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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE DIVIDE TOWN OF SNOWMASS VILLAGE, COLORADO

SILVIA DAVIS
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This Declaration of Covenants, Conditions and Restrictions for The Divide is made this 22nd day of August, 1989, by Snowmass Land Company, an Illinois general partnership, ("Declarant").

I. DECLARATION - PURPOSES AND EFFECT

1.1 General Purposes. Declarant is the owner of real property in Pitkin County, Colorado described on Exhibit A attached hereto. Declarant desires to submit the Property to this Declaration in order to provide for the use, operation, administration and maintenance of certain facilities or functions common to the use or benefit of the Property.

This Declaration establishes certain rights and obligations with respect to the Property for the Declarant and all present and future owners of the Property. Declarant intends that such owners, mortgagees and any other person or entity now or hereafter acquiring any interest in the Property shall hold their interests subject to the rights, privileges, obligations, and restrictions established by this Declaration. All such rights, privileges, obligations and restrictions are declared to be in furtherance of a plan to promote and protect the value, desirability and attractiveness of the Property.

1.2 Declaration. Declarant hereby submits the Property to this Declaration and declares that the Property shall at all times be owned, used or occupied subject to the provisions of this Declaration, which provisions shall constitute covenants running with the land and shall be binding upon and inure to the benefit of Declarant and any person or legal entity acquiring any interest in the Property.

II. DEFINITIONS

The terms listed below, as used in this Declaration, shall have the meanings set forth as follows:

2.1 "Articles" means the Articles of Incorporation of the Association as amended from time to time.

2.2 "Architectural Committee" means the Design Committee established pursuant to the Master Declaration of Protective Covenants For Snowmass-at-Aspen Residential Areas as more particularly defined in Article XIV.

2.3 "Association" means The Divide Homeowners Association, a Colorado non-profit corporation, and its successors and assigns, through which all Owners act as a group under the Articles, the By-laws and this Declaration.

2.4 "Association Property" means:

(a) the Common Open Space, being Lots numbered from 46 through 50, as shown on the Plat;

(b) the Caretaker lot, being Lot No. 41, as shown on the Plat, and all improvements thereon;

(c) all Private Roads, being Roads A, B and C, as shown on the Plat; and

(d) any additional real property or personal property owned or leased by the Association for the use, enjoyment and benefit of the Owners.

2.5 "Board" or "Board of Directors" means the governing board of the Association.

2.6 "By-laws" means the By-laws of the Association adopted and amended by the Board from time to time.

2.7 "Common Expenses" means the estimated and actual expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

2.8 "Declarant" means Snowmass Land Company, an Illinois general partnership, and its successors and assigns specifically designated as such by an instrument executed by Declarant and recorded in the office of the Clerk and Recorder of Pitkin County, Colorado.

2.9 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for The Divide as amended from time to time.

2.10 "Lot" means each single family residential lot numbered from 1 through 40, inclusive, as shown on the Plat.

2.11 "Maintenance" means such operation, management, maintenance, repair, renovation, restoration, or replacement of any property as may be necessary to maintain such property in substantially the same condition as originally or subsequently constructed, altered or improved including the removal of snow as necessary for customary use and enjoyment.

2.12 "Mortgage" means any mortgage, deed of trust or other security instrument creating a real property security interest in the Association Property, or any part thereof, or in

any Lot excluding any statutory, tax or judicial liens. "Mortgagee" shall include any grantee, beneficiary or assignee of a Mortgage, and "Mortgagor" shall include any grantor, trustor or assignor of a Mortgage. First Mortgagee means a Mortgagee having the highest priority as a Mortgage against the property thereby encumbered, but only if the Mortgagee of such Mortgage claims such status in a written notice delivered to the Association.

2.13 "Owner" means the person or legal entity holding fee simple title to a Lot.

2.14 "Plat" means the plat of the Property recorded in the office of the Clerk and Recorder of Pitkin County, Colorado, or as the same may be hereafter amended.

2.15 "Private Roadway" means any road dedicated as a private roadway on the Plat.

2.16 "Property" means the real property described in Exhibit A attached hereto.

2.17 "Subdivision Improvements Agreement" shall mean the agreement between the Declarant and the Town of Snowmass Village pertaining to the development of the Property.

2.18 "Town" means the Town of Snowmass Village, Colorado.

III. GENERAL LIMITATIONS AND RESTRICTIONS

3.1 Residential Use. Each Lot shall be used only for single family residential purposes and such accessory uses as may be permitted by the Land Use and Development Code of the Town, or as the same may be amended.

3.2 Compliance with Land Use Plan. All buildings and other improvements constructed upon a Lot, and the use thereof, shall comply with the provisions of the final Land Use Plan approved by the Town, or any amendments thereto.

3.3 Building Envelope. All above-grade improvements, except for driveways, parking areas, retaining walls and landscaping, shall be located within the Building Envelope of the Lot as shown on the Plat.

3.4 Outdoor Fixtures. Outdoor fixtures, except for chimneys and weather vanes, shall not exceed the height of the highest building on such Lot.

3.5 Reflective Finishes. Reflective finishes shall not be used on exterior surfaces, including, without limitations, walls, roofs, doors, trim, retaining walls and fences; except

that the foregoing shall not prohibit skylights. High reflective glass shall not be used on any windows facing Old Snowmass Valley.

3.6 Improvements. No improvement shall be made to any Lot without the prior approval of the Architectural Committee.

3.7 No Subdivision. No Lot shall be subdivided into smaller lots or conveyed or encumbered in any less than the full dimensions thereof as shown on the Plat.

3.8 Utilities. All water, sewer, gas, electrical, telephone, cable t.v. and other utility pipes or lines shall be buried underground and shall not be carried on overhead poles or above the surface of the ground. Any areas of natural vegetation or terrain disturbed by the burying of utility lines shall be revegated by and at the expense of the Owner causing the installation of the utilities no later than the next growing season following such installation.

3.9 Animals. No horses, cows, fowl or other farm animals shall be kept on any Lot. Domestic pets shall be permitted, subject to the rules and regulations with respect thereto as may be promulgated from time to time by the Association.

3.10 Enclosure of Unsightly Facilities and Equipment. All unsightly facilities, equipment and other items, including but not limited to those specified below, shall be enclosed within a covered structure. Any motorhome, trailer, boat, truck, tractor, snow removal or garden equipment and any similar items shall be kept at all times, except when in actual use, in an enclosed garage. Any refuse or trash containers, utility meters or other facilities, service area, or storage pile shall be enclosed within a structure or appropriately screened from view by planting or fencing approved by the Architectural Committee and adequate to conceal the same from neighbors and public and private roads. No lumber, metals, boat materials, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except building materials during the course of construction and only for such reasonable periods of time as is necessary prior to the collection of or disposal thereof.

3.11 Satellite Dishes. No satellite dishes shall be permitted on any Lot.

3.12 Firearms. The discharge or shooting of firearms is prohibited, except as may be permitted by rules and regulations promulgated by the Association.

3.13 No Mining, Drilling or Quarrying. No mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, sand and gravel,

shall be permitted. Individual wells shall not be permitted on any Lot and no Owner shall be permitted to drill for water on his Lot.

3.14 Impairment of Drainage. No Owner shall do anything which shall impair or adversely affect the natural drainage of the Property, or divert drainage water unto another Lot, or deprive any other Lot of its natural drainage course. Each Owner shall install culverts where driveways cross road ditches, irrigation channels and other drainage ways as required by the Architectural Committee.

3.15 Noxious or Offensive Activity. No noxious or offensive activity or sound shall be carried on upon any portion of the Property at any time nor shall anything be done or permitted which may become a nuisance to, or unreasonably disturbed, the Owners of the other Lots, or be injurious to the reputation of the Property.

3.16 Reservation of Rights to Declarant. In order that the Declarant's work may be completed and the Property may be established as a fully developed community, Declarant reserves the following rights with respect to the Property (including both the Association Property and the Lots), which rights shall be reserved to and remain vested in Declarant, notwithstanding the conveyance of the Association Property by Declarant to the Association or the conveyance of the Lots by Declarant to any other persons or entities:

(a) The right of Declarant, and its agents, employees and contractors, to enter upon the Property and to do whatever Declarant deems necessary or advisable in connection with the performance of the work to be performed by Declarant for the development of the Property, including, without limitation, the construction and installation of drainage, irrigation and water storage facilities, the installation of all utilities, the construction of all roads, the grading and landscaping of the Property, the construction of all buildings and other improvements to be constructed by Declarant, the erection or placement of such temporary structures as may be reasonably necessary to facilitate the development of the Property, and the placement of such sign or signs on the Property as Declarant may deem advisable in connection with the sale of the Lots.

(b) The right of Declarant to grant additional easements, and to relocate existing easements, for utilities, drainage, grading, driveway access and similar purposes as may be reasonably required for the performance and completion of Declarant's development work; provided that no such easements shall be granted or relocated so as to encroach upon the Building Envelopes of the Lots as shown on the Plat.

IV. LIMITATIONS AND RESTRICTIONS APPLICABLE TO CERTAIN LOTS

4.1 Existing Grade Calculations. For Lots Nos. 15, 16, 21 and 27, building height shall be measured from the natural undisturbed grade which existed prior to any improvements which affect these Lots. Natural undisturbed grade is shown on the Topographic Map prepared by Drexel Barrell and Company and recorded in ~~Plat~~ Book 600 at Page 609 in the office of the Clerk and Recorder of Pitkin County, Colorado.

4.2 Outdoor Lighting. For Lot Nos. 1, 2, 12, 13, 14, 15, 16, 24 and 35, outdoor lighting shall be kept at a minimum and shall be directed and screened, to the extent possible, so as to mitigate the impact thereof on the views from Old Snowmass Valley and, with respect to Lot 35, from the Top of the Village condominiums.

4.3 Common Driveways. Common driveways, and easements therefor, are provided on the Plat with respect to Lot Nos. 1 and 2 and with respect to Lot Nos. 34 and 35. The Declarant shall have the right to prescribe the location of said common driveways and the Declarant shall, at Declarant's cost, construct said common driveways. Thereafter, the cost of maintaining and repairing said common driveways, including the cost of snow removal, shall be shared equally by the owners of the Lots benefited by said common driveway.

V. LIMITATIONS AND RESTRICTIONS APPLICABLE TO ASSOCIATION PROPERTY

5.1 General Common Open Space Restrictions. The Common Open Space shall, except as provided by this Declaration, be maintained as a scenic and natural area for recreational use of the Owners with no above ground improvements. The Common Open Space shall be subject to the public easements as shown on the Plat and portions thereof used for the installation of underground utilities, water storage facilities, and drainage facilities. The Common Open Space shall be subject to and may be developed as reasonably necessary in accordance with easements affecting the area which are referred to herein, and shown on the Plat or otherwise of record at the time this Declaration is recorded in the office of the Clerk and Recorder of Pitkin County, Colorado, the landscaping plan provided for in the Subdivision Improvements Agreement and such easements with respect thereto as may be hereafter granted by the Declarant. No fences shall be constructed in the Common Open Space, except as provided for in Section 5.2.

5.2 Skier Control Fences. Snow fences and signage shall be erected from November 15 to the following May of each

winter season in the Common Open Space and located south of the retaining wall on Road C, as shown on the Plat, to direct skier traffic to the public parking lot.

5.3 Ski Grooming. The Common Open Space, including the ski easements therein, may be groomed for skiing during the winter seasons; provided, that neither the Declarant nor the Association shall have the obligation to do so.

5.4 Lot 49. Lot No. 49 is subject to those use restrictions set forth in Section 5.08 of that certain Site Sale Agreement recorded in Book 230 at Page 463 in the office of the Clerk and Recorder of Pitkin County, Colorado, and to those further use restrictions set forth in the final Land Use Plan approved by the Town.

5.5 Caretaker Lot. Declarant shall construct a caretaker's house and other accessory improvements on Lot No. 41, being the Caretaker Lot. Such improvements to the Caretaker Lot shall be in accordance with the final Land Use Plan approved by the Town. The Caretaker Lot shall be restricted for use as Employee Housing pursuant to the ordinances, rules and regulations established therefor by the Town, or the appropriate Agency thereof; provided that the Association shall have the sole and exclusive right to designate the occupant thereof. The Association agrees to provide the Town, or the appropriate agency thereof, with annual verification with respect to the occupancy thereof and agrees to be bound by all of the ordinances, rules and regulations of the Town, or the appropriate agency thereof, pertaining thereto.

VI. VARIANCES AND VACATION OF CERTAIN EASEMENTS

6.1 Variances. The Association may, by the majority vote of the members of its Board of Directors, grant reasonable variances from the strict compliance with the provisions of this Declaration in the case of undue hardship. The Owners of all of the Lots shall be given at least 10 days' advance written notice setting forth the time and place of the meeting of the Board of Directors at which any request for a variance is to be considered and describing the requested variance. Said notice shall be deemed given when mailed, by first class mail, to said Owners at their latest addresses provided to the Association. Said Owners shall be afforded the opportunity to appear before the meeting of the Board of Directors and be heard with respect to the requested variance.

6.2 Automatic Variances. In the event that the Town shall have granted any variance with respect to the Property pursuant to the provisions of the Town's Land Use and Development

Code, then the variance so granted by the Town shall automatically, and without action by the Association, constitute a variance from the provisions of the Declaration to the extent required by the terms of the variance so granted by the Town.

6.3 Vacation of Easements Encroaching Into Building Envelopes. The Plat provides for easements on each side of the private roads for the purposes therein specified, and it is recognized that such easements may, with respect to certain Lots, encroach into the Building Envelopes for such Lots. The Association, by the majority vote of the members of its Board of Directors, shall have the power and authority to vacate any such easement to the extent that such easement encroaches into the Building Envelope of any Lot, if in the determination of the Board of Directors, the vacation thereof, either in whole or in part, is necessary for the reasonable use and enjoyment of such Lot. Such vacation shall be evidenced by the execution and delivery by the Association of a release of easement, which shall be acknowledged and in form acceptable for recordation in the office of the County Clerk and Recorder of Pitkin County, Colorado.

VII. ASSOCIATION PROPERTY

7.1 Conveyance of Association Property. Declarant shall convey ownership of the Association Property described in Subparagraphs (a), (b) and (c) of Section 2.4, together with all rights and easements appurtenant thereto, to the Association; subject to this Declaration and all reservations, exceptions, easements and restrictions pertaining thereto. Such conveyances may be made from time to time either before or after Declarant has constructed the improvements thereon to be constructed by Declarant, whether pursuant to the provisions of the Subdivision Improvements Agreement, or elsewhere provided for herein; provided that the conveyance thereof shall not relieve Declarant of Declarant's obligations to construct such improvements.

7.2 Easement to Association Property. Appurtenant to each Lot shall be a nonexclusive easement to the Association Property. This easement is subject to the following rights of the Association, except as limited in this Declaration:

(a) The right to reasonably limit or regulate the use of Association Property; and

(b) The right to suspend an Owner, his lessees and their families or guests from use of the Association Property for a period of time during which any assessment against a Lot remains unpaid and delinquent and also for a period of time not exceeding 30 days for any single infraction of the rules of the Association.

7.3 Additional Easements with Respect to Association Property. The Association, after conveyance of Association Property to the Association, shall have the right to grant easements with respect to the Association Property either public or private, in furtherance of the intents and purposes of this Declaration.

7.4 Obligations with Respect to Association Property. Except as to those obligations to be performed by Declarant with respect to the development of the Association Property, upon the acceptance of the conveyance of Association Property, the Association shall assume all continuing obligations pertaining to such Association Property as provided for in this Declaration, and the Declarant shall automatically be released from said obligations.

7.5 Compliance with Law. No Owner and no Owner's family or guests shall do anything or keep anything in or on the Association Property which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental or quasi-governmental body.

VIII. THE ASSOCIATION

8.1 Business and Membership. The Association through its Board of Directors shall govern and manage the Association Property and shall enforce the provisions of this Declaration. All Owners shall automatically be members of the Association, and such membership shall automatically cease upon termination of the Owner's interest in his Lot. Membership shall be appurtenant to a Lot and shall not be separately conveyed, encumbered or abandoned.

8.2 Binding Effect. Each Owner, his lessees, their families and guests and any other persons using or occupying a Lot shall be bound by and shall strictly comply with the provisions of this Declaration, the By-laws, the Articles, any deed restrictions and covenants and all rules, regulations and agreements lawfully made by the Association. The Association

shall have the right and power to bring suit in its own name for either legal or equitable relief for any lack of compliance with any such provisions. The failure of the Association to insist upon the strict performance of any such provisions or to exercise any right or option available to it, or to serve any notice or to institute any action, shall not be a waiver or a relinquishment for the future, of any such provision. An Owner aggrieved by lack of compliance may also bring suit for legal and equitable remedies. If any court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to reimbursement of its costs and expenses, including reasonable attorneys' fees, in connection therewith.

8.3 Power of the Association. Each Owner agrees that the Association has all the powers granted it by the Colorado Non-Profit Corporation Act and any amendments thereto or replacements thereof. Such powers shall include, without limitation, levying assessments against Owners, imposing a lien on Lots for any such assessments and foreclosing any such liens, enforcing any deed restrictions and covenants, and acquiring, holding, leasing, mortgaging or conveying Association Property, and the adoption of rules and regulations.

8.4 Maintenance of Association Property. The Association shall be responsible for Maintenance and operation of all Association Property as a Common Expense.

8.5 Additional Association Functions. The Association may undertake, to the extent the Board, in its sole discretion so elects, to provide any other function for the benefit of or to further the interests of all, some or any Owners on a self-supporting, special assessment, or general assessment basis. The Board shall determine, in its sole discretion, whether the expenses in connection with any such function shall be designated as Common Expenses or as charges allocated solely to Owners utilizing such services. Any such charge shall be reasonable and shall be uniformly applied. Such functions may be provided by the Association's employees, by an independent contractor retained by the Association, or by the Snowmass Homeowners Association, Inc.

8.6 Other Rights of the Association. The Association may exercise any other right, power or privilege given to it expressly by this Declaration, the Articles and By-laws, or by law, and every other right, power or privilege reasonably to be implied from the existence of any right, power or privilege given to it herein or reasonably necessary to effectuate any such right, power or privilege.

8.7 Notice to Maintain. An Owner shall immediately report to the Association the need for any Maintenance which is the Association's responsibility to provide. In the event of any disagreement as to the need for or the responsibility of the Association to provide the Maintenance, the decision of the Board shall be final.

8.8 Mechanic's Liens. Declarant shall be responsible for the release of all mechanics' liens filed with respect to the Association Property, or any part thereof, if any such liens arise or are alleged to arise from labor performed or materials furnished at the instance of Declarant, its agents, contractors or subcontractors. Except as the result of labor performed or materials furnished at the instance of the Board, no labor performed or materials furnished with respect to the Association Property or Lots shall be the basis for filing a lien against the Association Property. No labor performed or materials furnished at the instance of the Board shall be the basis for filing a lien against any Lot.

IX. ASSESSMENTS

9.1 Obligation to Pay Assessments. Each Lot shall be subject to such general or special assessments as the Association may levy from time to time. The assessments collected shall be used exclusively to promote the operation, administration and management of the Association Property and the Property for the use and benefit of all Owners. Each Owner shall be obligated to pay and agrees to pay all such assessments levied against his Lot and may not exempt himself from liability by waiver of the use and enjoyment of the Association Property or by an abandonment of his Lot.

9.2 General Assessments. General assessments shall be based upon a budget for a fiscal year to be designated by the Board, shall include funds for the Common Expenses, and shall also include funds as a reserve for Maintenance which cannot be expected to occur on a regular annual basis. A brief summary of the annual budget shall accompany each general assessment notice. The failure of the Board to establish a budget for the next fiscal year before the expiration of any fiscal year shall not release the Owners from their obligation to pay any assessments or installments thereof for that or any subsequent year. The budget and assessment installments established for a preceding year shall continue until a new budget is fixed.

9.3 Special Assessments. If the estimated cash requirements set forth in the budget prove to be inadequate for any reason, including non-payment of any Owner's assessment, or there are inadequate funds in the reserve, the Board may levy special assessments from time to time. This Section shall not be construed as an independent source of authority for the Board to

incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections.

9.4 Apportionment of Assessments. Except as otherwise provided in this Declaration, amounts assessed pursuant to Section 9.2 or Section 9.3 shall be equally allocated and assessed among the Owners in proportion to the number of Lots owned by each. Assessments which are attributable to only particular Lots may be allocated, in the sole judgment of the Board, on an appropriate equitable basis.

9.5 Refunds. If in any fiscal year the assessments collected by the Board exceed Common Expenses incurred, the Board shall have the right, but not the obligation, to make refunds or give credits against future assessments. Refunds or credits shall be apportioned in the same manner as the general and special assessments which created such surplus. Owners whose Lots were subject to this Declaration for less than the full fiscal year shall receive only a proportionate refund or credit based upon the number of days the Lot was subjected to this Declaration. Any credit received by Declarant as an Owner under this Subsection shall be applied to another Lot owned by Declarant or, if there is no such Lot, shall be converted into a cash refund.

9.6 Assessments Adjustments. With respect to any assessment, credit or refund, the Board shall have the power to round off and make other minor adjustments of less than $10.00 in each Owner's allocation for the following purposes: (i) to create whole round numbers for the convenience of the payor; or (ii) to correct any discrepancy between the total of each Lot's allocation of any such assessment, credit, or refund, and the total amount of either the expenses actually subject to assessment or the surplus actually available for a refund or credit.

9.7 Collection Remedies.

(a) All assessments or installments thereof shall be due and payable at the time or times designated by the Board by written notice delivered to the Owners. Overdue assessments shall bear interest at 18% per annum, or such other lawful rate or charge as the Board may determine from time to time. The payment of any assessment payable in installments may be accelerated by the Board for failure to pay any installment when due.

(b) An assessment shall be the personal obligation of the Owner of the Lot at the time the assessment is levied against the Lot. A suit to recover a money judgment for unpaid assessments may be maintained against any Owner without waiving or otherwise prejudicing the Association's right to pursue its remedies under Subsection 9.7(c). The Association shall be entitled to

recover the costs of suit and reasonable attorneys' fees incurred in bringing any action under this subsection.

(c) The Association shall have a lien against a Lot for any assessments against the Lot which are due and unpaid. Costs of collection, including without limitation, a reasonable attorneys' fees and other court costs, shall be added to the assessment lien amount. All amounts unpaid shall be evidenced by a statement executed by the Association and recorded in the office of the Clerk and Recorder of Pitkin County, Colorado. The assessment lien against a Lot shall be subordinate only to the First Mortgage on the Lot. The Association shall have the right to foreclose such lien in the manner provided by Colorado law for mortgages upon real property. The Association shall have the power to bid on the Lot at a foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

(d) For the purposes of this Section, the term "assessments" includes any amounts due in accordance with the terms of this Declaration.

9.8 Grantee and Mortgagee Assessment Obligations. No Owner shall convey or mortgage his Lot unless and until all sums due the Association, whether or not evidenced by a recorded statement, are currently paid, but no Mortgage transaction shall be voidable by the Association nor shall the superior position of a First Mortgagee be adversely affected by a lien of the Association. At least five (5) business days prior to any conveyance or Mortgage, the Owner shall deliver written notice to the Association advising it of the proposed transaction and the names and addresses of all transferees and Mortgagees involved. If any assessment is due and owing by the Owner, his grantee or Mortgagee shall apply the proceeds of any such transaction to the payment of delinquent amounts due the Association before paying or disbursing any amount to the Owner. The grantee of a Lot shall be jointly and severally liable with his grantor for all unpaid assessments against the latter up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor any amounts paid by the grantee therefor. Upon written request and payment of such reasonable fee as may be set by the Association, the Association shall issue a written statement to such grantee or Mortgagee verifying the status of all assessments or charges affecting the Lot. Any statement as to the existence or amount of any delinquencies shall conclusively bind the Association. A First Mortgagee, who takes title to a Lot pursuant to the remedies in the deed of trust encumbering that Lot shall take such Lot free and clear of all unpaid assessments and the lien therefor.

9.9 Assessments for Tort Liability. In the event of any tort liability against the Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a special assessment in the

proportion described in Section 9.4. The Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principle regarding liability for negligent or willful acts or omissions.

X. INSURANCE

10.1 Types of Insurance. The Association shall obtain and keep in full force and effect the following insurance coverages, if appropriate:

(a) Property and fire insurance with extended coverage and standard all-risk endorsements, including vandalism and malicious mischief, on the Association Property. The total amount of insurance, after application of deductibles shall be 100% of the replacement value of the insured property exclusive of land, foundations and other items normally excluded from property policies.

(b) Public liability and property damage insurance, including medical payments insurance, in an amount to be determined by the Board covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the ownership, operation, Maintenance or other use of Association Property. This policy shall also cover operation of automobiles on behalf of the Association.

(c) Workmen's compensation and employer's liability insurance in the amounts and in the forms required by law.

(d) Fidelity coverage against the dishonesty of employees, destruction or disappearance of money or securities, and forgery. This policy shall also cover persons who serve the Association without compensation.

(e) Coverage of members of the Board and officers of the Association against libel, slander, false arrest, invasion of privacy and errors and omissions and other forms of liability generally covered in officers and directors liability policies.

(f) Coverage against such other risk of a similar or dissimilar nature as the Board deems appropriate.

10.2 Conditions of Insurance. Such insurance shall be at standard premium rates as established by the Colorado Insurance Commissioner and written with companies licensed to do business in Colorado having a Best insurance report rating of Class 6 or better. No policy shall be obtained where:

(a) contributions or assessments may be made against the Mortgagor or Mortgagee's designee under the terms of the insurance company's charter, by-laws or policy;

(b) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the company's board of directors, policyholders or members; or

(c) the policy includes any limiting clauses (other than insurance conditions) which could prevent Mortgages from collecting insurance proceeds.

10.3 Named Insured and Interests. Policies of property insurance shall name the Association as the insured and the entity to which payment is to be made. The certificate or memoranda of insurance, duplicate originals of all policies and renewals, and proof of payment of premiums shall be issued to the Association, and upon request, to any Owner or Mortgagee.

10.4 Invalidation or Reduction of Coverage. Insurance policies carried pursuant to Section 10.1(a) must provide the following:

(a) that the insurer waives its right to subrogation under the policy against any Owner, any lessee and their families;

(b) that no act or omission by any occupant will void the policy or be a condition to recovery under the policy, unless that person is acting within the scope of his authority as an officer of the Association or as a member of the Board; and

(c) that if, at the time of a loss under the policy, there is other insurance in the name of an Owner or any lessee covering the same property covered by the policy, the policy is primary insurance not contributing to the Owner's individual insurance.

XI. DAMAGE, DESTRUCTION AND OBSOLESCENCE

11.1 Insurance Proceeds. The Association shall receive the proceeds of any insurance described in Section 10.1(a) purchased by the Association as the owner of the Association Property. Any proceeds shall be used for the purpose of Maintenance unless the Owners decide to terminate this Declaration in accordance with the provisions set forth in Section 13.2.

11.2 Mandatory Maintenance. In the event of damage or destruction due to fire or other disaster, if the insurance proceeds are sufficient to reconstruct the improvements, the Association shall promptly cause such Maintenance to occur. If the insurance proceeds are not sufficient for such purpose, the Association may levy special assessments against the Owners for such deficiency pursuant to Article IX.

11.3 Plan for Maintenance. Members holding two-thirds or more of the votes outstanding and entitled to be cast under the By-laws may agree that the Association Property, or any part thereof, is obsolete and may adopt a written plan for Maintenance. The Association shall duly record such plan in the office of the Clerk and Recorder of Pitkin County, Colorado.

11.4 Payment for Maintenance. The expense of Maintenance shall be payable by all of the Owners as Common Expenses. Assessments for the estimated cost of Maintenance shall be levied pursuant to Article IX hereof and shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the Maintenance. Dissenting Owners shall not be relieved of their obligation to pay their proportionate share of any Common Expenses. If the Association collects more money pursuant to this Section than is ultimately required for Maintenance, the Association shall return such excess to the Owners by a credit against the next installments of the annual assessment, or by a cash distribution to each Owner, in an amount proportionate to the respective amount collected from each Owner. The Association shall have full authority, right, and power to Maintain the improvements on the Association Property notwithstanding the failure of an Owner to pay the assessment.

XII. TAKING BY EMINENT DOMAIN

12.1 Taking of Association Property. If any portion of all of the Association Property is taken or condemned by any authority having the power of eminent domain, all compensation and damages on account of the taking of the Association Property, exclusive of compensation for consequential damages to affected Lots, shall be payable to the Association as Owner of the Association Property. Such proceeds shall be used promptly by the Association to the extent necessary for repair and reconstruction of such remaining Association Property in as substantial compliance to the original plan of development as possible. If there is an award in excess of the amount necessary to so substantially repair or reconstruct such remaining Association Property, it shall, at the Board's discretion, be

either refunded or retained by the Association for such uses as it deems appropriate.

XIII. TERM, REVOCATION AND AMENDMENT OF DECLARATION

13.1 Term of Declaration. The term of this Declaration shall be perpetual.

13.2 Revocation of Declaration. This Declaration may be revoked if all of the Owners agree to such revocation by an executed, acknowledged instrument recorded in the office of the Clerk and Recorder of Pitkin County, Colorado. The prior written approval of each First Mortgagee of Association Property will be required for any such revocation, except in the case of obsolescence, substantial destruction by fire or other casualty, taking by condemnation or eminent domain, or abandonment or termination provided by law.

13.3 Disbursement of Proceeds. Upon revocation of this Declaration, the Association Property shall be sold by the Association, in whole or in parcels, as the Board may deem appropriate. All sales proceeds and all amounts recovered under any insurance policy shall be allocated among the Owners in the same proportion as is set forth in Section 9.4 hereof. The funds shall be disbursed, without contribution from one Owner to another, by the Association for the following purposes and in the following order:

(a) payment in full of the customary expenses of sale;

(b) payment in full of the allocable taxes and special assessment liens in favor of any governmental assessing entity;

(c) payment in full of the balance of the lien of any First Mortgage on the Association Property;

(d) payment in full of allocable unpaid Common Expenses and the unpaid costs, expenses, and fees incurred by the Association;

(e) payment in full of recorded junior liens and encumbrances on the Association Property in the order of and to the extent of their priority; and

(f) payment of any balance to the Owners.

13.4 Amendment of Declaration. This Declaration shall be amended if the members holding two-thirds or more of the votes outstanding and entitled to be cast under the By-laws agree thereto by an executed, acknowledged instrument recorded in the office of the Clerk and Recorder of Pitkin County, Colorado.

Until such time as homes shall have been constructed on all of the Lots, no amendment to the Declaration may be made without Declarant's prior written consent.

XIV. SUBJECTION TO MASTER DECLARATION OF PROTECTIVE COVENANTS FOR SNOWMASS-AT-ASPEN RESIDENTIAL AREAS

14.1 Master Declaration. As used herein the "Master Declaration" means the Master Declaration of Protective Covenants for Snowmass-at-Aspen Residential Areas, Pitkin County, Colorado, dated December 30, 1966, and recorded December 30, 1966, in Book 225 at Page 6 in the office of the Clerk and Recorder of Pitkin County, Colorado, as amended by the First Amendments to Master Declaration of Protective Covenants, dated May 25, 1967, and recorded May 26, 1967, in Book 227 at Page 124 in such office and by the Second Amendments to Master Declaration of Protective Covenants, dated June 18, 1970, and recorded June 19, 1970, in Book 249 at Page 58 in such office.

14.2 Subjection to Master Declaration. Declarant shall subject the Lots, as defined in Section 2.10 hereof, to the provisions of the Master Declaration by recording a supplemental declaration therefor, and subject to the provisions thereof.

14.3 Representation on Design Committee. The supplemental declaration which subjects the Lots to the Master Declaration shall, among other things, provide (i) for the right of The Divide Homeowners Association to designate one additional member of the Design Committee established pursuant to the Master Declaration to act as a member of the Design Committee with respect to all matters affecting the Lots, and (ii) that no improvements shall be constructed or altered on any Lot without the approval of the member of the Design Committee so designated by The Divide Homeowners Association.

14.4 Membership in Snowmass-At-Aspen Homeowners Association, Inc. The Master Declaration provides for the undertaking of certain functions for and on behalf of owners of property subject to the Master Declaration. Each Owner of a Lot shall automatically become a member of the Snowmass-At-Aspen Homeowners Association, Inc. and shall be entitled to the benefits and shall be subject to the obligations incident to such membership, including obligations with respect to assessments, as set forth in the Master Declaration. Such membership is appurtenant to a Lot and may not be separately conveyed,

encumbered or abandoned. Said membership shall cease upon the termination of an Owner's ownership interest in a Lot.

14.5 Interpretation of Provisions. The provisions set forth in the Master Declaration shall be in addition to, and not in lieu of, the provisions contained in this Declaration. In the event of conflict between the provisions of the Master Declaration and the provision of this Declaration, the provisions of this Declaration shall control.

XV. MISCELLANEOUS

15.1 Declarant's Rights Transferable. Any right or interest of the Declarant established or reserved in this Declaration may be transferred by Declarant either separately or with one or more of such rights or interests.

15.2 Provisions Incorporated in Deeds. Each provision contained in this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

15.3 Number and Gender. Unless the context shall otherwise provide, a singular number shall include the plural, a plural number shall include the singular, and the use of any gender shall include all genders.

15.4 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of certain common facilities and functions and for the Maintenance of the Association Property.

15.5 No Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public or for any public use.

15.6 Notices. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered 48 hours after a copy of the same has been deposited in the United States mail, postage prepaid for first class mail and addressed to the receiving party at the address last given by such party to the Association. Any notice to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

15.7 Mortgagee Notice Rights. Any First Mortgagee will, upon request, be entitled to:

(a) inspect the books and records of the Association during normal business hours:

(b) receive financial statements of the Association certified by the Association within 90 days following the end of any fiscal year; and

(c) receive written notice of meetings of the Association and be permitted to designate a representative to attend all such meetings.

15.8 Disclaimer. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Property, or any portion thereof, or any improvement thereon, its physical condition, zoning, compliance with the applicable laws, fitness or intended use, or in connection with the subdivision, sale, operation, Maintenance, cost of Maintenance, taxes or regulations hereof as a planned unit development, except as expressly set forth in this Declaration.

15.9 Limited Liability. The Association and the Board shall not be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. The Owners severally agree to indemnify the Association and the Board against loss resulting from such action or failure to act if the Association and the Board acted or failed to act in good faith and without malice.

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

SNOWMASS LAND COMPANY
an Illinois General Partnership

By Kenneth R Sontheim

Kenneth R. Sontheim, its Attorney-in-fact pursuant to Power of Attorney recorded in the office of the County Clerk and Recorder of Pitkin County, Colorado in Book 590 at Page 443.

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

The foregoing instrument was acknowledged before me this 22nd day of August, 1989 by Kenneth R. Sontheim as Attorney-in-fact for Snowmass Land Company, an Illinois general partnership.

WITNESS my hand and official seal.

NOTARY PUBLIC STATE OF COLORADO

Notary Public

Address: 409 Cabello
Carbondale, Colorado 81623

My commission expires: October 2, 1990

A14:25 89

EXHIBIT A

Residential Lots Nos. 1 through 40, inclusive; the Caretaker Lot, being Lot No. 41; the Common Open Space, being Lots Nos. 46 through 50, inclusive; and all Private Roads, being Roads A, B and C; as shown on the Plat of The Divide, recorded in the office of the Clerk and Recorder of Pitkin County, Colorado, in Plat Book 23 at Page 27.

A14:25 89

SUBORDINATION

THIS SUBORDINATION is attached to and made a part of that certain Declaration of Covenants, Conditions and Restrictions for The Divide (the "Declaration") dated August 22, 1989, executed by SNOWMASS LAND COMPANY, an Illinois general partnership.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned BURNT MOUNTAIN CORPORATION, a Nevada corporation, as Mortgagee under that certain Mortgage recorded September 23, 1988, in Book 573 at Page 955 in the records of the Clerk and Recorder of Pitkin County, Colorado (the "Mortgage"), hereby consents to the grant of the Declaration, subordinates the lien of the Mortgage to the Declaration, agrees that any foreclosure of the Mortgage shall not adversely affect the existence or continuing validity of the Declaration, which Declaration shall run with the land and remain in full force and effect as if such Declaration were delivered and recorded prior to the delivery and recording of the Mortgage.

IN WITNESS WHEREOF, the undersigned has executed this Subordination this 25th day of August, 1989.

Attest:

[redacted]

Title: Assistant Secretary

BURNT MOUNTAIN CORPORATION, a Nevada corporation

By D. P. Feldman

Title: President

STATE OF New Jersey)
) ss.
COUNTY OF Somerset)

The foregoing instrument was acknowledged before me this 25th day of August, 1989 by D. P. Feldman as President and by J. R. Russo as Assistant Secretary of BURNT MOUNTAIN CORPORATION, a Nevada corporation.

WITNESS my hand and official seal.

LETITIA P. ANNIS
A Notary Public of New Jersey
My Commission Expires May 16, 1990

My commission expires: _____.

Letitia P. Annis
Notary Public

LETITIA P. ANNIS NOTARY PUBLIC NEW JERSEY