

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
PITKIN CREEK TOWNHOUSES

THIS DECLARATION is made this 19th day of February,
1979, by P & R ENTERPRISES, a Colorado partnership, hereinafter
referred as the "Declarant" or "Developer".

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of certain real property
situated in the County of Eagle, State of Colorado, which is
more particularly described as Lots 1 through 23 and Parcel A
of Townhouse Plat of Pitkin Creek Filing No. 1, Eagle County,
Colorado, and as otherwise described on Exhibit "A" hereto, and

WHEREAS, Declarant desires to create on said property a
residential community and common facilities for the benefit
of owners of the townhouses to be constructed, and

WHEREAS, Declarant desires to provide for the preservation
of the values, desirability, and amenities of the said real
property and for the maintenance of open spaces and common
facilities, and, for such purposes, desires to subject the
said real property to the covenants, restrictions, easements,
conditions, charges and liens hereinafter set forth, each and
all of which are for the benefit of the said real property and
each owner of any title or interest in the said real property,
or any part thereof, and

WHEREAS, for the efficient preservation of the values,
desirability and amenities of the said real property and in
order to create an entity which will be responsible and have
the powers to maintain and administer the use of the open
spaces and common facilities and to administer and enforce
the covenants and restrictions and collect and disburse the
assessments and charges hereinafter provided for, the Declarant
will incorporate the Pitkin Creek Townhouse Association under
the laws of the State of Colorado as a non-profit corporation
for the purpose of exercising the functions aforesaid;

NOW THEREFORE, Declarant hereby declares that all of the said real property described above is and shall be held, sold, conveyed, transferred and occupied subject to the covenants, restrictions, easements, conditions, charges, uses, limitations and liens herein provided for, each of which shall run with the land and shall be binding upon Declarant, its successors and assigns, and any person or entity acquiring or owning any right, title or interest in and to said real property described in Article II and their grantees, heirs, devisees, personal representatives, successors and assigns. The Declarant reserves the right to add additional property to said development and subject said additional property to the provisions of this Declaration in future stages of development and allow owners of additional lots which may be added to enjoy and use all common facilities.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration, and as it may hereafter be amended, shall have the following meanings, viz:

1. "Architectural Control Committee" shall mean and refer to the committee established pursuant to Article X of this Declaration.

2. "Assessment" shall mean and refer to any annual assessment or special assessment, or both, which may be levied by the Association from time to time as is provided for in Article V of this Declaration.

3. "Association" shall mean and refer to the Pitkin Creek Townhouse Association, a Colorado corporation not for profit.

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

5. "Common Area" shall mean and refer to Parcel A of the Townhouse Plat of Pitkin Creek Filing No. 1, Eagle County, Colorado, and such other areas as may be added from time to time to the Common Areas.

6. "Committee" shall mean and refer to the Architectural Control Committee established pursuant to Article X of this Declaration.

7. "Committeeman" shall mean and refer to a single member of the Architectural Control Committee, and "Committeemen" shall mean and refer to more than one Committeeman.

8. "Declarant" shall mean and refer to P & R Enterprises.

9. "Lot" shall mean and refer to any lot designated as such on the Plat or subsequent Plats, except that designated Parcel A, which is the Common Area or areas hereafter added to the Common Area.

10. "Plat" shall mean and refer to the recorded Townhouse Plat of Pitkin Creek Filing No. 1 and any subsequent Plats subjected to this Declaration.

11. "Member" shall mean and refer to every person and entity who holds membership in the Association.

12. "Owner" shall mean and refer to the record owners, whether one or more persons or entities, of a fee simple title to any Lot, excluding those having such interest merely as security for the performance of an obligation.

13. "Properties" shall mean and refer to all of the said real property described above in this Declaration.

14. "Townhouse Real Property Interest", "Real Property Interest", "Townhouse Unit" and "Townhouse" shall mean and refer to a Lot and the constructed living unit improvement thereon, all owned in fee simple, including an undivided 1/23rd interest in and to the Common Areas.

ARTICLE II

ARCHITECTURAL-AESTHETIC CONTROL

1. No exterior additions or alterations to any exterior improvements or changes in fences, walls, or other structures shall be commenced, erected, or maintained until and unless the plans and specifications showing the nature, kind, shape, heights, materials, floor plans, exterior color scheme and

location of such structure and the grading plan and finished grade elevations of the site to be built upon shall have been submitted to and approved by the Architectural Control Committee hereinafter identified, and a copy thereof as finally approved lodged permanently with said Committee. No landscaping on any site shall be done until a landscaping plan shall have been submitted to and approved by such Committee. Such Committee shall have the right to refuse to approve any such plans or specifications or grading or landscaping the lands which are not suitable or desirable in the Committee's opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications, and grading and landscaping plans, the Committee shall have the right to take into consideration the suitability of the proposed building or other improvement and of the materials of which it is to be built, to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land, the overall landscape plan as approved by the Town of Vail and the effect of the residence structure or other improvement as proposed on the adjacent or neighboring property, and the general residence plan of the properties. All subsequent additions to or changes or alterations in any residence, fence, wall, or other structure, including exterior scheme and all subsequent additions to or changes or alterations in any grading or landscaping plans shall be subject to the prior approval of the Architectural Control Committee and the Town of Vail.

2. Fencing, landscaping, and other improvements erected or placed by Declarant at its expense shall thereafter be maintained by the Association.

3. No exterior mounted radio, short wave, television or other type of antenna shall be permitted on an exterior roof or wall. The Association may construct and maintain a community type television-radio antenna for use of all members

at such place as it deems appropriate within the Common Area.

4. No tanks of any kind, either elevated or buried, shall be erected, placed or permitted upon any site, except those initially installed by Declarant, if any, or upon written approval of the Architectural Control Committee.

5. No clothes-lines or incinerators shall be permitted or maintained on any site or on any part of the common properties.

6. All storage piles, equipment, furniture, tools, and other personal property shall be kept within the rear patio area (the patio) located at the rear of each site so that the same are concealed from view from any other sites, from any common area, and from the streets.

7. The fences furnished and installed by the Developer may not be removed. Such fences are part of the architectural design plan of the entire residential development.

8. No house trailer, tent, shack, detached garage, barn or out building of any kind shall be permitted on a site.

9. No house trailer, camping trailer, camper, boat trailer, hauling trailer, recreation vehicle or boat or accessories thereto, truck (except pickup or van) shall be parked, stored, or maintained on any site, unless the same shall be stored in a member's garage totally hidden from view of all other members. The streets and roads within the Common Area shall not be used for long-term parking or storage of any type of motore vehicle, trailer, boat, or other similar item at any time. This restriction shall not apply to commercial or other vehicles making business or service calls or deliveries to the residents or owners of the sites, to the Association, or contractors within the properties.

10. Declarant, its successors and assigns, its employees, representatives, agents and contractors may maintain a business and sales office, construction facilities in yards, trucks, equipment, parking area, model residences, display facilities, advertising signs and displays and other Developer facilities

reasonably necessary, appropriate, or customarily used or acquired during the construction, development and sales periods.

11. No signs of any kind shall be displayed to the public view on any site except one sign of not more than six feet square advertising that site or real property interest for sale or rent.

ARTICLE III

PROPERTY RIGHTS

1. Every owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every townhouse unit, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his living unit remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) The right of the Association to promulgate and publish rules and regulations, pertaining to the Common Area, with which each member shall strictly comply; and

(d) The right of the Declarant to add additional property in both townhouse units and Common Area to this Declaration and thereby grant additional owners rights to share such existing Common Area with existing owners.

2. Any owner may delegate, in accordance with the By-Laws and subject to the published rules and regulations of the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

3. Each townhouse unit and the lot conveyed therewith

shall together comprise one Townhouse Real Property Interest, shall be inseparable, and may be conveyed, leased, devised, or encumbered only as a Townhouse Real Property Interest, as defined herein.

4. The Common Area shall be owned and enjoyed by the owners of the townhouse units and shall remain undivided, and no owner or other person shall bring any action for partition or division of the Common Area. Nothing contained in this paragraph shall be construed as a limitation of the rights of a partition of a Townhouse Real Property Interest between two or more persons or entities comprising the owner thereof, but such partition shall not affect any other Townhouse Real Property Interest.

ARTICLE IV

THE PITKIN CREEK TOWNHOUSE ASSOCIATION

1. Each owner of a townhouse unit subject to assessment shall be a member of the Association and shall be bound by the provisions of the Articles of Incorporation and By-Laws of the Association and of the rules and regulations promulgated from time to time by the Board of Directors and of this Declaration. No owner shall have more than one membership at any one time, unless he shall be owner of more than one unit, in which event he shall be entitled to vote one vote for each unit owned. No person or entity who is not an owner shall be a member.

2. Membership shall be appurtenant to and may not be separated from ownership of any living unit which is subject to assessment. If any owner is in default in fulfilling obligations secured by first deed of trust on the townhouse unit, the beneficiary of the first deed of trust may, at its option, exercise the membership rights of the owner while the owner remains in default.

3. The Association shall have but one class of voting membership. The Declarant shall be entitled to one vote for each lot owned by Declarant and such voting rights shall

continue until said lots have been deeded to an Owner. Thereafter, each Owner shall be deemed to be a member and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any townhouse unit, all such persons shall be members. The vote for such townhouse unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any townhouse unit.

4. From time to time the Secretary of the Association shall cause the recordation of a Certificate of Identity in the office of the Clerk and Recorder of Eagle County, Colorado. Said Certificate shall set forth the names and addresses of all of the members of the Board of Directors and the officers of the Association. The most recently recorded Certificate shall be conclusive evidence of such identities as pertains to all persons relying in good faith thereon regardless of the elapsed time from the date thereof. The first such Certificate shall be recorded within 90 days from the date of recording this Declaration.

ARTICLE V

MAINTENANCE ASSESSMENTS

1. For each Real Property Interest owned within the properties, the Declarant hereby covenants and each owner of a Real Property Interest by acceptance of a deed therefor or title thereto, whether or not it shall be so expressed in any deed or other conveyance or otherwise, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges; and
- (b) Special assessments fixed, established, and collected as hereinafter provided.

The annual assessments and special assessments, together with such interest thereon and costs of collection thereof, as are hereinafter provided for, shall be charged on each Real Property Interest and shall be a continuing lien upon the Real

Property Interest against which each assessment is made. Each such assessment, together with such interest and costs of collection [shall also be the personal obligation of the person who was the owner of such Real Property Interest at the time when the assessment fell due.] Suit to recover a money judgment for any such obligation which is unpaid may be maintained without foreclosing or waiving the lien securing the same. [All fully constructed townhouse units owned by the Declarant shall be subject to such assessments.]

2. The assessments levied by the Association shall be used as follows, viz:

(a) For the purpose of promoting the recreation, health, safety, and welfare of the owners and their delegates and, in particular, for the improvement and maintenance of the Common Area, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and maintenance of and removal of snow from streets and roads within the Common Area, including, but not by way of limitation, the payment of taxes (until separately assessed) and insurance thereon, repair, replacement, and additions thereto and the cost of utilities, labor, equipment, trash removal and management and supervision of the Common Area; and

(b) For the purpose of providing insurance upon the improvements, utilities in common with all townhouse units, including, but not by way of limitation, electricity, heat, water, sewer and gas, but excluding utilities which are metered for separate townhouse units, and for providing exterior maintenance and repair upon each townhouse unit, including, but not by way of limitation, painting, repairing, replacing, and maintaining roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements, but excluding specifically glass surfaces and screens.

If the need for maintenance or repair is occasioned through the willful or negligent act of any owner, his family,

guests; tenants; and/or contract purchasers, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which the real property interest is subject.

No owner may perform the maintenance specified in this Paragraph 2 which is to be done by the Association without the written consent of the Association. If such consent is given, the amount of any assessment shall not be reduced. If such consent is given, it may be withdrawn at any time.

3. Prior to the commencement of the year for which the assessments are made, after considering the current maintenance costs and future needs of the Association, the Board of Directors shall fix the amount of the annual assessment to be made against each Real Property Interest. The first annual assessment shall be made by the Board of Directors within 30 days of the conveyance of the first Real Property Interest by the Declarant and shall be prorated to reflect the length of time then remaining in the first year of assessment.

4. At any time and from time to time and in addition to the annual assessment, the Board of Directors may levy a special assessment against each real property interest for the year in which the special assessment is levied, for the purpose of paying for any item which should be paid out of the annual assessments but for which there are not sufficient funds available and for defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of any improvement within the Common Area, including the necessary fixtures and personal property related thereto, or of any townhouse unit. Any such special assessment which is in excess of twenty-five per cent (25%) of the previous year's annual assessment, except in the case of special assessments for the repair of damage to the property as hereinafter provided, must be approved by two-thirds (2/3) of the owners present in person or by proxy at a meeting specially called for that purpose.

cost of Annual Assessment 400 x 12 = 4800
25% is 4800 (.25) = 1200

5. Written notice of the annual assessment and each special assessment shall be sent to every owner subject thereto. The due dates for the payment of all or installments of part of the assessment shall be established by the Board of Directors and set forth in such notice. The Board of Directors may collect the assessment in a lump sum or in installments as determined by them.

6. Both annual assessments and special assessments must be fixed at a uniform rate for all Real Property Interests, and the due dates for the collection of an assessment and the amount of each installment, if any, of each assessment must be uniform for all Real Property Interests. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his town-house Real Property Interest.

7. Any assessment, or installment of a part thereof, which is not paid on or before the date upon which it is due shall be delinquent. If any installment of a part of an assessment is not paid within 20 days after it has become due, at their option, the Board of Directors may declare the entire unpaid balance of the assessment due at once. If any assessment, or installment of a part thereof, is not paid within 30 days after it has become due, or if the accelerated installments of any assessment are not paid within 10 days of the acceleration thereof, then the balance due shall bear interest at the rate of one per cent (1%) per month and the Board of Directors shall prepare a written notice of lien setting forth the amount of the unpaid balance, the name of such owner, and a description of his real property interest. Such notice shall be signed by one member of the Board of Directors or an officer of the Association and shall be recorded in the office of the Clerk and Recorder of Eagle County, Colorado. Such lien shall attach from the date of the failure to pay the assessment, or an installment thereof, when due.

Subsequent to the recordation of the notice of lien, the lien may be enforced by the foreclosure on the defaulting owner's real property interest the same as if said lien was a recorded mortgage on such real property interest. Whenever a notice of lien is prepared, the owner in default shall be required to pay the Association's costs and expenses, including its attorney fees, incurred for the preparation and filing of such notice of lien and for the foreclosure of such lien. The commencement or pendency of any collection or foreclosure proceeding shall not relieve the defaulting owner from the obligation to pay subsequent assessments against such owner's real property interest. The Association shall have the power to acquire the real property interest in any foreclosure proceeding and to hold, lease, mortgage, convey or otherwise deal with the same.

8. The assessments made hereunder shall be equal and, upon the calculation of the total assessment for any given period, each unit shall be assessed that percentage of the total assessment as that Lot bears in a ratio to all Lots then subject to this Declaration. The Board of Directors shall have the power and the right to assess each unit subjected to this Declaration, based upon the percentage floor area that that individual unit bears to the entire floor area of all units, for those items of common expense which are allocated or may be allocated based upon the size of the individual unit. Direct charges against a unit, billed to the Association, may be billed directly without apportionment, by the Board.

9. Any entity holding a lien on real property interest of a defaulting owner may, at its option, pay any unpaid assessment on such Real Property Interest, and, upon such payment, shall have an additional lien thereon for the amounts paid and such additional lien shall have the same rank as the main lien of such entity.

10. Upon the request of an owner, a mortgagee of any Real Property Interest or contract purchaser, the Association

shall issue its certificate executed by an officer of the Association certifying whether or not the assessments on such real property interest are delinquent and, if delinquent, the total amount due as of the date of the certificate. The Association shall be entitled to collect a fee not to exceed \$25.00 for the issuance of any such certificate. Such certificate shall be conclusive evidence of the facts therein contained in favor of any third party relying thereon in good faith and the Association shall not be held liable for such disclosure nor error therein.

11. The lien of the assessments provided for herein shall be subordinate only to the lien of a first mortgage or first deed of trust. Except as is hereinafter provided and regardless of whether or not a lien against the real property interest has been recorded, prior to the sale or transfer of any Real Property Interest, all delinquent assessments, or installments of a part thereof, against such Real Property Interest must be paid in full. The sale or transfer of a Real Property Interest shall not affect the assessment lien on such Real Property Interest. However, the sale of any real property interest pursuant to a decree of foreclosure under a purchase money mortgage or purchase money deed of trust, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments thereof which become due prior to such sale. No such sale shall relieve such Real Property Interest from liability for any assessments thereafter becoming due or the lien thereof.

ARTICLE VI

PARTY WALLS

1. The Declarant has or will cause to be constructed twenty-three (23) townhouse residences on the building lots, each of which shall be connected to one or more other residences by support and division walls. The said support and division walls and the footings therefor shall be considered "Party Walls".

2. The general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to the party walls.

3. Each party to said party wall shall have a perpetual easement in that part of the premises of the other on which said party wall is located for party wall purposes as herein described, including, without limitation, the continuing right to use, repair, restore, maintain, and replace such party walls, porches, or balconies as provided in this instrument, and the right of reasonable access, including ingress and egress to and from the premises of such other party, for such repair, restoration, maintenance, and replacement.

ARTICLE VII

EASEMENTS

1. All utility mains, lines, pipes, and appurtenances shall be placed under the surface of the ground or otherwise hidden from view whenever possible.

2. A non-exclusive easement is hereby created in favor of the Association and each townhouse unit upon, over, through and under each townhouse unit and the Common Area for the installation, maintenance, repair, replacement, and upgrading of utilities which serve more than one townhouse unit and which are now installed, hereafter installed by the Declarant, or hereafter installed by the Association. Such easement shall include a reasonable right of ingress and egress for such purposes, and for the purpose of making emergency repairs thereon necessary to prevent damage to the Common Area elements or to another townhouse unit. The term "utilities" shall include, but not be limited to, heating systems, water, sewer, gas, telephone, television cable, electricity and any similar services.

Each owner shall be liable to the Association for damages sustained by reason of damage to a utility which resulted from the negligent or willful act of such owner, his family, guests,

or contract purchasers. In the event that any owner shall fail to pay the amount of such damages to the Association upon demand, in addition to any remedy which the Association may have, the Association shall have the same rights and remedies concerning the collection of such damages as the Association has under Paragraph 7, Article V, hereof concerning the collection of delinquent assessments.

3. Any easements required by or for any utility district, company, city, or other legal entity over, across, under, or through the Common Area, that are not inconsistent with the plan and development thereof, may be granted by the Declarant prior to the sale of the last Lot by the Declarant, but in no event after December 31, 1981.

4. In the event that any utility easement or easements are required after December 31, 1981, in the Common Area, only written approval and written conveyance of the Association will be required for the granting of any such easement.

5. Each townhouse unit and the Common Area shall be subject to an easement for encroachments created by construction, settling, and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as the encroachments remain, shall and does exist. In the event that the townhouse structure on a Lot is partially or totally destroyed and then rebuilt, the owners agree that minor encroachments of parts of the adjacent townhouse units or common elements due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

ARTICLE VIII

INSURANCE

1. To the extent possible, the Association shall obtain and maintain for the benefit of all owners and others the following insurance:

(a) Fire insurance with extended coverage and additional perils endorsements insuring all improvements on the properties and all personal property belonging to the Association in an amount equal to the full replacement value, without deduction for depreciation, containing a standard noncontributory mortgage clause in favor of each mortgagee of the properties, and providing that the loss, if any, shall be payable to such mortgagee as its interest may appear, subject, however, to the loss payment provisions in favor of the Association as set forth in Article IX.

(b) Public liability insurance covering each member of the owners' association, the Directors, and such other persons as the Board of Directors may determine from time to time. Such public liability insurance shall also cover cross liability claims of one insured against the other.

(c) Workmen's compensation.

(d) Such other coverages as are commonly utilized in the Vail area for comparable projects.

2. All policies of insurance obtained hereunder shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured and shall provide that such policies may not be cancelled or substantially modified without at least fifteen (15) days' prior written notice to all of the insured, including mortgagees. Duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact for all of the owners, which policy or policies shall identify the interest of each owner (owner's name and townhouse unit number or symbol).

3. Prior to obtaining any policy of fire insurance or renewal thereof, the Board of Directors shall obtain an

appraisal from a fire insurance company or otherwise, of the full replacement value of the entire complex, including all improvements, without deduction for depreciation, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions of this Article VIII. In no event shall the insurance policy contain a co-insurance clause for less than ninety per cent (90%) of the full replacement cost. Determination of maximum replacement value shall be made annually by one or more written appraisals to be furnished by a person knowledgeable of replacement cost, and each mortgagee shall be furnished with a copy thereof within thirty (30) days after receipt of such written appraisals.

4. Owners may carry other insurance for their benefit and at their expense, provided that all such policies shall contain waivers of subrogation, and provided further that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any owner.

5. Insurance coverage on furnishings and other items of personal or other property belonging to an owner and public liability coverage within each townhouse shall be the sole and direct responsibility of the owner thereof, and the Board of Directors, officers, and the Association shall have no responsibility therefor.

6. The premiums and other costs concerning the said insurance shall be paid for by the Association from assessments levied by the Association.

ARTICLE IX

MAINTENANCE, REPAIR AND RECONSTRUCTION

1. The Association shall have the exclusive right and duty to provide the insurance and all of the materials and labor for exterior maintenance and repair or replacement of the entire complex and upon each townhouse unit, including, but not by way

of limitation, painting, repairing, replacing and maintaining roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvement, but excluding specifically glass surfaces and screens.

2. Acceptance by any person or other entity of a fee interest in any townhouse unit shall constitute the irrevocable appointment of the Association as the attorney-in-fact for such person or entity to act in their name, place and stead for the purpose of dealing with the properties, or any part thereof, including all improvements thereon, after their damage or destruction or upon their pending damage or destruction. As the attorney-in-fact for each owner, the Association by its President and Secretary or its other duly authorized officers or agents shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to any owner which is necessary and appropriate to exercise the powers granted herein.

3. Wherever the repair and reconstruction of improvements is referred to in this Article IX, it shall denote the restoration of the improvements to substantially the same condition as they existed prior to the damage, but in no event shall such repair or replacement exceed the improvements installed by the original developer and Declarant herein, and each townhouse repaired and reconstructed shall have substantially the same horizontal boundaries as before.

4. In the event of damage or destruction of any improvement on the properties due to any cause insured against, the proceeds of the insurance collected shall be available to the Association, and the Association shall promptly apply such proceeds toward the repair and reconstruction of the improvements damaged or destroyed.

5. In the event that the insurance proceeds collected are insufficient to accomplish the repair and reconstruction

of damaged or destroyed improvements on the properties or in the event that the damage or destruction incurred was not insured against, the Association shall promptly proceed with ~~the~~ complete the repair and reconstruction of such improvements and shall pay for the same by making a special assessment as provided for in Paragraph 4, Article V.

6. During the repair and reconstruction of any improvement on the properties, no assessment shall be abated or prorated.

7. For the purposes of repair and reconstruction of any improvement on any Lot, every mortgagee under a junior mortgage or deed of trust shall release all of his right, title, and interest in and to the proceeds from all insurance policies which would be available to the Association but for such junior mortgages or deeds of trust. Such release shall be furnished forthwith by every junior mortgagee upon the written request of the Association and, if such release is not timely furnished the Association, such release may be executed and delivered by the Association as attorney-in-fact for each such junior mortgagee.

ARTICLE X

ARCHITECTURAL CONTROL

1. The Architectural Control Committee is hereby established and is initially composed of the following Committeemen, viz:

<u>Committeemen</u>	<u>Address</u>
Ralph B. Putnam	P.O. Box 1211, Vail, Colorado 81657
William Robbie	P.O. Box 1211, Vail, Colorado 81657
Mark Donaldson	P.O. Box 3667, Vail, Colorado 81657

The initial Committeemen shall serve until completion of the development and construction (including landscaping) of the townhouse units. Prior to such completion, the Declarant may remove any such Committeeman, or any of his successors, at will and appoint a successor.

Upon such completion, the initial Committeemen and their

successors who were appointed by the Declarant shall resign, and the members of the Board of Directors of the Association shall comprise the membership of the Architectural Control Committee. Every member of the Board of Directors shall be a Committeeman on the Architectural Control Committee so long as he shall remain a Board member. A majority of the Committee may designate a representative to act for the Committee. Neither the Committeemen nor the designated representative shall be entitled to any compensation for services performed pursuant to these protective covenants.

All matters coming before the Architectural Control Committee, or its representative, shall be either approved or disapproved in writing by the Committee by a majority vote of all Committeemen or, if a representative has been appointed, upon the decision of such representative. The Committee, or its representative, shall have the right to disapprove any plans, specifications, or other documents submitted to it which, in their or his opinion, are not suitable or desirable for aesthetic or other reasons and to take into consideration the suitability of the project described in the submitted plans, specifications or other documents.

ARTICLE XI

AMENDMENT OF DECLARATION

1. This Declaration shall not be revoked unless all owners, all persons holding recorded first mortgages or being the beneficiaries of recorded first deeds of trust encumbering all or any part of the properties, and the Town of Vail Planning Commission, Vail, Colorado, consent and agree to such revocation by instrument(s) duly recorded.

2. This Declaration shall not be amended unless owners representing two-thirds (2/3) or more of the townhouse real property interests, two-thirds (2/3) or more of the persons holding recorded first mortgages or being the beneficiaries of recorded first deeds of trust encumbering all or any part of

the properties, and the Town of Vail Planning and Environmental Commission, Vail, Colorado, consent and agree to such amendment by instrument(s) duly recorded; provided, however, that the undivided interests in the Common Area appurtenant to each townhouse unit shall have a permanent character and shall not be altered without the consent of all owners and all persons holding recorded first mortgages or being the beneficiaries of recorded first deeds of trust encumbering all or any part of the properties, and such consent shall be duly expressed in the recorded amended Declaration.

ARTICLE XII

ACCESS AREAS

1. The Declarant shall surface the roads provided for the use of the owners which provide access to the said townhouse units.
2. The Association shall maintain said roads and provide reasonable snow removal and other maintenance for the said roads.
3. All costs arising from such snow removal and maintenance shall be paid for by the Association from assessments levied by the Association.
4. Neither the Declarant nor the Association shall be required to perform the obligations under the foregoing provisions of this Article XII if they are specifically directed in writing not to do so by any governmental body or agency having jurisdiction over the matter.

ARTICLE XIII

GENERAL PROVISIONS

1. The covenants and restrictions contained in this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the owner of any Lot, their respective legal representatives, heirs, successors, and assigns, until revoked, as provided in Article XI.

2. The Declarant, so long as it shall own any townhouse real property interest, the Association, or any owner 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 Declarant, the Association, 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.

3. When necessary for proper construction, the masculine of any word used in this Agreement shall include the feminine and neuter gender, and the singular shall include the plural, and vice versa.

4. If any provision, sentence, phrase, or word of this Declaration, or application thereof to any person or circumstance, shall be held invalid, the remainder of this Declaration or the application of such provision, sentence, phrase or word to persons or circumstances, other than those to which it is held invalid, shall not be affected thereby.

5. The Declarant is hereby specifically granted the right for a period of five (5) years after the recording of this Declaration to subject additional adjacent property to the provisions of this Declaration and, in so doing, to grant to owners of townhouse units on said property similar non-exclusive rights as are granted to townhouse unit owners herein in the Common Area created hereunder.

ARTICLE XIV

CONDEMNATION

If any any time or times during the continuance of ownership pursuant to this Declaration all or any part of the Common Areas or any lot or lots 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:

(a) Proceeds: All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association.

(b) Complete Taking:

(1) In the event that all of the Common Areas are taken or condemned or sold or otherwise disposed of, in lieu of or in avoidance thereof, the Condemnation Award shall be apportioned among the Owners in the same percentages as provided for the payment of annual assessments and payment of said apportioned amounts shall be made payable to the owner and the first mortgagee of his Lot jointly.

(2) 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.

(c) Partial Taking: In the event that less than the entire Common Area is 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 and replacement of those improvements on the Common Area damaged or taken by the condemning public authority, unless seventy-five per cent (75%) of the owners and the first mortgagees of each Lot agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement, shall be used by the Association for the future maintenance of the Common Area and exterior maintenance of the Lots.

ARTICLE XV

CONVEYANCES

Declarant agrees that prior to the conveyance of the first townhouse unit to an Owner, that all the lands and improvements, if any, comprising the Common Area, as defined herein, shall be released from any deeds of trust or mortgages thereon and thereafter Declarant shall be prohibited from further encumbering

said Common Area and Declarant agrees that it shall cause any liens or encumbrances created by it to be released of record.

IN WITNESS WHEREOF, this Declaration was executed the day and year first-above written.

P & R ENTERPRISES, a Colorado partnership

By Ralph B. Putnam
Ralph B. Putnam, Partner

By William Robbie
William Robbie, Partner

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

Subscribed and sworn to before me this 19th day of September, 1979, by RALPH B. PUTNAM as Partner and WILLIAM ROBBIE as Partner of P & R ENTERPRISES, a Colorado partnership.

Witness my hand and official seal.

My commission expires: November 24, 1980.

Carol A. Priest
Notary Public

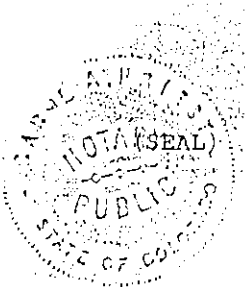


EXHIBIT "A"

The land referred to in this Declaration is situated in the State of Colorado, County of Eagle, and is described as follows:

A parcel of land in the County of Eagle and State of Colorado in Section 2, Township 5 South, Range 80 West of the 6th P.M. according to the Survey of said Township and Range as approved by the U.S. Surveyor General in Denver, Colorado on April 12, 1892; said parcel of land being more particularly described as follows, to wit:

Beginning at a point on the Northerly right of way boundary line of U.S. Interstate Highway 70 from which the Southeast Corner of said Section 2 bears S. 00°22'59" E., 40.78 feet distant; thence following said highway boundary line as follows:

N. 60°33'13" W., 229.80 feet; thence N. 60°18'51" W., 507.16 feet; thence N. 60°33'14" W., 24.58 feet to a Colorado State Highway Department Monument found in place; thence N. 02°44'58" W., 181.86 feet to a Colorado State Highway Department Monument found in place; thence departing said Highway right of way boundary line N. 88°36'35" E., 298.79 feet to an iron pin monument found in place; thence S. 60°36'03" E., 419.33 feet to an iron pin monument with an aluminum cap marked Corner No. 1, found in place; thence S. 61°05'04" E., 359.35 feet to the point of beginning.

And shall upon the filing of the Townhouse Plat of Pitkin Creek Filing No. 1, be described as Lots 1-23 and Parcel A.