in the Office of the Clerk and Recorder of Eagle County, Colorado.

Declarant does hereby make, publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations and obligations shall be deemed to run with the land, shall be a burden and a benefit to Declarant, its successors and assigns, the Town of Vail, as to certain restrictions, and any person or entity acquiring or owning an interest in the real property described above and all other real property which is or becomes subject to this Declaration and improvements built thereon, their grantees, successors, heirs, personal representatives, devisees or assigns.

1. DEFINITIONS: As used herein, the following words and terms shall have the following meanings:

a. "Annual Assessment" - Annual Assessment shall mean the charge levied and assessed each year against each Lot pursuant to Section 4, hereof.

b. "Articles" - Articles shall mean the Articles of Incorporation of the Association as filed or to be filed with the Colorado Secretary of State, as such Articles shall be amended from time to time.

c. "Association" - Association shall mean the Grand Traverse at Vail Association, a Colorado non-profit corporation (including its successors and assigns) organized or to be organized to administer and enforce the covenants and to exercise the rights, powers and duties set forth in this Declaration.

d. "Board" - Board shall mean the Board of Directors of the Association.

e. "Bylaws" - Bylaws shall mean the bylaws of the Association.



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f. "Common Expenses" - Common expenses shall mean all expenses of maintenance, utilities and taxes incurred on or in connection with the Tracts within the Subdivision; the expenses of owning, operating and maintaining the Tracts, Utility Easements, and Drainage Easements; all insurance premiums; all expenses incurred in connection with enforcement of this Declaration; all expenses expressly declared to be Common Expenses by this Declaration, the Bylaws or the Articles, and all other expenses which the Association is entitled to incur pursuant to the provisions of this Declaration, the Bylaws or the Articles.

g. "Declaration" - Declaration shall mean this Instrument and all amendments or supplements thereto hereafter recorded in the records in the Office of the Clerk and Recorder of Eagle County, Colorado.

h. "Design Guidelines" - Design Guidelines shall mean the guidelines as set forth in Section 5 hereof. Additional guidelines for the use of the Tracts may be adopted by the Board. The Guidelines may be amended from time to time with the majority vote of approval from the Board and approval of the Town of Vail Design Review Board.

i. "First Lienor" - First Lienor shall mean the holder of a promissory note payment of which is secured by a first mortgage or first deed of trust encumbering an interest in a Lot. "Mortgage" shall include a deed of trust, and "mortgage" shall include the beneficiary of a deed of trust.

j. "Lot" - Lot shall mean any area of real property within the Subdivision designated as a Lot on the Plat or any subsequent plat approved by Declarant and recorded in the public records. A lot within Dauphinais-Moseley Subdivision Filing No. 1.

k. "Maintenance Charges" - Maintenance Charges shall mean any and all costs assessed against an Owner's Lot and to be reimbursed to the Association for work done pursuant to Sections 5.2 and 5.3 and fines, penalties and collection costs incurred in connection with delinquent assessments pursuant to Section 4.6.

l. "Member" - Member shall mean any person holding a membership in the Association, as set forth in the Articles.

m. "Open Space Tracts" - Open Space Tracts shall mean Tracts B and D which shall remain in its natural and undisturbed state to or be landscaped (including recreational structures, artwork or entryway structure to the subdivision) in a manner approved by the Board; provided, however, that an Open Space Tract may have constructed and maintained thereon utilities and drainage facilities

in areas as so designated on the final plat of the Subdivision, or as needed from time to time. In addition, easements for ingress and egress may be granted by Declarant over such Open Space Tracts to adjacent parcels or lots.

n. "Owner" - Owner shall mean the record holder of legal title to the fee simple interest in any Lot. If there is more than one record holder of legal title to a Lot, each record holder shall be an "Owner".

o. "Plat" - Plat shall mean the Plat recorded August 23, 1990 in Book 536 at Page 221.

p. "Road Tract" - Road Tract shall mean Tract A, which can be used solely (i) to provide a public road and right of way for use as ingress and egress from each of the lots to Lion's Ridge Loop, a public road located in Eagle County, Colorado, and (ii) to provide open space in the same manner as an Open Space Tract on portions not used for a public road and right of way or for vehicular parking; provided, however, that the Road Tract may have constructed and maintained thereon utilities and drainage facilities.

q. "Special Assessment" - Special Assessment shall mean any assessment levied and assessed pursuant to Section 4.

r. "Special Development District No. 22" - Special Development District No. 22 shall mean the special development district adopted by Ordinance No. 10, Series of 1991 as amended from time to time by the Town of Vail.

s. "Subdivision" - Subdivision shall mean the Dauphinais-Moseley Subdivision Filing #1 recorded August 23, 1990 in Book 523 at Page 221, Eagle County Clerk and Recorder's Office.

t. "Tract" - Tract shall mean a tract within the Subdivision

u. "Tract C" - Tract C shall be used for access, utilities and open space as more fully set forth in the Quit Claim Deed dated March 17, 1989 and recorded in Book 502 at Page 263.

v. "Utility Easement" - Utility Easement shall mean any area of real property within the Subdivision designated as a Utility Easement on the Plat or any subsequent plat recorded or approved by Declarant.

2. MEMBERSHIP AND VOTING:

a. Members. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. The rights of the Members are as set forth in the Articles. The rights and obligations of a Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and any such transfer shall automatically transfer the membership appurtenant to said Lot to the new Owner thereof.

b. Declarant. The Declarant shall be a Member of the Association so long as it owns any portion of the Subdivision.

3. ASSOCIATION:

a. Formation of Association. The Association shall be a non-profit Colorado corporation charged with the duties and invested with the power prescribed by law and set forth in the Articles, the Bylaws and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

b. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws, as the same may be amended from time to time. The Board may also appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager or any other employee of the Association.

c. Rules and Regulations. By a majority vote of the Board, the Association may, from time to time adopt, amend and repeal rules and regulations to be known as the Rules and Regulations of the Grand Traverse at Vail.

d. Personal Liability. Neither Declarant nor any member of the Board, officer, manager or other employee or committee member of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, negligence, or other matter, of any kind or nature except for acts performed intentionally and with malice.

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4. ASSESSMENT:

a. Purpose of Assessments; Assessment Lien. All Members of the Association hereby covenant and agree, and each Owner by acceptance of a deed to a Lot is deemed to covenant and agree, to pay to the Association the following assessments and charges: (a) Annual Assessments, (b) Special Assessments, and (c) Maintenance Charges, all such assessments and charges to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments and Maintenance Charges, together with interest, costs, and reasonable attorney's fees, shall be secured by a lien (the "Assessment Lien") on the Lot to which they relate in favor of the Association which shall be a continuing servitude and lien upon the Lot against which each such assessment or charge is made. The Assessment Lien shall be a charge on the Lot, shall attach from the date when the unpaid assessment or charge shall become due 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 Owner of such Lot at the time the assessment became due. The personal obligation for delinquent assessments shall pass to successors in title unless expressly waived by the Association. The Assessment Lien may be foreclosed by the Association in the manner as a mortgage on real property upon the recording of a Notice of Delinquent Assessment or Charge as set forth in Section 4(g) hereof. The Association shall be entitled to purchase the Lot at any foreclosure sale.

b. Annual Assessment. Commencing January 1, 1992 an Annual Assessment shall be made against each Lot for the purpose of paying (or creating a reserve for) Common Expenses. Until January 1, 1993 the Annual Assessment for all Lots shall not exceed \$300.00 per Lot.

(i) From and after January 1, 1993 the Annual Assessment may be increased each year by the Board not more than ten percent (10%) above the Annual Assessment for the previous year without a vote of the Members.

(ii) From and after January 1, 1993 the Annual Assessment may be increased in excess of ten percent (10%) in any given year by an Affirmative Vote of a Majority of the Classes (as defined in the Articles), who are voting in person or by proxy, at a meeting duly called for that purpose, provided however that, from and after the date of dissolution of Classes B and C, as provided for in the Articles, the Annual Assessment may be adjusted in excess of ten percent (10%) in any given year, by an affirmative vote of a majority of the Class A Members.

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c. Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any of the Tracts, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall have been approved by the Affirmative Vote of a Majority of the classes (or if Classes B and C are dissolved, by an affirmative vote of a majority of the Class A Members), who are voting in person or by proxy at a meeting duly called for such purpose.

d. Uniform Rate of Assessment. Annual Assessments shall be fixed at a uniform rate for all Lots and may be collected on a yearly basis or more frequently if the Board shall so determine.

e. Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period shall commence upon the recording of this Declaration and terminate on December 31, 1991. The Board in its sole discretion from time to time may change the Assessment Period by recording in the public records of Eagle County, Colorado, an instrument specifying the new Assessment Period. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty days in advance of the end of each Assessment Period. Written notice of the Annual Assessment shall be sent to each Member. Failure of the Association to send a bill to any Member shall not relieve the Member of liability for payment of any assessment or charge. The due dates shall be established by the Board. 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.

f. Effect of Nonpayment. Any assessment or charge or installment thereof not paid when due shall be deemed delinquent and in the discretion of the Board may bear interest from thirty days after the due date until paid at a reasonable rate, and the Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The Board may also record a Notice of Delinquent Assessment or Charge against any Lot as to which an assessment or charge is delinquent. The Notice shall be executed by an officer of the Board, and shall set forth the amount of the unpaid assessment, the name of the delinquent Owner and a description of the Lot. The Board may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency and recording a release of said lien, which fixed fee shall be treated as part of the Maintenance

Charge of the Association secured by the Assessment Lien. The Association may bring an action at law against the Owner personally obligated to said Owner's Lot. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the benefits derived from assessments or abandonment of his Lot.

g. Priority of Lien. The Assessment Lien provided for herein, is superior to all other liens and encumbrance except:

(i) Tax and special assessment liens in favor of any assessing authority; and

(ii) All sums unpaid on a First Mortgage of record, including all unpaid sums as may be provided for by such encumbrance, and including additional advances made thereon prior to the arising of such lien.

(iii) Any encumbrancer holding a lien on a Lot may pay any unpaid Common Expenses payable with respect to such Lot, and upon such payment such expenses shall have a lien on such Lot for the amounts paid of the same rank as the lien of his encumbrance.

(iv) Mortgagee of Lots which acquire title to a Lot as a result of obtaining a deed in lieu of foreclosure and purchasers of Lots at foreclosure sale foreclosed pursuant to any first mortgage shall not be liable for any such Assessment unless accruing during the period when such mortgagee or purchaser is the Owner of said Lot.

h. Initial Capital Contribution. The Association shall levy and collect from each Owner at the closing when the Owner acquires a Lot, a sum of Three Hundred Dollars (\$300.00). Said sum shall be deposited by the Association in the working capital fund for use as working capital, for initial expenses of the Association, for application against a delinquent account of an Owner, or for emergency needs, and shall be refunded to the Owner (except as hereinafter provided) upon the sale or transfer of the Lot less any amount then due by said Owner to the Association. Such amount may be transferred to a new Owner of such Lot by a settlement sheet adjustment between seller and purchaser. Any deficiency in an Owner's account shall be restored within fifteen (15) days after receipt of a written request from the Board in order to maintain an amount equal to one hundred percent (100%) of one (1) year's assessment for such Lot. The existence of this reserve shall in no way relieve any Owner from the duty to pay assessments when due.

i. Assessment of Certain Costs. In the event that the need for maintenance or repair of the Tracts or other areas maintained by the Association is caused through the willful or negligent act of

any Owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Maintenance Charge to which such Owner's Lot is subject and shall be secured by the Assessment Lien.

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j. Improper Maintenance. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of any of the Lots or other areas within the Subdivision, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event any Member is failing to perform any of his obligations under this Declaration or the Design Guidelines, the Association may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Member that unless corrective action is taken within fourteen days, the Association may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen-day period of time the requisite corrective action has not been taken, the Association shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Maintenance Charge and shall be secured by the Assessment Lien.

k. Utility Easements and Drainage Easements. The Association, or its duly delegated representative, shall maintain and otherwise manage the Utility Easements and Drainage Easements located throughout the Subdivision and shall have the power to make rules and regulations governing the use thereof. The Association shall also have the power to erect and maintain various street and identification signs, informational and directional markers throughout the Subdivision.

5. RIGHTS AND POWERS OF THE ASSOCIATION.

a. Association's Rights. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and the Bylaws.

b. Rights of Enforcement. The Association, as the agent and representative of the Members, shall have the right to enforce the covenants set forth in this Declaration. The Association or the Declarant shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by the Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.



c. Insurance. The Association shall obtain in its name and keep in full force and effect at all times, insurance policies for such casualty and public liability and other insurance policies as the Board deems necessary.

6. APPROVAL OF CONSTRUCTION PLANS.

a. No building or other structure shall be constructed, erected, or maintained on any Lot, nor shall any addition thereto or alteration or change therein be made until complete plans and specifications (including, but not limited to, a color rendering and/or a model, floor plans, elevations, site and grading plans, provisions for off street parking and locations of driveway access, landscaping plan, the specification of principal exterior materials, color schemes and the location and the method of utilization of all utilities) have been submitted to the Town of Vail and approved in writing. Notice of such submission to the Town, shall be given to the President of the Board of Directors on or before the date of such submission. Declarant shall not be required to give such notice to the President of the Board of Directors. In addition, each owner that builds a structure on a Lot and all plans submitted pursuant to this paragraph 6 shall comply with the design guidelines as outlined hereunder.

The Town of Vail shall have the right to enforce the covenants and all requirements within articles 6 and 7 herein. The covenants and requirements contained in articles 6 and 7 herein and the design guidelines may not be amended or deleted without Town of Vail approval.

b. Owners are encouraged to consult with the Town of Vail prior to and during the preparation of such plans and specifications for compliance with the design guidelines in order to avoid withholding or delay in approval.

7. DESIGN GUIDELINES.

a. All criteria and requirements as set forth in the Municipal Code of the Town of Vail including but not limited to Chapter 18.54 shall be complied with.

b. The Town of Vail Design Review Board ("DRB") in addition to the requirements of Chapter 18.54 shall take into consideration the suitability of the proposed building or other structure and the materials of which it is to be built to the Lot upon which it is to be erected, and the harmony thereof with the surroundings.

c. The goal of these guidelines and the interpretation of Chapter 18.54 of the Town of Vail Municipal Code shall be to create, for the entire Subdivision, a compatible and homogeneous architectural quality harmonious with the character of the area.

d. The following specific restrictions shall govern construction on and use of any Lot.

(i) Architectural. At the time of review of specific architectural plans provided for any development of single family structures within Special Development District #22, the Town of Vail Design Review Board shall, in addition to the Design Guidelines set forth in Chapter 18.54 of the Vail Municipal Code, consider the following guidelines in the review and approval process. The architectural design of the buildings upon the site shall be such that buildings relate harmoniously to each other. This is not to imply that each building must look exactly similar to those around it, but that compatibility be achieved through the use of scale materials and colors, and building shape and form. The overriding concern is that, upon completion, the Special Development District, because of the clustered nature of the small single family lots situated around common open space should appear to be an integrated development possessing a common architectural quality, character, and appearance. To this end the following general design criteria shall be followed:

a. A palette of colors shall be as set forth below and presented to the Design Review Board for their review and approval. Colors are indicated for the use on different types of building materials and elements such as stucco colors, siding colors, metal flashing, windows, accent colors, etc. The palette of colors indicate a range of acceptable colors in order to encourage similarity on one hand, but also diversity within the acceptable range.

b. The following building forms and materials shall be adhered to:

1. Roof. The roof pitch shall be a minimum 8/10 and a maximum of 12/12. A clipped or hipped gable roof shall be mandatory. The roofing material shall be #1 shake shingles with staggered butts.
2. Chimneys. The chimneys shall be stucco or stone with chimney caps of weathered copper.
3. Flues. All flues shall be galvanized or "Paint Loc" sheet metal, painted to match the roof.
4. Main Fasia. The main fasia shall be a solid color stain as approved by the DRB.

5. Secondary Fasia and Metal Railings above the First Floor. The secondary fasia and metal railings above the first floor shall be an accent trim color as approved by DRB.
6. Walls. Walls shall be of stucco and horizontal wood siding. Stucco colors shall be gray, tin or off-white. Wood siding colors shall be as approved by DRB.
7. Stone. Walls will have a minimum of a two foot high stone wainscoat in rainbow mix with a sandstone cap except under bays, decks, or cantilevers as approved by DRB.
8. Windows. Windows shall be recessed a minimum of two inches from the outside wall plane and have a sandstone sill. Trim shall be white, taupe or brown.
9. Outdoor Lighting. Outdoor lighting shall be indirect with a concealed source except for an entry chandelier which may be exposed globes with a fixture of black or weathered cooper look metal. Additional lighting may be added with DRB approval.
10. Garages. No garage doors, except Lot 24, shall directly face the street.

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2. Landscape: At the time of review of landscape plans provided for any development of single family structures within the Special Development District #22 the Town of Vail shall, in addition to the landscape guidelines set forth in Chapter 18.54 of the Vail Municipal Code, consider the following guidelines in the review and approval process:

a. Entry Landscaping and Lighting: A plan indicating the landscape treatment of the main project entry shall be submitted and approved. The goal of such a plan shall be the following:

1. Present an identifiable entry point to the subdivision containing plant materials, lighting, and signage of a scale appropriate for the size of the development.

2. Provide appropriate screening to the rear yards (along Lion's Ridge Loop) of Lots 20-24 which blends in with the entry treatment.
3. Provide appropriate screening along the western edge of Tract C.

b. When the individual landscape plans are presented for individual lots special care shall be taken in the design of side yard landscaping in order to provide adequate screening between structures. Active outdoor use areas should be located within front and rear yards.

Because of the potential for blockage of views and sun/shade considerations on adjacent properties, no plantings shall be allowed or maintained which are in excess of five feet in height in areas southeast of the main structure to the ridge line on any lot, nor in areas located south of a line connecting the south facing exterior wall of two adjacent structures to the ridge line. This restriction shall not apply to Lots 13 through 24, inclusive.

1. For areas south or southeast of the ridge line, no plantings shall be allowed or maintained which are in excess of five feet above the ridge line at the nearest point on the ridge line.
2. For Lots 1 and 2, the screening of improvements to be located on the adjacent property south of Solar Crest Condominiums, is an equally valid concern as view blockage and sun/shade consideration, so trees in excess of five feet in height, but in no event higher than twelve feet in height, shall be allowed if such plantings are necessary to screen the improvements on the adjacent property as described above.

If a member violates such restrictions by allowing plantings to exceed such height, the Association may deem such violation "improper maintenance" under Section 4(j) above and take all action under such section to correct the violation.

c. The concern of the Committee shall be to improve the natural appearance of the Subdivision and the maintenance of such appearance. Owners and their representatives or builders will be required to:

(aa) Minimize disruption from grading.

(bb) Revegetate and restore ground cover for erosion and appearance reasons.

(cc) Use indigenous species of plant materials.

(dd) Select the man-made elements that blend and are compatible with the land.

(ee) Use existing or natural drainage paths whenever possible.

(ff) Conserve and protect topsoil, rock formations and unique landscape features.

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3. Water and Sanitation: Each structure designed for occupancy or use by human beings shall connect with water and sanitation facilities made available by Upper Eagle Valley Water and Sanitation district or any other similar governmental or quasi-governmental entity. No private wells shall be used as a source of water for human consumption or irrigation.

4. Electrical and telephone Service: All electrical and telephone service to the Lots will be placed underground.

5. Easements: Easements and rights of way are hereby reserved as shown or described on the final plat for the Subdivision.

6. Signs: No signs, billboards, or other advertising structure of any kind shall be erected, constructed or maintained on any Building Envelope for any purpose whatsoever, except such signs as have been approved by the Town of Vail.

7. Fences: Design and location of fencing shall be submitted to and approved by the DRB prior to installation and shall conform to Town of Vail requirements, except no fence shall exceed 4 feet in height.

8. Trash: No trash, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each Owner shall provide suitable receptacles for the temporary storage and collection of refuse and all such receptacles shall be placed in enclosures attached to the buildings so that such receptacles shall be screened from the public view and protected from disturbance.

9. Livestock: No animals, livestock, horses or poultry of any kind (except dogs, cats and other domesticated pets for household enjoyment, not for commercial purposes and not to exceed two in number

may be kept by an Owner so long as such pets are not a nuisance to any other Owner) shall be kept, raised or bred in the Subdivision.

10. Pets: Household pets, such as dogs and cats, must be contained upon an Owner's Lot. Owners may not construct a fenced run on their Lot. Pets shall not be allowed to remain tied or chained anywhere in the Subdivision, any pet so tied or chained may be removed. Pedestrians accompanied by dogs within the Subdivision must have said dogs under their direct control by use of leash not to exceed ten feet in length.

11. Temporary Structures: No temporary structure, such as a basement, trailer, mobile home or tent shall be permitted in the Subdivision, except as may be determined to be necessary during construction and specifically authorized by the Town of Vail in writing and in accordance with the regulations of the appropriate governmental entities.

12. Television Antenna: Exterior mounted, exposed television or radio antenna will not be permitted within the Subdivision.

13. Outdoor Lighting: All outdoor lighting comes under the jurisdiction of the Town of Vail.

14. Repair of Vehicles: No work of automotive repair shall be performed anywhere within the Subdivision except within private garages.

15. Accessory Structures and Greenhouses: No accessory structures shall be allowed. Greenhouses must be constructed of permanent materials, must be a part of the residential structure or garage, may not be a free standing building and must be compatible with the architecture of the residential structure.

16. Continuity of Construction: All structures commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within the twelve months of commencement unless exception is granted in writing by the Town of Vail.

17. Nuisance: No noxious or offensive activity shall be carried on within the Subdivision, nor shall anything be done or permitted which shall constitute a nuisance therein.

18. Storage of Materials and Equipment: Owners and contractors are permitted to store construction materials and equipment on the approved construction site during the construction period. It shall be neatly stacked, properly covered and secured and

is the responsibility of the Owner and the contractor. Owners and contractors, other than Declarant, will not disturb, damage, trespass or store materials or equipment on other Owners' Lots, on the Open Space Tract or on the Road Tract. Declarant, however, for a period of ten years from the date of these covenants shall be allowed to use the Open Space tract for the storage of construction materials and for a staging area for construction purposes.

19. Debris and Trash Removal: Owners and contractors shall clean up all trash debris on the construction site at the end of each day. Trash and debris shall be removed from the site at least once a week to the closest solid waste disposal site approved by Eagle County. Owners and contractors are prohibited from dumping, burying or burning trash anywhere in the Subdivision.

20. Sanitary Facilities: Each Owner and contractor shall be responsible for providing adequate sanitary facilities for his construction workers.

21. Restoration or Repair of Other Property Damaged: Damage or scarring to other property, including but not limited to other Lots, the Open Space Tract, the Road Tract and improvements thereon, driveways or other improvements is not permitted. If any such damage occurs, it will be repaired promptly at the expense of the person causing the same.

22. Conduct and Behavior: All Owners shall be responsible for the conduct and behavior of their agents, representatives, invitees, builders, contractors and subcontractors.

8. OWNERSHIP AND USE OF TRACTS. The Declarant shall own the Tracts, however, nothing contained herein shall prohibit the Declarant from transferring such Tract to the Town of Vail or to the Association.

The Road Tract upon acceptance by the Town of Vail shall be dedicated to the Town of Vail as a public right-of-way.

The Open Space Tracts may at Declarant's option be transferred to the Association or to the Town of Vail without further acceptance or approval by the Association.

Each Owner shall be entitled to use the Tracts in accordance with the purpose for which they are intended, without hindering, impeding or imposing upon the rights of the other Owners and in accordance with the rules and regulations duly established from time to time by the Association or the Town of Vail.

9. EASEMENT FOR USE OF ROAD TRACT: Declarant desires to provide to each Owner the right of ingress and egress to his Lot from a public road and Declarant hereby grants and assigns to each Owner a perpetual, non-exclusive easement and right of way under, over, across and through the Road Tract for the purpose of ingress and egress between his Lot and Lion's Ridge Loop prior to dedication of the Road Tract to the Town of Vail as a public right-of-way. The non-exclusive easement and right of way hereby granted and assigned shall run with the land and shall be appurtenant to each Lot, such that a transfer by an Owner of legal title to all or any portion of a Lot shall automatically transfer the interest in the easement and right of way granted and assigned herein.

This easement shall lapse upon such dedication.

10. COVENANTS, CONDITIONS AND RESTRICTIONS.

a. All permitted, conditional and accessory uses, allowable GRFA and other square footage allowances, setbacks, density, building height, site coverage, parking requirements, design guidelines, recreational amenities tax, employee housing allowances, requirements and restrictions shall be as set forth in Ordinance No. 10, Series of 1991 as such ordinance is amended from time to time.

b. Restriction of Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots by any Owner. No easement shall be conveyed or transferred by any Owner except the Declarant, without the prior written approval of the Board, which approval must be evidenced on the Plat or other instrument creating the easement. All building improvements on any Lot must be built within the building envelopes designated for each Lot on the Plat for the Subdivision. No further covenants, conditions, restrictions or easements shall be recorded by any Owner except the Declarant or other person against any Lot without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot, and no application for variances or use permits shall be filed with any governmental authority except by the Declarant unless the proposed use of the Lot has been approved by the Board.

11. AMENDMENTS.

a. Term; Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of forty years from the date of recordation. From and after said date,

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this Declaration, as amended, shall be automatically extended for successive periods of twenty years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting eighty-five percent (85%) of the total votes cast at an election held for such purpose within six months prior to the expiration of the initial effective period hereof or any twenty-year extension. The Declaration may be terminated at any time if at least ninety-five percent (95%) of the votes cast by all Members shall be cast in favor of termination at an election held for such purpose and the affirmative vote of the Declarant, if any. No vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six months prior to such vote to six months after such vote, from the holders of recorded first mortgages or deeds of trust on at least fifty-one percent (51%) of the Lots upon which there are such recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be recorded in the Eagle County, Colorado public records a "Certificate of Termination," duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon the covenants herein contained shall have no further force and effect.

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b. Amendments. This Declaration may be amended only upon the affirmative vote of a majority of the Classes (as such term is defined in the Articles) or if there are only Class A Members, upon an affirmative vote of a majority of the Class A Members and Declarant, if any. This Declaration may be amended by recording in the public records of Eagle County, Colorado records a "Certificate of Amendment," duly signed and acknowledged as required for a Certificate of Termination. The Certificate of Amendment shall set forth in full the amendment adopted, and shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws the amendment was adopted by an Affirmative Vote of the Majority of Classes (until Class B and Class C are dissolved, in which case the Certificate shall certify that the majority of the Class A Members and the Declarant, if any, voted affirmative for the adoption of such amendment).

12. MISCELLANEOUS.

a. Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, 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.

b. Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

c. Rule Against Perpetuities. Each provision contained in this Declaration which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints or alienation shall continue and remain in full force and effect for the period of 21 years following the death of the last survivor of the issue of President George Bush, and the now living children of said issue, or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect in accordance with provisions hereof.



d. Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

e. General Reservations. Declarant reserves the right to grant, convey, sell, establish, amend, release and otherwise deal with easements, reservations, exceptions and exclusions which do not materially interfere with the best interests of Owners and/or the Association including, but not limited to, access and utility easements, road easements, pedestrian and equestrian easements, pedestrian and hiking trails and easements and drainage easements.

f. Effect of Provisions of Declaration. Each provision of this Declaration and agreement, promise, covenant, 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: (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any Lot or Tract is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (ii) shall, by virtue of acceptance of any right, title or interest in any Lot or Tract by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner and, as a personal covenant, shall be binding on such Owner, his heirs, personal representatives, successors and assigns, and shall be deemed a personal covenant to, with and for the benefit of each Owner; and (iii) 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 title to each and every Lot and Tract.

EXECUTED effective as of the 26<sup>TH</sup> day of August, 1991.

DAUPHINAIS-MOSELEY CONSTRUCTION, INC., a Colorado Corporation

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ATTEST:

Suzanne E. Dauphinais  
Secretary

By: Patrick G. Dauphinais - Pres.



STATE OF )  
                  ) SS.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 26 day of August, 1991 by Patrick G. Dauphinais as President\* of Dauphinais-Moseley Construction, Inc., a Colorado Corporation.

\* AND SUZANNE E. DAUPHINAIS, as Secretary  
Witness my hand and official seal.

My commission expires on:

9/19/93

Al B. Wabulich - powered  
Notary Public

Land Title Guarantees Company  
3033 E. First Ave. - Suite 600  
Denver, Colorado 80206

