

MASTER DECLARATION OF PROTECTIVE COVENANTS

FOR

SNOWMASS-AT-ASPEN RESIDENTIAL AREAS

PITKIN COUNTY, COLORADO

TABLE OF CONTENTS

- I. CERTAIN DEFINITIONS
  - 1.1 Snowmass
  - 1.2 Association
  - 1.3 Dwelling Unit
- II. GENERAL PURPOSES
  - 2.1 General Purposes
  - 2.2 Particular Purposes
- III. SUBJECTION OF PROPERTY TO DECLARATION
  - 3.1 Property Which May Be Covered
  - 3.2 Supplemental Declaration
  - 3.3 Effect of Supplemental Declaration
  - 3.4 Additional Provisions in Supplemental Declaration
- IV. LAND CLASSIFICATION AND DEFINITIONS
  - 4.1 Lot
  - 4.2 Multiple Unit Tract
  - 4.3 Common Area
  - 4.4 Greenbelt Area
  - 4.5 Property
- V. PROVISIONS APPLICABLE TO PARTICULAR LAND CLASSIFICATIONS
  - 5.1 Lot Restrictions
  - 5.2 Multiple Unit Tract Restrictions
  - 5.3 Common Area Restrictions
  - 5.4 Greenbelt Area Restrictions
- VI. PROVISIONS APPLICABLE TO ALL PROPERTY
  - 6.1 Subdivision of Property
  - 6.2 Combining Parcels
  - 6.3 No Business or Commercial Activity
  - 6.4 Occupancy Limitations
  - 6.5 Maintenance of Property
  - 6.6 No Noxious or Offensive Activity
  - 6.7 No Hazardous Activities
  - 6.8 No Unsightliness
  - 6.9 No Annoying Lights, Sounds or Odors

- 6.10 No Temporary Structures
- 6.11 Restriction on Animals
- 6.12 Restriction on Signs
- 6.13 No Mining or Drilling
- 6.14 No Cesspools or Septic Tanks
- 6.15 Construction Period Exception
- 6.16 Variances by Design Committee

#### VII. REQUIRED APPROVAL OF ALL CHANGES TO PROPERTY

- 7.1 Change in the Existing State of Property
- 7.2 Approval of Change in Existing State Required
- 7.3 Design Committee Criteria for Approval
- 7.4 Conditions Precedent to Approval
- 7.5 Prosecution of Work After Approval

#### VIII. DESIGN COMMITTEE

- 8.1 Design Committee Members
- 8.2 Action by Design Committee
- 8.3 Estoppel Certificate
- 8.4 Limitation on Liability

#### IX. HOMEOWNERS ASSOCIATION

- 9.1 General Purposes and Powers
- 9.2 Property Maintenance Function
- 9.3 Road and Easement Maintenance Function
- 9.4 Television Function
- 9.5 Insurance Function
- 9.6 Right to Make Rules and Regulations
- 9.7 Reserved Rights with Respect to Property Furnished  
by Snowmass
- 9.8 No Sale or Abandonment of Property Furnished by  
Snowmass
- 9.9 No Commercial Enterprises on Property Furnished  
by Snowmass
- 9.10 Charges for Use of Facilities
- 9.11 Right to Dispose of Property
- 9.12 Governmental Successor
- 9.13 Owner's Enjoyment of Functions and Facilities
- 9.14 Implied Rights of Association
- 9.15 Indemnification
- 9.16 Regular Membership
- 9.17 Snowmass Special Membership
- 9.18 Board of Directors
- 9.19 Voting of Members
- 9.20 Notices to Members
- 9.21 Certificate of Incorporation and Bylaws
- 9.22 Member's Obligation to Pay Assessments and  
Other Amounts
- 9.23 Assessments
- 9.24 Determination of Total Amount of Assessments
- 9.25 Approval of New Functions or Facilities
- 9.26 Lien for Assessments and Other Amounts
- 9.27 Personal Liability of Member
- 9.28 Liability of Purchasers and Encumbrancers
- 9.29 Estoppel Certificate

## II. GENERAL PURPOSES:

2.1 General Purposes: Snowmass now owns certain real property and may acquire additional real property in the general area sometimes referred to as the Snowmass-At-Aspen Area of Pitkin County, Colorado. Snowmass expects to develop certain portions of said real property as residential areas. These residential areas may or may not be adjacent to each other and may or may not be developed in exactly the same manner or with exactly the same objectives but it is expected that all will be developed with certain common objectives and that owners of property within these areas will have certain common interests.

Some or all of said residential areas will be developed with the objective of establishing the areas as scenic and pastoral or forested mountain residential areas of the highest possible quality, value, desirability and attractiveness where the natural beauty and view and the natural and unspoiled state of the property will be preserved as near as may be and where persons may reside and find seclusion and a pleasant environment. All of said residential areas will be developed with objectives designed to enhance the value of and to benefit all property within these residential areas and to enhance the value of and benefit other real property which may now or hereafter be owned by Snowmass in the Snowmass-At-Aspen Area even though such other real property may be of a different and non-residential character.

2.2 Particular Purposes: This Declaration is executed to define and describe certain land or property classifications which will be established in some or all of said residential areas; to define and describe certain provisions, covenants, conditions, and restrictions which may be made applicable to some or all property within said residential areas; to provide for a homeowner's association to perform certain obligations with respect to some or all property within said residential areas and to further the common interests of some or all owners of property within said residential areas; to establish the manner and extent to which property may be made subject to some or all of the provisions, covenants, conditions and restrictions set forth in this Declaration or may be made subject to additional or different provisions, covenants, conditions and restrictions; and to establish the effect of such provisions, covenants, conditions and restrictions.

## III. SUBJECTION OF PROPERTY TO DECLARATION:

3.1 Property Which May Be Covered: Any real property located in Pitkin County, Colorado, which is then owned by Snowmass, but only if it is then owned by Snowmass, may be made subject, in whole or in part, to any or all of the provisions, covenants, conditions and restrictions contained in this Declaration and to additional or different provisions, covenants, conditions and restrictions as hereinafter provided.

3.2 Supplemental Declaration: Any real property, as aforesaid, may be made subject in whole or in part to any

MASTER DECLARATION OF PROTECTIVE COVENANTS

FOR

SNOWMASS-AT-ASPEN RESIDENTIAL AREAS

PITKIN COUNTY, COLORADO

This Declaration is made this 30th day of December, 1966, by SNOWMASS-AT-ASPEN, a joint venture consisting of JANSS COLORADO CORPORATION, a California corporation, and AMERICAN CEMENT PROPERTIES, INC., a Delaware corporation.

I. CERTAIN DEFINITIONS:

1.1 Snowmass: Snowmass shall mean Snowmass-At-Aspen, a joint venture consisting of Janss Colorado Corporation and American Cement Properties, Inc.; any successor or assign of Snowmass-At-Aspen under an instrument specifically designating such successor or assign as a successor or assign under this Declaration; and, to the extent of the interest of each as a joint venturer, Janss Colorado Corporation and American Cement Properties, Inc.; and, to the extent of the interest of each as a joint venturer, any successor to Janss Colorado Corporation or American Cement Properties, Inc., by merger or consolidation; and, to the extent of the interest of each as a joint venturer, any successor or assign of Janss Colorado Corporation or American Cement Properties, Inc., under an instrument specifically designating such successor or assign as a successor or assign under this Declaration. A successor or assign other than by merger or consolidation shall be deemed a successor or assign under this Declaration only to the extent and only as to the particular rights or interests specifically designated in a written instrument.

1.2 Association: Association shall mean Snowmass-At-Aspen Homeowners Association, Inc., a Colorado corporation not for profit, formed and incorporated to be and constitute the Association to which reference is made in this Declaration and to further the common interests of some or all owners of any real property which may become subject to some or all of the provisions, covenants, conditions and restrictions contained in this Declaration or in any Supplemental Declaration as hereinafter provided.

1.3 Dwelling Unit: Dwelling Unit shall mean a single room or series of interconnected rooms within a multi-family structure, separated from, and not connected by private, direct, interior access with, any other room or rooms in said structure other than a common or public hall or lobby and served by a separate and private entrance or entrances.

or all of the provisions, covenants, conditions and restrictions contained in this Declaration and to additional or different provisions, covenants, conditions and restrictions by the recording in the office of the County Clerk and Recorder of Pitkin County, Colorado, of an instrument (hereinafter called a Supplemental Declaration) executed by Snowmass, describing the property, and stating that, except as may be specifically stated in such Supplemental Declaration, the real property described in the Supplemental Declaration shall be subject to the provisions, covenants, restrictions and conditions contained in this Declaration and in any previously recorded Supplemental Declaration and to the additional or different provisions, covenants, conditions and restrictions which may be contained in such Supplemental Declaration.

3.3 Effect of Supplemental Declaration: Upon the recording of a Supplemental Declaration in the office of the County Clerk and Recorder of Pitkin County, Colorado, all of the real property described in the Supplemental Declaration shall be and shall be deemed subject to all of the provisions, covenants, conditions and restrictions contained in this Declaration and in any previously recorded Supplemental Declaration, except as specifically stated in the Supplemental Declaration, and to the additional or different provisions, covenants, conditions and restrictions which may be stated in the Supplemental Declaration.

3.4 Additional Provisions in Supplemental Declaration: A Supplemental Declaration may define and describe additional or different land classifications other than the land classifications set forth in this Declaration; may set forth additional or different provisions, covenants, conditions and restrictions applicable to property within such additional or different land classifications; may contain additional or different provisions, covenants, restrictions and conditions applicable only to the property described in the Supplemental Declaration; and may contain additional or different provisions, covenants, restrictions and conditions applicable both to the property described in the Supplemental Declaration and, except to the extent stated in a subsequent Supplemental Declaration, to any property described in a subsequent Supplemental Declaration. No provisions, covenants, restrictions and conditions contained in a Supplemental Declaration may be made or shall be considered applicable to any property except property described in that Supplemental Declaration or property described in a Supplemental Declaration recorded subsequent to that Supplemental Declaration. In the event of a conflict or inconsistency between a Supplemental Declaration and this Declaration or any previously recorded Supplemental Declaration, the terms of the Supplemental Declaration shall prevail as to the particular property described in that Supplemental Declaration.

#### IV. LAND CLASSIFICATIONS AND DEFINITIONS:

4.1 Lot: A Lot shall mean any parcel of property shown on a recorded plat or described in a recorded instrument which is not clearly identified on the recorded plat or in the recorded instrument as a Multiple Unit Tract or Common Area or as a parcel of property under some other land classification designation described in this Declaration or in any

Supplemental Declaration, provided, however, that the inclusion of any parcel of property within a Greenbelt Area, as herein defined, shall not affect the classification of such parcel of property as a Lot under this Section 4.1.

4.2 Multiple Unit Tract: A Multiple Unit Tract shall mean any parcel of property shown on a recorded plat or described in a recorded instrument which is clearly identified as a Multiple Unit Tract on the recorded plat or in the recorded instrument.

4.3 Common Area: Common Area shall mean any parcel of property shown on a recorded plat or described in a recorded instrument which is clearly identified as Common or Common Area on the recorded plat or in the recorded instrument. Any parcel of property identified under any land classification designation may be changed to Common Area by Snowmass by declaration recorded prior to conveyance of the parcel by Snowmass.

4.4 Greenbelt Area: Greenbelt Area shall mean any portion of any Lot, Multiple Unit Tract, Common Area or other parcel of property designated on a recorded plat or in a recorded instrument as Greenbelt or Greenbelt Area.

4.5 Property: Property shall mean any property which is now or may hereafter be subject to this Declaration or any Supplemental Declaration, including Lots, Multiple Unit Tracts, Common Areas and any other parcels of property under any other land classification designation, and including public or private streets, roads, easements or ways and including any and all improvements on any of the foregoing.

#### V. PROVISIONS APPLICABLE TO PARTICULAR LAND CLASSIFICATIONS:

5.1 Lot Restrictions: Each Lot shall be used exclusively for residential living purposes and such purposes as are customarily incident thereto. Unless otherwise specified on a recorded plat or in a Supplemental Declaration covering the Lot: No Lot shall be improved except with a residence structure or complex designed to accommodate no more than a single family and its servants and occasional guests plus such other improvements and structures as are necessary or customarily incident to a single family residence; No guest house or guest area of a structure shall have its own, separate kitchen facilities; No structures or above-ground improvements shall be permitted on any Lot which are detached or separated from the principal residence structure unless located within a reasonably compact area adjacent to the principal residence structure and unless designed as a single visual element, connected or related visually with the principal residence structure by fencing or other architectural features; The residence structure or complex shall have a minimum living floor area of the number of square feet, exclusive of garages, porches, patios and accessory structures, shown on the recorded plat or specified in a Supplemental Declaration covering the Lot; No residence structure and no other structure or above-ground improvement shall rise more than the number of stories or number of feet, measured in either case, from the highest grade level adjoining the

structure, shown on the recorded plat or specified in a Supplemental Declaration covering the Lot; and All above-ground improvements, except landscaping and necessary crossings by access drives, bridges or paths, shall be set back at least the distance from the boundaries of the Lot established by setback lines shown on the recorded plat or specified in a Supplemental Declaration covering the Lot.

5.2 Multiple Unit Tract Restrictions: Each Multiple Unit Tract shall be used exclusively for residential living purposes and such purposes as are customarily incident thereto. Unless otherwise specified on a recorded plat or in a Supplemental Declaration covering the Multiple Unit Tract: No Multiple Unit Tract shall be improved with more than the number of principal structures containing the number of Dwelling Units which may be specified for the Tract on the recorded plat or in a Supplemental Declaration covering the Tract, plus such other improvements and structures as are necessary or customarily incident to any such principal structures; Each Dwelling Unit within a structure shall be designed to accommodate no more than a single family and its servants and occasional guests; No structures or above-ground improvements shall be permitted on any Multiple Unit Tract which are detached or separated from a principal structure unless located within a reasonably compact area adjacent to a principal structure and unless designed as a single visual element, connected or related visually with that principal structure by fencing or other architectural features; Each Dwelling Unit within a structure shall have a minimum floor area of the number of square feet, exclusive of garages, porches, patios and accessory structures, specified on the recorded plat or in a Supplemental Declaration covering the Tract; No principal structure and no other structure or above-ground improvement shall rise more than the number of stories or more than the number of feet, measured in either case, from the highest grade level adjoining the structure, which may be specified on the recorded plat or in a Supplemental Declaration covering the Tract; and All above-ground improvements, except landscaping and necessary crossings by access driveways, bridges or paths, shall be set back at least the distance from the boundaries of the Multiple Unit Tract established by setback lines shown on the recorded plat or specified in the Supplemental Declaration covering the Multiple Unit Tract.

5.3 Common Area Restrictions: Common Area shall be kept exclusively as a scenic and as a natural forested or natural open area except as herein stated and except as may be specifically provided on the recorded plat or in the Supplemental Declaration covering the Common Area. Portions of Common Area, not extensive in proportion to the total Common Area then subject to this Declaration or any Supplemental Declaration may be developed for non-profit recreation and leisure-time activities for the benefit of owners of property subject to this Declaration or any Supplemental Declaration, their guests and invitees; and portions of Common Area may be developed as may be reasonably necessary for installation of below-surface utilities, as may be necessary or desirable to provide or improve access to or from or to enhance the use and enjoyment of any Property, or as may be necessary or desirable to protect, support or preserve any Property. Common

Areas shall at all times be held by Snowmass or by the Association, or, with the consent of Snowmass, by an appropriate governmental authority, including a park or recreation district, which is existing and willing to accept and maintain the same. For so long as any Common Area is owned or held by Snowmass or by the Association and until and unless conveyed to a governmental authority, any such Common Area shall be maintained by the Association and shall be held by Snowmass or the Association for the exclusive use of owners of Property, their invitees and guests, although Snowmass, or, upon conveyance thereof to the Association, the Association, may at any time and from time to time limit or restrict use of all or portions of any Common Area to certain uses and/or to certain persons or classes of persons, may prescribe rules and regulations governing the use of Common Areas and may, if some owners wish to use and develop a portion of Common Areas for recreation facilities and are willing to pay the cost of developing and maintaining the same, permit such development on such terms and conditions as may be deemed advisable.

5.4 Greenbelt Area Restrictions: Any portion of a Lot, Multiple Unit Tract, Common Area or other parcel of property designated as a Greenbelt Area shall be preserved and maintained at all times as near as may be in its natural state and no above-ground improvements, except necessary crossings by access driveways, bridges or paths, shall be permitted therein or thereon except that, if all of any Lot, Multiple Unit Tract, Common Area or other parcel of property is designated as Greenbelt Area, portions thereof, to the extent reasonably necessary to proper use and enjoyment, may be occupied by such principal structures, accessory structures and improvements as may be otherwise permitted for property under that particular land classification and by such improvements and structures as are necessary or customarily incident thereto.

VI. PROVISIONS APPLICABLE TO ALL PROPERTY:

6.1 Subdivision of Property: No Lot, Multiple Unit Tract, Common Area or parcel of property identified under any other land classification designation may be divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership, except that a Multiple Unit Tract may be divided and sold or conveyed in condominium ownership as recognized under the Condominium Ownership Act of Colorado. Notwithstanding the foregoing, adjoining property owners may sell or purchase adjoining property to accomplish relocation of the boundary line between such properties if such sale and purchase will not cause or result in a violation of any setback, building or other restriction herein contained. In such cases, the new boundary line thus established shall be deemed the new boundary line between the respective properties but no setback lines, easements or land classifications established for such properties with respect to the former boundary line or otherwise shall be changed or shifted by reason of the change of boundary line.

6.2 Combining Parcels: Two or more adjoining Lots, Multiple Unit Tracts or other parcels of property of the same land classification which are under the same ownership may



be combined and developed as one parcel. Setback lines along the common boundary line of the combined parcels may be removed and shall be deemed removed if the written consent of the Design Committee is obtained and if the Design Committee, prior to giving its consent, finds and determines that any improvements to be constructed within these setback lines will not cause unreasonable diminution of the view from other property. Easements created or established by Snowmass along the common boundary line of the combined parcels may be changed without the consent of any person entitled to use thereof if the written consent of Snowmass is obtained and if alternate easements are granted or created, satisfactory to Snowmass, by the owner of the combined parcels. If setback lines are removed or easements changed along the common boundary line of combined parcels, the combined parcels shall thereafter be deemed one parcel, and may not thereafter be split and developed as two parcels.

6.3 No Business or Commercial Activity: No Property shall be used at any time for business or commercial activity, provided, however, that Snowmass or its nominee may use any Property for model homes or real estate sales offices.

6.4 Occupancy Limitations: No residence structure on any Lot and no Dwelling Unit in any structure on a Multiple Unit Tract or other parcel of property shall be used for living purposes by more persons than it was designed to accommodate comfortably. No portion of any Property shall be used as a residence or for living purposes other than the permitted residence structure on a Lot or a Dwelling Unit in any permitted structure constructed on a Multiple Unit Tract or other parcel of property.

6.5 Maintenance of Property: All Property, including Common Areas, and all improvements on any Property shall be kept and maintained by the owner thereof in clean, safe, attractive and sightly condition and in good repair. Common Areas shall be so maintained by the Association notwithstanding the fact that the Common Area may not have been conveyed to the Association by Snowmass.

6.6 No Noxious or Offensive Activity: No noxious or offensive activity shall be carried on upon any Property nor shall anything be done or placed on any Property which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

6.7 No Hazardous Activities: No activities shall be conducted on any Property and no improvements constructed on any Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property; and no open fires shall be lighted or permitted on any Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or except such campfires or picnic fires in portions of Common Areas designated for such use by Snowmass or by the Association or except such controlled and attended fires required for clearing or maintenance of land.

6.8 No Unsightliness: No unsightliness shall be permitted on any Property. Without limiting the generality of the foregoing: (a) All unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure or appropriately screened from view; (b) Trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view; (c) Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view; (d) Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view; (e) Pipes for water, gas, sewer, drainage or other purposes and wires, poles, antenna and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities and gas, oil, water or other tanks, and sewage disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground; (f) and No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Property. Notwithstanding the foregoing, if at the time of the occupancy of any approved structure, connections to a nearby underground electricity line or telephone line are not available, then temporary poles or wires for electricity, or telephone service, as the case may be, may be installed to a reasonably necessary height provided that they shall be promptly removed at the expense of the owner after the availability of connections to nearby underground lines or cables. If, at the time of the occupancy of any approved structure, a connection to a nearby television cable is not available, and if a signal from a booster or translator is not being produced into the area, an owner may install a temporary television antenna to a reasonable height. If at any subsequent time a signal from a booster or translator is being produced but a connection to a nearby television cable is still not available, an owner may install a television antenna no larger or more conspicuous than is necessary and in any event shall remove promptly at his expense any larger television antenna previously installed. If at any time a connection to a nearby television cable is or becomes available, each owner shall remove promptly at his expense all television antennae previously installed.

6.9 No Annoying Lights, Sounds or Odors: No light shall be emitted from any Property which is unreasonably bright or causes unreasonable glare; No sound shall be emitted on any Property which is unreasonably loud or annoying; and No odor shall be emitted on any Property which is noxious or offensive to others.

6.10 No Temporary Structures: No tent or shack or other temporary building, improvement or structure shall be placed upon any Property.

6.11 Restriction on Animals: No animals, birds, insects or livestock shall be kept on any Property except domesticated dogs, cats or other household pets which do not unreasonably bother or constitute a nuisance to others and except horses on such portions of Common Area, roads and other public ways or easements as may be designated for such use from time to time by Snowmass and except for such numbers of horses or livestock on a particular Lot, or Multiple Unit Tract or other parcel of property as may be specifically designated for such Property on the recorded plat or in the Supplemental Declaration covering such Lot, Multiple Unit Tract or other parcel of property.

6.12 Restriction on Signs: No signs or advertising devices of any nature shall be erected or maintained on any Property except as necessary to identify the ownership of the Property and its address; or to show the Property is for sale or for rent; or as may be necessary or desirable to give direction, advise of rules and regulations, or caution or warn of danger; and such signs as may be otherwise required by law. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on Property only with the prior written approval of the Design Committee which approval shall be given only if such signs shall be of attractive design in keeping with the scenic and rustic nature of the area and shall be as small in size as is reasonably possible and shall be placed or located as directed or approved by the Design Committee.

6.13 No Mining and Drilling: No Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

6.14 No Cesspools or Septic Tanks: No cesspools or septic tanks shall be permitted on any Property. Any other type of sewage disposal system shall be installed only after approval by the Design Committee and any governmental health authority having jurisdiction.

6.15 Construction Period Exception: During the course of actual construction of any permitted structures or improvements, the provisions, covenants, conditions and restrictions contained in this Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction, provided that, during the course of such construction, nothing is done which will result in a violation of any of said provisions, covenants, conditions and restrictions upon completion of construction.

6.16 Variances by Design Committee: The Design Committee may authorize variances from compliance with any of the provisions, covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration when circumstances such as topography, natural obstructions or hardship may require. Such variances must be evidenced in writing. If such variances are granted, no violation of the provisions, covenants, restrictions and conditions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance

shall not operate to waive any of the provisions, covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration for any purpose except as to the particular property and particular provision covered by the variance.

VII. REQUIRED APPROVAL OF ALL CHANGES TO PROPERTY:

7.1 Change in the Existing State of Property:

Change in the Existing State of Property shall mean and include, without limitation, the construction of any building, structure or other improvement, including utility facilities; The excavation, filling or similar disturbance of the surface of land including, without limitation, change of grade, stream bed, ground level or drainage pattern; The clearing, marring, defacing or damaging of trees, shrubs or other growing things; The landscaping or planting of trees, shrubs, lawns or plants; or Any change or alteration, including without limitation, any change of color, texture or exterior appearance, of any previously approved Change in the Existing State of Property.

7.2 Approval of Change in Existing State Required:

No Change in the Existing State of Property shall be made or permitted, except by Snowmass, without the prior written approval of the Design Committee and without compliance with the provisions, covenants, conditions and restrictions set forth in this Article VII. The following paragraphs of this Article VII shall not be applicable to any Change in the Existing State of Property by Snowmass, except as specifically provided therein.

7.3 Design Committee Criteria for Approval:

The Design Committee shall have complete discretion to approve or disapprove any Change in the Existing State of Property. The Design Committee shall exercise such discretion with the following objectives in mind among others: To carry out the general purposes expressed in this Declaration; To prevent violation of any specific provision of this Declaration or any Supplemental Declaration; To prevent any change which would be unsafe or hazardous to any persons or property; To minimize obstruction or diminution of the view of others; To preserve visual continuity of the area and to prevent a marked or unnecessary transition between improved and unimproved areas and any sharp definition of boundaries of property ownership; To assure that any change will be of good and attractive design and in harmony with the rustic and natural setting of the area and will serve to preserve and enhance existing features of natural beauty; To assure that materials and workmanship for all improvements are of high quality comparable to other improvements in the area; and To assure that any change will require as little maintenance as possible so as to assure a better appearing area under all conditions. Any Change in the Existing State of Property by Snowmass shall be made with the same objectives in mind.

7.4 Conditions Precedent to Approval:

Prior to expenditures of any substantial time or funds in the planning of any proposed Change in the Existing State of Property, the owner of Property shall advise the Design Committee in writing of the general nature of the proposed change; shall, if requested by the Design Committee, meet with a member or members

of the Design Committee to discuss the proposed change; shall read or become familiar with any guides or guidelines which may have been prepared or formulated by the Design Committee; and shall, if requested by the Design Committee, furnish the Design Committee with preliminary plans and specifications for comment and review. After the nature and scope of a proposed Change in the Existing State of Property is determined and prior to the commencement of work to accomplish such Change, the Design Committee shall be furnished in duplicate, by the owner of the Property, with a complete and full description of the proposed Change in writing and with a plot plan covering the particular Lot, Multiple Unit Tract, Common Area or other parcel of property, drawn to such scale as may be reasonably required by the Design Committee, showing all boundaries, showing existing and proposed contour lines and elevations at reasonably detailed intervals, showing all existing and proposed improvements, showing the existing and proposed drainage pattern, showing the existing and proposed utility and sanitation facilities and showing the existing or proposed substantial trees or shrubs. There shall also be furnished to the Design Committee by any owner of property any and all further information with respect to the Existing State of Property or the proposed Change in the Existing State of Property which the Design Committee may reasonably require to permit it to make an informed decision on whether or not to grant approval to the Change. If the drainage pattern of any Property will be affected by any Change, the Design Committee may require submission of a report on the effect by a qualified engineer or geologist. With respect to all buildings and other structures, the Design Committee may require submission, in duplicate, of floor plans, elevation drawings, and final working drawings, all drawn to such scale as may be reasonably required by the Design Committee; descriptions of exterior materials and colors and samples of the same; and final construction specifications. Where buildings or structures or other improvements which reasonably require plans and specifications are proposed to be constructed or built, the Design Committee may require that the plans and specifications be prepared by a practicing licensed architect and that a fee of \$100 be paid to the Association to cover costs and expenses of review, provided that \$75 of the fee may be waived by the Design Committee in its discretion if the plans and specifications furnished are prepared by a practicing licensed architect. Prior to giving approval to a proposed Change in the Existing State of Property, at least one member of the Design Committee shall physically inspect the Property. No proposed Change in the Existing State of Property shall be deemed to have been approved by the Design Committee unless its approval is in writing executed by at least two members of the Design Committee provided that approval shall be deemed given if the Design Committee fails to approve or disapprove a proposed Change or to make additional requirements or request additional information within 45 days after a full and complete description of the proposed Change has been furnished in writing to the Design Committee with a written and specific request for approval.

7.5 Prosecution of Work After Approval: After approval by the Design Committee of any proposed Change in the Existing State of Property, the proposed Change shall be accomplished as promptly and diligently as possible and

in complete conformity with the description of the proposed Change and with any plans and specifications therefor given to the Design Committee. Failure to accomplish the Change within one year after the date of approval or to complete the proposed Change strictly in accordance with the description thereof and plans and specifications therefor shall operate to automatically revoke the approval of the proposed Change and, upon demand by the Design Committee, the Property shall be restored as nearly as possible to its state existing prior to any work in connection with the proposed Change. The Design Committee and its duly appointed agents may enter upon any Property at any reasonable time or times to inspect the progress or status of any Change in the Existing State of Property being made or which may have been made. The Design Committee shall have the right and authority to record a notice to show that any particular Change in the Existing State of Property has not been approved or that any approval given has been automatically revoked.

#### VIII. DESIGN COMMITTEE:

8.1 Design Committee Members: The Design Committee shall consist of three members. At least one member shall be a licensed architect or landscape architect who shall be designated specifically as the Architect Member. There may be designated one or more alternate members for each regular member of the Design Committee each of whom shall be authorized to act in the place and stead of the member for whom he is an alternate in the event of that member's absence or inability to act. Members and alternate members of the Design Committee shall be appointed by and shall serve at the pleasure of Snowmass, provided that, at any time, Snowmass may assign the right to appoint and remove one or more members and alternate members of the Design Committee to the Association. Snowmass or, after assignment of the right to appoint and remove a majority of the members and alternate members to the Association, then the Association, shall promptly furnish the names and addresses of the current members and alternate members of the Design Committee to any interested person and the name and address to which all notices and communications to the Design Committee should be directed. The Association shall be obligated to pay reasonable compensation to members and alternate members for actual services rendered and to reimburse them for actual and reasonable expenses incurred.

8.2 Action by Design Committee: The vote or written consent of any two members shall constitute action of the Design Committee, provided, however, that approval of plans, drawings and specifications by the Design Committee shall require the vote or written consent of the Architect Member and at least one other member. The Design Committee shall report in writing all approvals and disapprovals of any Changes in the Existing State of Property to Snowmass or to the Association whichever then has the right to appoint and remove a majority of the members and Snowmass or the Association, as the case may be, shall keep a permanent record of all such reported action.

8.3 Estoppel Certificate: Snowmass or the Association shall, upon written request of any interested person,

furnish a certificate with respect to approval or disapproval by the Design Committee of any Change in the Existing State of Property and any person, without actual notice to the contrary, shall be entitled to rely on said certificate by either Snowmass or the Association with respect to all matters set forth therein.

8.4 Limitation on Liability: Neither the Design Committee nor any member thereof nor the Association nor any director, officer or member thereof, nor Snowmass nor any joint venturer therein nor any director, officer or stockholder of any joint venturer therein, nor any agent or employee of any of the foregoing shall be liable to any party for any action or for any failure to act under or pursuant to or with respect to any provision of this Declaration provided only that the person or entity sought to be charged with any liability shall have proceeded in good faith and without malice.

#### IX. HOMEOWNERS ASSOCIATION:

9.1 General Purposes and Powers: Snowmass-At-Aspen Homeowners Association, Inc., has been formed and incorporated as a Colorado corporation not for profit to be and constitute the Association to which reference is made in this Declaration, to perform functions and hold and manage property as provided in this Declaration and to further the common interests of all owners of property or particular groups of owners of property which may be subject, in whole or in part, to any or all of the provisions, covenants, conditions and restrictions contained in this Declaration. The Association shall be obligated to and shall assume and perform all functions and obligations imposed on it or contemplated for it under this Declaration and any similar functions or obligations imposed on it or contemplated for it under any Supplemental Declaration with respect to any Property now or hereafter subject to this Declaration. The Association shall have all powers necessary or desirable to effectuate these purposes. It shall not engage in commercial, profit-making activity.

9.2 Property Maintenance Function: The Association shall be obligated to and shall accept title to any real property or interest therein, including improvements thereon, or to any personal property or equipment granted or furnished by Snowmass to the Association and, with respect to any such property and to any other property acquired and held by the Association shall be obligated to and shall pay all taxes and assessments of whatever nature relating to any of said property; adequately and fully insure all of said property against casualty loss as hereinafter provided; provide for the best and highest quality care, operation, management, maintenance, repair and replacement of the same; remove snow from the same as necessary for their customary use and enjoyment; maintain plants, trees and shrubs provided or existing thereon; and maintain lighting provided or existing thereon; and maintain roads, walks or drives provided or existing thereon.

9.3 Road and Easement Maintenance Function: The Association shall be obligated to and shall provide for the best and highest quality care, operation, management, maintenance, repair and replacement of all public and private

roads, streets, lanes, drives, avenues, courts, circles and places; of all skiing, equestrian or other easements established or provided for some or all owners of any property which may be made subject to this Declaration; and of any and all drainage easements and drainage pipes or facilities within the same which may be established or provided with respect to any property which may be made subject to this Declaration. Maintenance shall include the removal of snow to the extent necessary to assure full use of any public or private roads, streets, lanes, drives, avenues, courts, circles and places. These obligations shall be obligations of the Association without regard to whether or not the Association has any right, title or interest in any of the foregoing.

9.4 Television Function: The Association shall be obligated to and shall pay a fair share of the costs and expenses of any system provided in the Snowmass-At-Aspen Area in Pitkin County, Colorado, by a suitable area-wide, non-profit, organization to assure suitable and adequate television reception in the area through a television booster, translator or cable system.

9.5 Insurance Function: The Association shall be obligated to and shall obtain and keep in full force and effect at all times at least the following insurance coverage. The Association shall obtain casualty insurance with respect to all insurable property of the Association, insuring the full replacement value thereof, including coverage for fire and extended coverage, vandalism and malicious mischief and war risk coverage if available and if deemed appropriate by the Association. The Association shall obtain broad form comprehensive liability coverage, covering both public liability and automobile liability, with limits of not less than \$1,000,000 for each person and not less than \$3,000,000 for each occurrence and with property damage limits of not less than \$500,000 for each accident. All insurance may contain such deductible provisions as good business practice may dictate. All insurance shall name the Association, shall name Snowmass as an additional insured and shall, to the extent reasonably possible, cover each owner of property now or hereafter subject to this Declaration without any such owner necessarily being specifically named. The Association shall provide Snowmass, upon request, with certificates evidencing such insurance and copies of the insurance policies.

9.6 Right to Make Rules and Regulations: The Association shall be authorized to and shall have the power to adopt and enforce rules and regulations to regulate use of any and all facilities and property of the Association to assure fullest enjoyment and use by the persons entitled to enjoy and use the same. The Association may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from property and facilities of the Association or otherwise. Each owner of any property which may be made subject to this Declaration and such owner's guests and invitees shall be obligated to comply with and abide by any such rules and regulations.



9.7 Reserved Rights with Respect to Property Furnished by Snowmass: Any real property or interest in real property furnished by Snowmass to the Association may be and shall be deemed conveyed, granted or furnished subject to then existing easements for utilities, including gas, electricity, water, sewer, telephone, television and intercommunication, alarm or other systems; easements for drainage and drainage facilities; easements for public or private skiing and skiing facilities; easements for ingress, egress and access for the benefit of any property, whether or not subject to this Declaration; and shall be deemed subject to and deemed accepted by the Association subject to an exception and reservation by Snowmass, whether or not expressed at the time, of the right, power and authority to thereafter create and grant any such easements and to enter upon and further improve or develop any such property, at its own cost and expense, for the benefit of the Association or of any owners of property which may be subject to this Declaration.

9.8 No Sale or Abandonment of Property Furnished by Snowmass: No real property or interest in real property conveyed, granted or furnished by Snowmass to the Association may be, and any such real property or interest therein shall be deemed, conveyed, granted or furnished, whether or not expressed in the deed or instrument of conveyance or grant, on and subject to the condition that it shall not be sold, conveyed, leased, transferred, abandoned or disposed of by the Association without the written consent of Snowmass. No improvements on real property granted or furnished by Snowmass to the Association may be destroyed, permitted to deteriorate or waste or disposed of by the Association without the written consent of Snowmass unless a suitable and adequate replacement or substitute is constructed, purchased or acquired by the Association which replacement or substitute shall be deemed to be property furnished by Snowmass.

9.9 No Commercial Enterprises on Property Furnished by Snowmass: No real property or interest in real property, including improvements thereon, and no personal property or equipment granted or furnished by Snowmass to the Association shall be used or operated by the Association or by any other person or entity for commercial use, profit or gain without the written consent of Snowmass and no charges shall be imposed by the Association for use of property or facilities granted or furnished by Snowmass to the Association without the written consent of Snowmass.

9.10 Charges for Use of Facilities: Subject to the provisions of this Declaration requiring the consent of Snowmass with respect to property or facilities furnished by Snowmass to the Association, the Association may establish reasonable and uniformly applied charges for use of property and facilities of the Association to assist the Association in offsetting the costs and expenses of the Association attributable thereto.

9.11 Right to Dispose of Property: Subject to the provisions of this Declaration requiring the consent of Snowmass with respect to property furnished by Snowmass to the

Association, the Association shall have full power and authority to sell, lease, grant rights in, transfer, abandon or dispose of any property or facilities owned or held by the Association.

9.12 Governmental Successor: Any property or facility owned or held by the Association and any function or activity required to be performed by the Association under the terms of this Declaration may be turned over to a governmental authority which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate with the written consent of Snowmass.

9.13 Owner's Enjoyment of Functions and Facilities: Each owner of any property which may be subject to this Declaration and such owner's guests and invitees shall be entitled to use and enjoyment of all property, property interests, and facilities owned or held by the Association and of all functions and activities undertaken by the Association subject to such reasonable and uniformly applied rules and regulations which the Association may adopt to assure the fullest and best possible use and enjoyment of the same by all persons entitled thereto and subject to such reasonable and uniformly applied charges which the Association may, subject to the other provisions of this Declaration, impose to offset costs and expenses in connection therewith.

9.14 Implied Rights of Association: The Association shall have and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law, and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under this Declaration, including, without limiting the generality of the foregoing, the right to engage necessary labor and acquire use of or purchase necessary property, equipment or facilities; employ personnel necessary to manage affairs of the Association; and obtain, and pay for, legal, accounting and other professional services as may be necessary or desirable.

9.15 Indemnification: The Association shall be obligated to and shall indemnify Snowmass and hold it harmless from all liability, loss, cost, damage and expense, including attorney's fees, arising with respect to any operations of the Association or any property of the Association including property granted or furnished to the Association by Snowmass.

9.16 Regular Membership: There shall be one Regular Membership in the Association for each Lot, each Multiple Unit Tract prior to construction of improvements thereon, each Dwelling Unit on a Multiple Unit Tract after construction of improvements thereon, and for each parcel of property under any land classification designation specified in any Supplemental Declaration and each such Membership shall be appurtenant to the fee simple title to such Lot, Multiple Unit Tract, Dwelling Unit or other parcel of property. The owner or owners of the Lot, Multiple Unit Tract, Dwelling Unit or other parcel of property shall be deemed the owner or owners of the Regular Membership appurtenant to that property and title to and ownership of the Membership for that property

shall automatically pass upon transfer of fee simple title to that property. Each owner or owners of a Lot, Multiple Unit Tract, Dwelling Unit or other parcel of property as aforesaid shall be at all times entitled to the benefits and subject to the burdens relating to the Regular Membership for such property. If fee simple title to a Lot, Multiple Unit Tract, Dwelling Unit or other parcel of property, as aforesaid, is held by more than one person or entity, the Regular Membership appurtenant to that property shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership in which fee simple title to that property is held. Membership in the Association shall be limited to owners of Lots, Multiple Unit Tracts, Dwelling Units or other parcels of property as aforesaid except as hereinafter specifically provided with respect to the Special Membership of Snowmass. The term Member as used herein shall mean a Special Member as well as a Regular Member.

9.17 Snowmass Special Membership: Snowmass shall, at all times, have and be deemed to hold a Special Membership in the Association without regard to whether Snowmass is the owner of a Lot, Multiple Unit Tract, Dwelling Unit or other parcel of property. As the holder of this Special Membership, Snowmass shall be entitled to notice of all meetings of Regular Members of the Association and shall be entitled to speak and be heard at any such meetings and shall have a vote equal to the vote of the owner of one Lot on all matters submitted to a vote of Regular Members. As the holder of this Special Membership, Snowmass shall also have the power and authority to designate 60% of the members of the Board of Directors of the Association until the first annual meeting of Regular Members of the Association and for 2 years thereafter; the power and authority to designate 40% of the members of the Board for the following 3 years; and the power and authority to designate at least 1 member of the Board of the Association for the following 10 years, such designations to be made at least annually and immediately following election of members of the Board by Regular Members of the Association. As holder of this Special Membership, the approval of Snowmass shall be required as a condition to merger, consolidation or dissolution of the Association. Except as herein stated, Snowmass, as the holder of this Special Membership shall have no other rights and be subject to no other obligations by reason of such Special Membership.

9.18 Board of Directors: The affairs of the Association shall be managed by a Board of Directors which may, however, delegate any portion of its authority, by resolution, to an Executive Committee, or to an Executive Manager or Director for the Association. Members of the Board of Directors, other than those designated by Snowmass, shall be elected annually by the Members as hereinafter provided.

9.19 Voting of Members: Each Regular Member shall have one vote for each Lot, Multiple Unit Tract prior to construction of improvements thereon, Dwelling Unit on a Multiple Unit Tract after construction of improvements thereon, and each parcel of property under any other land classification

designation specified in a Supplemental Declaration, in the election of members of the Board of Directors of the Association, other than members to be designated by Snowmass, and in all other matters submitted to the vote of Regular Members. In all voting by Members, cumulative voting and voting by proxy shall be allowed and permitted.

9.20 Notices to Members: Snowmass, as the holder of a Special Membership, and each Regular Member shall be entitled to at least thirty days' notice of all meetings in which a vote of Members is to be taken and of the amount of all assessments which the Member is obligated to pay. Notice shall be considered given when written notice is mailed or telegraphed to a Member addressed to the Member under the name and address for the Member furnished by the Member to the Association and, in any event shall be deemed given when the Member actually receives notice. If a Member fails to furnish a name or address to the Association to which notices may be mailed, the Association shall be entitled to give notice by mail, telegraph or delivery of a written notice to the address of such Member's property, addressed "Care of Owner."

9.21 Certificate of Incorporation and Bylaws: The purposes and powers of the Association and the rights and obligations inherent in membership set forth in this Declaration may and shall be amplified by provisions of the Certificate of Incorporation and Bylaws of the Association, including any reasonable provisions with respect to establishing a record date for determination of Members entitled to notice or to vote, with respect to quorum required at meetings of Members and with respect to other corporate matters, but no such provisions may be, at any time, inconsistent with any provision of this Declaration.

9.22 Member's Obligation to Pay Assessments and Other Amounts: Snowmass, with respect to all property which may now or hereafter be subject to this Declaration, hereby covenants and each owner of any such property or any right, title or interest therein, whether or not it be so expressed at the time of acquisition of such right, title or interest, shall be deemed to covenant and agree with each other and with the Association to pay to the Association assessments as provided in this Declaration and such reasonable and uniformly applied charges for the use of facilities which may be established by the Association as provided in this Declaration and such reasonable and uniformly applied fines and penalties imposed for violation of rules and regulations adopted by the Association as provided in this Declaration.

9.23 Assessments: Each Member of the Association shall be obligated to pay and shall pay to the Association, at least annually, an amount which shall be levied pro rata on the basis of the valuation for assessment by the County Assessor of Pitkin County, Colorado, for the preceding year of each Lot, Multiple Unit Tract if no improvements are constructed thereon, Dwelling Unit on a Multiple Unit Tract if improvements are constructed thereon, and each parcel of property under any other land classification designation

established by a Supplemental Declaration, owned by such Member. The total amount required to be raised by assessment shall be determined as provided in the section of this Declaration entitled Determination of Total Amount of Assessments:.

9.24 Determination of Total Amount of Assessments:

The total amount required to be raised by assessments for the Association shall be determined at least annually in accordance with the following procedure. The Board of Directors of the Association shall prepare a budget, covering at least a one-year period, showing, in reasonable detail, the various functions and matters proposed to be covered by the budget, showing the estimated costs and expenses of such functions or matters, showing the estimated income and other funds which may be received by the Association, and showing the estimated total amount of assessments required to cover costs and expenses and to provide a reasonable reserve; shall call a meeting of the Members and give thirty days' notice of the time and place thereof to all such Members; and shall furnish a copy of the budget to all such Members at least thirty days prior to such meetings. The total amount to be raised by assessments shall be that amount necessary to cover the costs and expenses of functions required to be undertaken or performed by the Association under this Declaration and to fulfill any and all long-term or continuing commitments of the Association made in connection with or contemplated under any previously approved budget plus such additional amount, if any, determined or approved by the majority of the Members either at or after such meeting. The Association shall, except as emergencies may require, make no commitment or expenditures in excess of the funds reasonably expected to be available to the Association.

9.25 Approval of New Functions or Facilities:

Prior to acquisition of a new facility, except from Snowmass, or undertaking a new function (a new facility or new function being hereby defined as a facility or function not incidental to or reasonably required in connection with an existing facility, or the performance of an existing function, and not a replacement of an existing facility); and prior to acquisition of any facility costing in excess of \$5,000 not included in an approved budget; and prior to making a commitment with respect to any of the foregoing, the Board of Directors of the Association shall estimate the initial cost and subsequent income, cost and expenses of the facility or function; shall furnish a copy of its estimate to all Members; shall call a meeting to discuss the same and give thirty days' notice thereof to all Members; and shall, at or after such meeting, obtain the approval of 60% of the Members.

9.26 Lien for Assessments and Other Amounts:

The Association shall have a lien against each parcel of property which may be subject to this Declaration to secure payment of any assessment, charge, fine, penalty or other amount due to the Association from the owner of that property which is not paid, plus interest from the date of demand for payment at the rate of twelve per cent per annum, plus all costs and expenses of collecting the unpaid amount, including reasonable attorney's fees. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Colorado.

9.27 Personal Liability of Member: The amount of any assessment, charge, fine or penalty payable by a Member shall be a joint and several personal obligation to the Association of the persons or entities who constitute the Member at the time the amount was payable, their heirs, personal representatives, successors and assigns and may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any lien securing the same.

9.28 Liability of Purchasers and Encumbrancers: A purchaser of any property subject to this Declaration shall be jointly and severally liable with the seller of the property for all unpaid assessments, charges, fines or penalties with respect to the owner of the property, or the Membership appurtenant thereto which had accrued or were payable at the time of the grant or conveyance of the property to such purchaser, without prejudice to such purchaser's right to recover any of said amounts paid by the purchaser from the seller. No holder of a lien or encumbrance on any property shall be personally liable for any such assessment, charge, fine or penalty and the lien for such assessments, charges, fines or penalties shall be junior to any lien or encumbrance on any property taken or acquired in good faith and for value without notice and perfected by recording prior to the time a notice of failure to pay any such amount is recorded in the office of the County Clerk and Recorder of Pitkin County, Colorado, against the property.

9.29 Estoppel Certificate: Upon payment of a reasonable fee not to exceed \$15 and upon written request of any person with an interest in any property subject to this Declaration or intending to acquire an interest in such property, the Association shall furnish a written statement setting forth the amount of any unpaid assessments, charges, fines or penalties, if any, with respect to the owner of the property or the Membership appurtenant thereto and the amount of the current yearly assessments payable with respect to the property, which statement shall be conclusive upon the Association.

X. MISCELLANEOUS PROVISIONS:

10.1 Duration of Declaration: Any provision, covenant, condition or restriction contained in this Declaration or any Supplemental Declaration which is subject to the common law rule sometimes referred to as the rule against perpetuities, shall continue and remain in full force and effect for the period of twenty-one years following the death of the survivor of R. L. Herberg, Brian Corbell, Victor H. Palmieri and the survivor of the now living children of said persons, or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions, covenants, conditions and restrictions contained in this Declaration or in any Supplemental Declaration shall continue and remain in full force and effect until the year 2000 A.D., provided, however, that, unless at least one year prior to said time of expiration, there is recorded an instrument directing the termination of this Declaration, executed by the owners of not less than two-thirds in area of the real property then subject to this Declaration, said other provisions, covenants, conditions and restrictions shall continue automatically for an additional ten years and thereafter for successive periods of ten years unless, at least one year prior to the expiration of any such extended period of duration, this Declaration is terminated by recorded instrument directing termination signed by the Owners of not less than two-thirds in area of the real property then subject to this Declaration as aforesaid.

10.2 Amendment or Revocation: At any time while any provision, covenant, condition and restriction contained in this Declaration or any Supplemental Declaration is in force and effect, it may be amended or repealed, with the written consent of Snowmass, by the recording of a written instrument specifying the amendment or the repeal, executed by Snowmass and by the owners of not less than 2/3 in area of the property then subject to this Declaration, excluding the Common Area. No such amendment or repeal shall be effective with respect to the holder or successor or assign of the holder of a mortgage or deed of trust recorded prior to recording of the instrument specifying the amendment or repeal unless such holder executes the said instrument.

10.3 Arbitration of Disputes: All controversies arising under or with respect to this Declaration or any Supplemental Declaration shall be submitted to arbitration in accordance with the following procedure. All determinations, decisions and actions of the Association of the Board of Directors of the Association or of Snowmass or of Members at any meeting of such Members which is made or taken or purportedly made or taken under or pursuant to any provision of or with respect to this Declaration shall be binding and conclusive on every person including the Association, Snowmass, and each owner of property and each such owner's heirs, personal representatives, successors and assigns unless notice of dispute is given as herein provided and the matter is submitted to arbitration in accordance with the following procedure.

Any party desiring to arbitrate any controversy shall file written notice of his desire with the Association and any party desiring to dispute any determination, decision or action

as aforesaid shall file a written notice of the existence and nature of the dispute with the Association within 30 days after he discovers, learns or has notice of such determination, decision or action. As promptly as possible after receipt of such notice, the party or parties interested in the matter or dispute shall be notified of the notice by the Association; the matter shall be heard by the Board of Directors; if not settled or resolved at such hearing by the Board of Directors the party or parties on each side of the matter or dispute shall select an arbitrator; the arbitrators so selected shall select an additional arbitrator; the matter of dispute shall be heard by the arbitrators at a convenient location in Pitkin County, Colorado; and a decision in the arbitration shall be rendered by the arbitrators. The decision of a majority of the arbitrators shall be binding and conclusive on all parties. Any disputed determination, decision or action as aforesaid shall be upheld by the arbitrators if it is or was authorized or proper under or consistent with the overall purposes of the Declaration or any Supplemental Declaration. Costs of any arbitration shall be borne equally by the party or parties on each side of the controversy or dispute.

10.4 Effect of Provisions of Declaration: Each provision, covenant, condition and restriction contained in this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property subject to this Declaration is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of any person's or entity's acceptance of any right, title or interest in any parcel of property subject to this Declaration, be deemed accepted, ratified, adopted and declared as a personal covenant of such person or entity and, as a personal covenant, shall be binding on such person or entity and such person's or entity's heirs, personal representatives, successors and assigns and, if a personal covenant of a person or entity other than the Association or Snowmass, shall be deemed a personal covenant to, with and for the benefit of Snowmass and to, with and for the benefit of the Association and, if a personal covenant of the Association, shall be deemed a personal covenant to, with and for the benefit of Snowmass and to, with and for the benefit of each owner of property subject to this Declaration; (c) shall be deemed a real covenant by Snowmass, for itself, its successors and assigns, and also an equitable servitude running, in each case, as a burden with the title to each parcel of property now or hereafter subject to this Declaration and, both as a real covenant and an equitable servitude, shall be a burden upon and binding on each such parcel of property and upon each person or entity owning any right, title or interest in such parcel of property for so long as such person or entity owns any such right, title or interest, and, with respect to any property of a person or entity other than the Association or Snowmass, shall, both as a real covenant and an equitable servitude, be deemed a covenant and servitude for the benefit of any property now or hereafter owned by Snowmass subject to this Declaration, and any property owned by Snowmass in Pitkin County, Colorado for so long as such property is owned by Snowmass, and for the benefit of any property now or hereafter owned by the Association which is subject to this Declaration and for the benefit of any and all other property



which is subject to this Declaration; (d) shall be deemed a covenant, secured by a lien binding, burdening and encumbering the title to each parcel of property which is subject to this Declaration and, with respect to any property of a person or entity other than the Association or Snowmass, shall, as a lien, be deemed a lien in favor of Snowmass and the Association and, with respect to any property owned by the Association, shall, as a lien, be deemed a lien in favor of Snowmass; (e) shall be deemed a condition subject to which title to each parcel of property which is subject to this Declaration is and shall at all times be held, enforceable by a power of termination and right of re-entry vested in Snowmass as hereinafter provided.

10.5 Enforcement and Remedies: The obligations, provisions, covenants, restrictions and conditions contained in this Declaration or any Supplemental Declaration with respect to the Association or property of the Association shall be enforceable by Snowmass or by any owner of property subject to this Declaration by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration or any Supplemental Declaration with respect to a person or entity or property of a person or entity other than the Association or Snowmass shall be enforceable by Snowmass or the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid or, in the discretion of the Association, for so long as any person or entity fails to comply with any such obligation, provision, covenant, restriction or condition, by exclusion of such person or entity and such person's or entity's guests or invitees from use of any property or facility owned or held by the Association and from enjoyment of any function undertaken by the Association. In addition to the remedies stated above, if, with respect to any property subject to this Declaration, conveyed to the Association or to any other person or entity by Snowmass, there is a violation or breach of or failure to comply with, any of the covenants, restrictions or conditions contained in this Declaration, then Snowmass shall be deemed to have and shall have a power of termination and the right immediately or at any time during the continuation of any such violation, breach or failure to re-enter and take possession of the real property and, upon exercise of this right of re-entry, title to the property shall thereupon vest in Snowmass. This right of re-entry and for revesting of title shall be subject to the provisions of the Section hereof entitled Protection of Encumbrancer. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees.

10.6 Protection of Encumbrancer: No violation or breach of any provision, restriction, covenant or condition contained in this Declaration or any Supplemental Declaration and no action to enforce the same shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value and perfected by recording prior to the time of recording of an instrument giving notice of such violation or breach, or the title or interest of the holder

thereof or the title acquired by any purchaser upon foreclosure of any such mortgage or deed of trust. Any such purchaser shall, however, take subject to this Declaration except only that violations or breaches which occur prior to such foreclosure shall not be deemed breaches or violations hereof with respect to such purchaser, his heirs, personal representatives, successors and assigns.

10.7 Limited Liability: Neither Snowmass, the Association, the Board of Directors of the Association, the Design Committee nor any member, agent or employee of any of the same shall 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.

10.8 Successors and Assigns of Association: This Declaration and any Supplemental Declaration shall be binding upon assigns of the Association whether voluntary or involuntary by operation of law or otherwise, except to the extent provided in any written assignment which has the written approval of Snowmass. The successors of the Association shall be bound by this Declaration and any Supplemental Declaration.

10.9 Severability: Invalidity or unenforceability of any provision of this Declaration or of any Supplemental Declaration in whole or in part shall not affect the validity or enforceability of any other provision or valid and enforceable part of a provision of this Declaration.


10.10 Captions: The captions and headings in this instrument are for convenience only and shall not be considered in construing any provision, restriction, covenant or condition contained in this Declaration.

10.11 No Waiver: Failure to enforce any provision, restriction, covenant or condition in this Declaration or in any Supplemental Declaration shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition.

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

SNOWMASS-AT-ASPEN, a joint venture, and  
JANSS COLORADO CORPORATION, as a  
member thereof, and  
AMERICAN CEMENT PROPERTIES, INC., as  
a member thereof

By

  
\_\_\_\_\_  
R. L. Herberg, Attorney-in-Fact

STATE OF COLORADO )  
COUNTY OF PITKIN )      ss.

The foregoing instrument was acknowledged before me this 20th day of December, 1966, by R. L. Herberg, as Attorney-in-Fact for Snowmass-At-Aspen, a joint venture, and for Janss Colorado Corporation, a corporation, as a member of said joint venture and for American Cement Properties, Inc., a corporation, as a member of said joint venture.

My commission expires Nov. 15, 1967.

WITNESS my hand and official seal.

Matilda C Zaccaro  
Notary Public

