

**TO:** Honorable Mayor Fancher and Town Council members  
**FROM:** Eric J. Heil, Town Attorney  
**RE:** Termination of Benchmark Covenants  
**DATE:** October 20, 2016

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**SUMMARY:** Representatives of Traer Creek LLC have requested that the Town of Avon consider, participate and support an effort to terminate the Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision, originally adopted in 1974 ("**Benchmark Covenants**"). The Town Council reviewed my introductory memorandum at its regular meeting on September 27, 2016 and provided direction to proceed with efforts to provide notice to property owners and prepare documents necessary for termination of the Benchmark Covenants.

**HISTORY:** The Benchmark Covenants predate the incorporation of the Town of Avon. The Benchmark Covenants address permitted uses, approval of construction plans, fences, signs, livestock, trees, building height and parking, and other matters. At the time, the Benchmark Covenants were typical of initial covenants created by a master developer to guide the development of a large multi-use planned development area. However, some 42 years later, the Benchmark Covenants are outdated, duplicitous with Town's Development Code regulations, and are largely unenforced. Traer Creek LLC has found that the Benchmark Covenants are now a cloud on property title as well as impediment to certain retail commercial deals, and has therefore requested the Town's support and participation in an effort to terminate the Benchmark Covenants.

**RECOMMENDATION:** The Town of Avon's Development Code, sign code, building code and other municipal regulations address the same topic matters in the Benchmark Covenants, but in a more defined, complete and modern manner. The Town's regulations are more easily updated, are more easily accessible, and are better administered through the Avon Community Development department than the Benchmark Covenants. The Benchmark Covenants makes several references to review and approval of private a design committee; however, such design committee has not existed for more than a decade.

Upon review of the Benchmark Covenants, I fully support and recommend termination of the Benchmark Covenants because they are duplicitous of the Town's Development Code and other municipal regulations, appear to no longer have any valid purpose or offer any protection to property owners, create unnecessary restrictions and requirements, and create unnecessary exceptions on property title throughout the Town of Avon. The Benchmark Covenants also affect Town owned properties in the original Benchmark Subdivision.

**PROCESS TO TERMINATE:** The Benchmark Covenants apply to all of the original platted area of the Town of Avon, which is basically everything on the valley floor except Eagle Bend, Nottingham Station, River Front, Brookside and the Village (at Avon). The Benchmark Covenants allow for the amendment and termination through a five member Landowner's Committee appointed by a majority of the landowners in the Benchmark Subdivision. The Town of Avon appears to be the majority landowner and may therefore effectively control the appointment of the five member Landowner's Committee. The Town of Avon may only be one member of the Landowner Committee. A decision of the Landowner Committee requires the concurring vote of four members.

The law firm of Johnson and Repucci, hired by Traer Creek LLC, is assisting with the process. The process includes notification of all landowners in the Benchmark Subdivision with an explanation of the effort to terminate the covenants, conducting a ballot to appoint the five person Landowner Committee, and documenting the actions of the land owner committee once appointed. A notice was sent to property owners on October 14, 2016 which is attached to this memorandum. Notice has also been published in the Vail Daily. The notice and procedures for termination of the Benchmark Covenants has been coordinated with a local title insurance company to ensure that the process is effective in order to remove the Benchmark Protective Covenants from an encumbrance on properties within the Benchmark Subdivision.

Effectively, the Town is the land owner of more than 51% of the original Benchmark Subdivision. Therefore, the Town's vote will determine the appointment of the five person Landowner Committee. The Town of Avon may appoint one representative to the Landowners Committee. Jennie Fancher, Mayor is proposed for the Town's representative. Other property owners that have been identified as supportive of this effort include Katherine Pakozdi, Rob E. Tartre, Marka Ann McLaughlin Brenner, and Ellen Mary Crosbie.

The following actions are requested for Council consideration:

- (1) Approve a landowner ballot on behalf of the Town of Avon for consent to terminate the Benchmark Covenants.
- (2) Approve a landowner ballot on behalf of the Town of Avon to vote for Jennie Fancher, Katherine Pakozdi, Rob E. Tartre, Marka Ann McLaughlin Brenner, and Ellen Mary Crosbie to be on the five person Landowners Committee.
- (3) Authorize the Town's representative on the Landowners Committee (i.e. Jennie Fancher) to vote to terminate the Benchmark Covenants and take such other actions as a Landowner Committee member as required to effectuate the termination of the of the Benchmark Covenants.

A proxy statement and absentee ballot form is attached which the Town may complete and sign with regard to the first two action items.

**REQUESTED MOTION:** "I move to vote for termination of the Benchmark Covenants, vote for the appointment of Jennie Fancher, Katherine Pakozdi, Rob E. Tartre, Marka Ann McLaughlin Brenner, and Ellen Mary Crosbie as members of the Benchmark Landowners Committee, and authorize Jennie Fancher to vote in favor of terminating the Benchmark Covenants at the Landowners Committee meeting and take such other action as required to effectuate the termination of the Benchmark Covenants."

*Thank you, Eric*

**ATTACHMENTS:** A: The Benchmark Covenants, with amendments  
B: Notice to Property Owners dated October 14, 2016  
C: Proxy Statement and Absentee Ballot

# Attachment A: Benchmark Covenants

Eagle County, Colorado

## DECLARATION OF PROTECTIVE COVENANTS

### FOR

### BENCHMARK AT BEAVER CREEK SUBDIVISION

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership, is the beneficial owner of all that real property within the subdivision named BENCHMARK AT BEAVER CREEK in Eagle County, Colorado, the plat of which has been filed under Reception No. 129460 and recorded in Map Case 2, Drawer "B" of Plats in the records of the Eagle County Clerk & Recorder.

BENCHMARK AT BEAVER CREEK, Grantor, hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and as binding upon Grantor and upon all persons claiming under Grantor and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

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

- Subdivision - Benchmark at Beaver Creek Subdivision
- Lot - A lot located within Benchmark at Beaver
- Commercial - Lots in the Commercial Zone are intended to provide for the broad range of commercial operations and services required for the proper and convenient functioning of Commercial Centers serving large areas of the County. Uses permitted are intended to include all retail and service operations, including but not limited to the following: Wholesale and retail establishments, including sale of food, beverages, drygoods, furniture, appliances, bakery, automobile and vehicular equipment, hardware, clothing, building materials, feed, garden supply, equipment rental and plant materials; personal service establishments, including banks, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals only, mortuary, photo studio, shoe repair, tailor shop, bowling alley, restaurant, cocktail lounge, private reading club, theater and indoor recreation; general service establishments, including service of automobile service stations, vehicular rental service and repair shops, motel-hotel-lodges up to 750 units, boarding and rooming house, offices for conduct of a business or profession, studio for conduct of arts and crafts, dental and medical clinics.

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- Condominium - A lot which may be used for multiple family residential purposes, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants.
- Multiple Family - A lot which may be used for multiple family residential apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
- Community Facilities - A lot which may be used for Church, fire station, police or Sheriff's station, public nursery or day care center.
- Common Open Space - That portion of the subdivision held in trust by Benchmark at Beaver Creek and Eagle County and used to provide common access to the public domain by residents and visitors to the subdivision and the public in general.
- Committee - A group of three persons who shall be responsible for the administration and enforcement of these protective covenants. Two of such persons shall be appointed by Grantor and the third shall be selected by the two persons so appointed. A majority of the Committee shall govern its actions. Any vacancy on the Committee which shall continue for a continuous period of thirty days without replacement by the remaining members of the committee can be filled by appointment of the Board of County Commissioners of Eagle County, Colorado.

2. GENERAL PURPOSES: These covenants are for the mutual benefit and protection of the owners and lessees of the lots in the subdivision and are made for the purpose of creating and keeping the subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference or destruction of the natural beauty of the subdivision.

3. USES: All lots in the subdivision shall fall within the following land use definitions:

<u>Definition</u>	<u>Lot Description</u>
Commercial	Block 1, Lots 1, 2 and 3, Block 2, Lots 6, 7, 8, 9, 10, 11, 12, 20, 21, 22, 23, 24, 25, 26, 27

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Condominium	Block 1, Lot 4, Block 2, Lots 3, 4, 5, 13, 14, 15, 17, 18, 19, Block 3, Lots 1, 2, 4
Multiple Family	Block 1, Lot 5, Block 2, Lot 2, Block 3, Lots 5, 6
Community Facilities	Block 2, Lot 16, Block 3, Lot 3
Common Open Space	Tracts A, B, C

4. APPROVAL OF CONSTRUCTION PLANS: All plans for construction and alteration shall be first submitted to the Committee as herein provided: (a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor, elevation showing four sides, plot and grading plans; provisions for offstreet parking and locations of driveway access; the specifications for exterior materials, color schemes; landscape drawings and plant specifications; the location, character and method of utilization of all utilities have been submitted to the Committee and approved by it in writing. Owners and lessees of lots within the subdivision are encouraged to consult with the Committee prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay.

(b) The Committee shall be authorized to levy a reasonable charge, not exceeding ten cents for each square foot of enclosed floor space, for the review of final plans and specifications, which charge shall be paid in advance. The proceeds of such charges shall be used for the administration and enforcement of these protective covenants.

(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) In passing upon all such plans and specifications, the Committee shall take into consideration the suitability of the proposed building or other structure and the materials of which it is to be built to the lot upon which it is to be erected, the harmony thereof with the surroundings and the effect of the building or other structure, as planned, on the outlook from adjacent or neighboring lots. The Committee shall use reasonable judgment in passing upon all such plans and specifications, but the Committee shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the Committee acted with malice or wrongful intent.

5. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the subdivision free and clear

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and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the Committee.

6. EASEMENTS: Easements and rights-of-way are hereby reserved as shown or described on the recorded plat of the subdivision. There are also in addition the following easements and rights-of-way reserved:

(a) Easement reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Benchmark for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage and similar services. Provided, however, that the use and exercise of said easement shall not disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

7. FENCES: No fence, wall or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the Committee as an integral or decorative part of a building to be erected on a lot.

8. SIGNS: No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot for any purpose whatsoever, except such commercial signs as have been approved by the Committee either for identification of residences or places of business or other commercial uses.

9. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by Grantor or any successive person or entity. No private wells or sanitation system shall be used within the subdivision.

10. TRASH: No trash, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse and all such receptacles shall be screened from the public view and protected from disturbance.

11. LIVESTOCK: The keeping of livestock and animals except dogs, cats and other household pets for personal enjoyment and not for commercial purposes shall not be allowed. The keeping of such dogs, cats and other household pets shall be strictly governed by the applicable rules and regulations adopted by the Board of County Commissioners of Eagle County, Colorado, any successor entity, the Committee aforementioned, or homeowners association.

## Attachment A: Benchmark Covenants

12. TREES. Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the Committee.

13. BUILDING HEIGHT AND PARKING REQUIREMENTS. Building height and parking requirements shall be governed by the Committee.

14. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 4 hereof. In addition, for every 2,000 square feet of building area the builder shall plant one (1) 12 foot high or larger non-deciduous tree, either on the subject lot or another location within the subdivision approved by the Committee.

15. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, trailer or tent shall be permitted in the subdivision, except as may be determined to be necessary during construction and specifically authorized by the Committee in writing.

16. CONTINUITY OF CONSTRUCTION: All structures commenced in the subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless some exception is granted in writing by the Committee.

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

18. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the subdivision or herein may be granted in writing by the Committee.

19. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 1999, at which time they shall be automatically extended for five successive terms of ten years each.

20. AMENDMENT: The conditions, restrictions, stipulations, agreements and covenants contained herein shall not be abandoned, terminated, or amended except by written consent of the owners of 51% of the land included within the boundaries of the subdivision. In determining the land included within the boundaries of the subdivision, those parcels designated on the final plat as "public tracts" shall be counted and shall be deemed to be owned by Benchmark at Beaver Creek.

21. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the Board of County Commissioners of Eagle County, Colorado, or any person or persons owning real property

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in the subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorney's fees, for such violations.

22. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

Executed this 7th day of February, 1974.

BENCHMARK AT BEAVER CREEK  
By Benchmark-Avon Properties,  
General Partner

By Ronald D. Allred  
Ronald D. Allred

By A. J. Wells  
A. J. Wells

By Doyle G. Fulton  
Doyle G. Fulton

STATE OF COLORADO     )  
                                  ) ss.  
COUNTY OF EAGLE     )

The above and foregoing instrument was acknowledged before me this 8th day of February, 1974, by RONALD D. ALLRED, A. J. WELLS and DOYLE G. FULTON, Attorneys-in-fact for Benchmark-Avon Properties, General Partner of Benchmark at Beaver Creek.

My commission expires: July 3, 1977

WITNESS my hand and official seal.



Bennice J. Milano  
NOTARY PUBLIC

129459

STATE OF COLORADO, }  
EAGLE COUNTY. } ss.

I hereby certify that this instrument  
was filed for record in my office the  
27 day of February, 1974, at  
9:00 o'clock A.M., and is duly recorded  
in Book 233 Page 565

Marshall R. Barry  
County Clerk and Recorder

Jessie Baker  
Deputy

Fee \$ 12.00 Pd.

Ron Allred  
Box 5  
Avon, Colo

Attachment A: Benchmark Covenants

#135288-Filed for Record: Apr. 7, 1975 at 9 A M 239/249

135288

4/7/75 @ 9AM 239 /249

AMENDED DECLARATION OF PROTECTIVE COVENANTS

FOR

BENCHMARK AT BEAVER CREEK SUBDIVISION

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership, is the beneficial owner of all that real property within the subdivision named BENCHMARK AT BEAVER CREEK in Eagle County, Colorado, the final plat of which has been filed under Reception No. 129460 and recorded in Map Case #2, Drawer "B" of Plats in Book 233 at Page 566 in the records of the Eagle County Clerk and Recorder and the Revised Final Plat of which has been filed under Reception No. 134061 and recorded in Map Case #2, Drawer "B" in Book 238 at Page 41 in the records of the Eagle County Clerk and Recorder; and

BENCHMARK AT BEAVER CREEK, Grantor, as the owner of at least 51% of the land included within the boundaries of said Subdivision, hereby amends in total the previously filed Declaration of Protective Covenants for said Subdivision as recorded in Book 233 at Page 565 in the records of the Eagle County Clerk and Recorder; and

BENCHMARK AT BEAVER CREEK, Grantor, hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and as binding upon Grantor and upon all persons claiming under Grantor and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

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

Subdivision - Benchmark at Beaver Creek Subdivision

Lot - A lot located within Benchmark at Beaver Creek Subdivision

Commercial - Lots in the Commercial Zone are intended to provide for the broad range of commercial operations and services required for the proper and convenient functioning of Commercial Centers serving large areas of the County. Uses permitted are intended to include all retail and service operations that may be appropriately located within a shopping district and that are normally required to sustain a community, including but not limited to the following: Wholesale and retail establishments, including sale of food, beverages, drygoods, furniture, appliances, bakery, automotive and vehicular equipment, hardware, clothing, building materials, feed, garden supply, equipment rental and plant materials, personal service establishments, including banks, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals only, mortuary, photo studio, shoe repair, tailor ship, bowling alley, restaurant, cocktail lounge, private

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reading club, theater and indoor recreation; general service establishments, including automobile service stations, vehicular rental service and repair shops, motel-hotel-lodges up to 750 units, boarding and rooming houses, offices for conduct of a business or profession, studios for conduct of arts and crafts, dental and medical clinics. Also, any Use by Right of the C/L District and C/G District permitted under the Zoning Resolution of Eagle County, Colorado.

- Condominium** - A lot which may be used for multiple family residential purposes, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants.
- Multiple Family** - A lot which may be used for multiple family residential apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
- Mobile Home Park** - A lot which may be used for mobile home park purposes; which shall be subject to any rules and regulations for such purposes as are established by the State of Colorado and County of Eagle; and further shall be subject to any rules and regulations for mobile home parks which may be established by the Planning and Architectural Control Committee of the Benchmark at Beaver Creek Subdivision.
- Community Facilities** - A lot which may be used for religious purposes, fire station, police or sheriff's station, or similar governmental purposes, public nursery or day-care center.
- Common Open Space** - That portion of the Subdivision held in trust by Benchmark at Beaver Creek and Eagle County and used to provide common access to the public domain by residents and visitors to the Subdivision and the public in general.
- Committee** - A group of five persons who shall be responsible for the administration and enforcement of these protective covenants. All such persons shall be appointed by Grantor.

2. **GENERAL PURPOSES:** These covenants are for the mutual benefit and protection of the owners and lessees of the lots in the Subdivision and are made for the purposes of creating and keeping the Subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference or destruction of the natural beauty of the Subdivision.

3. **USES:** All lots in the Subdivision shall fall within the following land use definitions:

<u>Definition</u>	<u>Lot Description</u>
Commercial	Block 1, Lots 1, 2, 3, 4, 6, 7 and 8. Block 2, Lots 10, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and Tract Q Block 3, Lot 4
Condominium	Block 1, Lot 9 Block 2, Lots 3, 4, 5, 6, 7, 8, 9, 15 and 16 Block 3, Lots 1, 2, 4, 5 and 6
Multiple Family	Block 1, Lots 5 and 9 Block 2, Lots 2, 3, 4, 5, 6, 7, 8, 9, 15 and 16 Block 3, Lots 5 and 6
Community Facilities	Block 2, Lot 34 Block 3, Lot 3
Common Open Space	Tracts A, B, and C

**4. PLANNING AND ARCHITECTURAL CONTROL COMMITTEE:**

The Planning and Architectural Control Committee, hereinafter referred to as the Committee, shall consist of five members and shall be appointed by the Grantor, Benchmark at Beaver Creek, its successors or assigns, to review, study, and approve or reject proposed improvements of any nature whatsoever within the area described in the Final Plat and Revised Final Plat of Benchmark at Beaver Creek of which these protective covenants are made a part. A majority of the Committee shall govern its actions. Any vacancy on the Committee which shall continue for a continuous period of thirty days without replacement by the remaining members of the Committee may be filled by appointment of the Board of County Commissioners of Eagle County, Colorado.

(a) The Committee shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings.

(b) In passing upon any plans and specifications submitted for its approval the Committee shall consider:

(i) the suitability of the improvement, including materials of which it is to be constructed, to the site upon which it is to be located;

(ii) the nature of adjacent and neighboring improvements;

(iii) the quality of the materials to be utilized in any proposed improvement; and

(iv) the effect of any proposed improvement on the outlook of any adjacent or neighboring property.

(c) It shall be an objective of the Committee to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values, monetary or aesthetic, will be impaired.

(d) In the event the Committee fails to approve or disapprove plans and specifications submitted to it within thirty days of submission and no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and the related covenants shall be determined to have been fully complied with.

5. APPROVAL OF CONSTRUCTION PLANS: All plans for construction and alteration shall be first submitted to the Committee as herein provided:

(a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of final plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor plan, elevation showing all sides, plot and grading plans; provisions for off-street parking and locations of driveway access; the specifications for exterior materials, color schemes; landscape drawings and plant specifications; the location, character and method of utilization of all utilities have been submitted to the Committee and approved by it in writing. Owners and lessees of lots within the Subdivision are encouraged to consult with the Committee prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay in approval.

(b) The Committee shall be authorized to levy a reasonable charge, not exceeding ten cents for each square foot of enclosed floor space, for the review of final plans and specifications, which charge shall be paid in advance. The Committee shall publish as a part of its rules and regulations a schedule setting forth the various fees to be charged for the various types of submittals for approval.

(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) The Committee shall use reasonable judgment in passing upon all such plans and specifications, but the Committee shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the Committee acted with malice or wrongful intent.

6. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the Subdivision free and clear and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the Committee. No vehicle entrance to any lot in the Subdivision from any dedicated road or street shall be constructed or used unless serviced by a constructed drainage culvert located and sized in a manner which shall first be approved in writing by the Committee. The Committee's action

in reviewing such drainage plans shall be guided by the recommendations of the Planning Department of Eagle County, Colorado.

7. **EASEMENTS:** Easements and rights-of-way as shown or described on the recorded plat of the Subdivision are hereby reserved. In addition the following easements and rights-of-way are reserved:

(a) Easement reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Grantor for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage, sewer, sanitation, telephone, natural gas, liquid propane gas, television cable, lighting, heating, bridle path, pedestrian traffic, and similar services. Provided, however, that the use and exercise of said easement shall not disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

8. **FENCES:** No fence, wall, or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the Committee as an integral or decorative part of a building to be erected on a lot.

9. **SIGNS:** No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot or structure for any purpose whatsoever, except such commercial signs as have been approved by the Committee either for identification of residences or places of business or other commercial uses. The Committee shall establish comprehensive sign regulations for the Subdivision providing for the administration and enforcement of same; regulate the erection, construction, restoration, alteration, location, landscaping and maintenance of signs, window signs, flags, pennants, banners and bunting, display boxes, residential name plate signs, subdivision interest signs, temporary site development signs, traffic control signs. For private property, murals and supergraphics; establishment of an approved sign program; establishment of a design review procedure and guidelines. The Committee shall review the appearance, lighting, form, color, character, dimensions, and materials of all signs requiring approval under this covenant and any rules and regulations created pursuant hereto. The Committee shall make such aesthetic judgments necessary to insure that all signs requiring approval under this covenant or any rules and regulations made pursuant hereto are in conformance with such sign rules and regulations and in harmony with the character of the Subdivision. The Committee may adopt from time to time such rules and regulations as it may deem necessary to perform its prescribed duties. Review shall be in conformance with the procedure outlined in such rules and regulations.

10. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by Grantor or any successive person or entity. No private wells or sanitation system shall be used within the Subdivision.

11. TRASH: No trash, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and protected from disturbance.

12. LIVESTOCK: No animals, livestock, horses or poultry (except dogs, cats and other household pets for personal enjoyment and not for commercial purposes and except horses owned and used in conjunction with an equestrian-livery operation approved by the Committee) shall be kept, raised or bred in the Subdivision. The keeping of dogs, cats and other household pets for personal enjoyment shall be strictly governed by all applicable rules and regulations adopted by the County of Eagle, Colorado, any successor governmental entity, the Committee aforementioned, or any homeowners association created for the benefit of property owners and lessees of the Subdivision.

13. TREES: Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the Committee.

14. SET BACK REQUIREMENTS: The Committee may determine the location of improvements in relation to property lines, and all actual construction sites must receive the advance written approval of the Committee prior to the commencement of construction. In determining the proper location for each improvement, the Committee shall consider the location of existing and future improvements on adjacent property, the wishes of adjacent property owners, and such other economic or aesthetic considerations as it may deem appropriate.

15. BUILDING HEIGHT: All building height maximums shall be as determined by the Committee. Building height is defined as the distance, measured vertically, from the finished grade at the midpoint between the front and rear walls of a building to the top of a flat roof or mansard roof, or to the midpoint between the eave line and the peak of a gable, gambrel, hip, shed or similar pitched roof, and measured to a slope not to exceed 12:24.

16. PARKING REQUIREMENTS: Parking requirements shall be determined by the Committee. The following provisions shall apply to off-street parking and loading facilities:

The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. The Committee shall not approve any construction until plans are presented and approved by the Committee that show property that is available and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the Committee's approval is granted shall be conditional

upon the unqualified continuance and availability of the amount of parking and loading space required by this covenant. Should the owner or occupant of any lot or building change the use to which the lot or building is utilized, thereby increasing off-street parking and loading requirements, it shall be a violation of this covenant to begin or maintain such altered use until such time as the increased off-street parking and loading requirements are complied with. With respect to additional general provisions, design requirements, minimum off-street loading requirements, minimum off-street parking space requirements, clear-vision area requirements, the Committee shall be guided by the standards set forth in the Eagle County Zoning Resolution, as amended.

17. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 5 hereof. The Committee shall make rules and regulations specifying the location, type, and quantities of ground cover, plants, shrubbery, trees, and similarly related natural and/or artificial materials used and submitted in connection with said landscaping plans.

18. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, trailer or tent shall be permitted in the Subdivision, except as may be determined to be necessary during construction and specifically authorized by the Committee in writing.

19. CONTINUITY OF CONSTRUCTION: All structures commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless an exception is granted in writing by the Committee.

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

21. TRADE NAMES: No word, name, symbol, or combination thereof shall be used to identify for commercial purposes a house, structure, business or service within the Subdivision unless the same shall have been first approved in writing by the Committee.

22. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the Subdivision or herein may be granted in writing by the Committee upon approval thereof by the Board of County Commissioners of Eagle County, Colorado.

23. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the Subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 2000, at which time they shall be automatically extended for five successive terms of ten years each.

24. AMENDMENT: The conditions, restrictions, stipulations, agreements, and covenants contained herein may be abandoned,

terminated, or amended by the Grantor until such time as 70% of the land included within the boundaries of the Subdivision have been sold by the Grantor, at which time the then owners of 51% of the land in the Subdivision may call an election to select a "Landowners Committee" comprised of five individual owners in the subdivision, one of whom shall be the Grantor, if the Grantor shall at such time still be an owner of property in the Subdivision, and said Committee, by 4/5 majority vote, may amend, alter, revoke or modify the conditions, restrictions, stipulations, agreements and covenants contained herein. In determining the land included within the boundaries of the Subdivision, those parcels designated on the final plat as "public tracts" shall be counted and shall be deemed to be owned by Benchmark at Beaver Creek.

25. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the Board of County Commissioners of Eagle County, Colorado, or any person or persons owning real property in the Subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorneys' fees, for such violations.

26. PENALTIES AND EXPENSES OF ENFORCEMENT; LIENS FOR NON-PAYMENT OF SAME: If any person shall violate any of the provisions of this instrument or the rules and regulations promulgated by the Committee pursuant to this instrument for which penalties are provided, or cause expenses to the Committee as a result of such violations, and fail to or refuse to pay such penalties or expenses, then such unpaid penalties or expenses shall be chargeable to the owner, including interest, and shall constitute a lien thereon superior (prior) to all other liens and encumbrances except:

- a) tax and special assessment liens in favor of any assessing unit; and
- b) all sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance and including additional advances made thereon prior to the creation of such a lien.

To evidence such a lien the Committee shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of record of the subject property, and the legal description of the subject property. Such notice shall be signed by a member of the Committee and shall be recorded in the office of the Clerk and Recorder of the County of Eagle, State of Colorado. Such lien for the penalties or expenses shall attach from the date of the failure of payment of said assessment of penalties or expenses, and may be enforced by foreclosure on the defaulting owner's property by the Committee. In the event of such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees. The Grantor hereunder shall have the power to bid in said real property at any foreclosure sale and to acquire and hold, lease, mortgage or convey the same.

The amount of any such penalties or expenses assessed against such real property shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid penalties or expenses may be maintained without foreclosing or waiving the lien securing said debt.

Any mortgage holder or similar encumbrancer holding a lien on any real property in the Subdivision may pay any unpaid penalties or expenses created hereunder with respect to such real property, and upon such payment such encumbrancer shall have a lien on such real property for the amounts paid, said lien to be of the same priority as the lien of his respective encumbrance.

27. NON-CONFORMING USES AND BUILDINGS: The lawful use of a building or structure, or the lawful use of any land as existing and lawful at the time of recording of this instrument, or in the case of amendment of this instrument then at the time of such amendment, may be continued although such use does not conform to the provisions of this instrument or amendments thereto; and such use may be extended throughout the same building, provided no structural alteration of such structure is proposed or made for the purpose of such extension.

27.1. Repair and Maintenance. Repair and maintenance of a non-conforming building shall be permitted.

27.2. Restoration. A non-conforming building which has been damaged or destroyed by fire or other causes may be restored to its original condition, provided such work is commenced within one year of such event, and completed within 18 months of such commencement.

27.3. Change in Use. A non-conforming use shall not be replaced by a use considered to exhibit a greater degree of non-conformity than the existing use; a non-conforming use may be replaced by a use considered to exhibit an equal or lesser degree of non-conformity, to be determined by the Committee based on the intent and purposes of this instrument.

27.4. Abandonment. Whenever a non-conforming use of a building or land has been abandoned for a period of one year, future use of the land or building shall be in conformity with all applicable provisions of this instrument or rules and regulations promulgated by the Committee pursuant to this instrument.

28. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

Executed this 4<sup>th</sup> day of April, 1975.

BENCHMARK AT BEAVER CREEK, a Colorado Limited Partnership

By BENCHMARK-AVON PROPERTIES, a Partnership, Its Sole General Partner

By Ronald D. Allred  
Ronald D. Allred, A Managing Partner and Attorney-In-Fact

By A. J. Wells  
A. J. Wells, A Managing Partner and Attorney-In-Fact

By Doyle G. Fulton  
Doyle G. Fulton, A Managing Partner and Attorney-In-Fact

STATE OF COLORADO )  
COUNTY OF EAGLE ) ss.

The above and foregoing instrument was acknowledged before me this 4<sup>th</sup> day of April, 1975, by RONALD D. ALLRED, A. J. WELLS, and DOYLE G. FULTON, Attorneys-in-fact for Benchmark-Avon Properties, General Partner of Benchmark at Beaver Creek.

My commission expires: My Commission expires Nov. 3, 1978

WITNESS my hand and official seal.



George Rosenberg  
NOTARY PUBLIC

SECOND AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS

FOR

BENCHMARK AT BEAVER CREEK SUBDIVISION

BENCHMARK AT BEAVER CREEK, being a subdivision in Eagle County, Colorado, the Final Plat of which has been filed under Reception No. 129460 and recorded in Map Case #2, Drawer "B" of Plats in Book 233 at Page 566 in the records of the Eagle County Clerk and Recorder and the Revised Final Plat of which has been filed under Reception No. 134061 and recorded in Map Case #2, Drawer "B" in Book 238 at Page 41 in the records of the Eagle County Clerk and Recorder; and

BENCHMARK AT BEAVER CREEK, a limited partnership, Grantor, as the owner of at least 51% of the land included within the boundaries of said Subdivision, hereby amends in part the previously filed Amended Declaration of Protective Covenants for said Subdivision as recorded in Book 239 at Page 249 in the records of the Eagle County Clerk and Recorder; and

BENCHMARK AT BEAVER CREEK, Grantor, hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and as binding upon Grantor and upon all persons claiming under Grantor and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

I. Paragraph 1 of the previously filed Amended Declaration of Protective Covenants is amended by the addition of the following definition:

"Industrial - A lot which may be used for the broad range of Manufacturing, Warehousing, Storage, Retail and Sales Operations required for the proper and convenient functioning of industrial centers serving large areas of Eagle County, including but not limited to all of the uses by right contained in the Zoning Resolution for the County of Eagle, State of Colorado,

and/or also an electric utility substation including the placement of all equipment, the construction of roads, and all other appurtenances necessary to operate an electric substation, also including warehouse, storage, garage and office use thereto."

II. Paragraph 3 of the previously filed Amended Declaration of Protective Covenants is amended as follows: Lot 5, Block 1 in the Subdivision is hereby deleted from the definition "Multiple Family" and said Lot 5, Block 1 is added to the definition "Commercial"; further, the definition "Industrial" as set forth in Paragraph 1 of said Amended Declaration of Protective Covenants is added to said Paragraph 3, and Block 1, Lot 5 shall be included under said definition.

Only the amendments contained herein shall affect the previously filed Amended Declaration of Protective Covenants, and all other provisions of said Amended Declaration of Protective Covenants shall remain in full force and effect.

Executed this 29th day of March, 1976.

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership,

By: BENCHMARK-AVON PROPERTIES, a partnership, its sole general partner

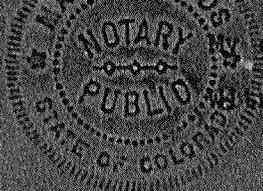
By: Ronald D. Allred  
Ronald D. Allred, a Managing Partner

By: A. J. Wells  
A. J. Wells, a managing partner

By: Doyle G. Fulton  
Doyle G. Fulton, a managing partner

STATE OF COLORADO )  
COUNTY OF EAGLE ) ss.

The above and foregoing instrument was acknowledged before me this 29th day of March, 1976, by RONALD D. ALLRED, A. J. WELLS, and DOYLE G. FULTON, managing partners of Benchmark-Avon Properties, a partnership and general partner of Benchmark at Beaver Creek.



My commission expires: My Commission expires May 28, 1979

In witness my hand and official seal.

Margaret Woods  
Notary Public

Attachment A: Benchmark Covenants

and/or also an electric utility substation including the placement of all equipment, the construction of roads, and all other appurtenances necessary to operate an electric substation, also including warehouse, storage, garage and office use thereto."

II. Paragraph 3 of the previously filed Amended Declaration of Protective Covenants is amended as follows: Lot 5, Block 1 in the Subdivision is hereby deleted from the definition "Multiple Family" and said Lot 5, Block 1 is added to the definition "Commercial"; further, the definition "Industrial" as set forth in Paragraph 1 of said Amended Declaration of Protective Covenants is added to said Paragraph 3, and Block 1, Lot 5 shall be included under said definition.

Only the amendments contained herein shall affect the previously filed Amended Declaration of Protective Covenants, and all other provisions of said Amended Declaration of Protective Covenants shall remain in full force and effect.

Executed this 29th day of March, 1976.

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership,

By: BENCHMARK-AVON PROPERTIES, a partnership, its sole general partner

By: Ronald D. Allred  
Ronald D. Allred, a Managing Partner

By: A. J. Wells  
A. J. Wells, a managing partner

By: Doyle G. Fulton  
Doyle G. Fulton, a managing partner

STATE OF COLORADO )  
COUNTY OF EAGLE ) ss.

The above and foregoing instrument was acknowledged before me this 29th day of March, 1976, by RONALD D. ALLRED, A. J. WELLS, and DOYLE G. FULTON, managing partners of Benchmark-Avon Properties, a partnership and general partner of Benchmark at Beaver Creek.



My commission expires: My Commission expires May 20, 1978

In witness my hand and official seal.

Margo Woods  
Notary Public

141817

STATE OF COLORADO }  
County of EAGLE } ss.  
I hereby certify that this instrument was  
Filed for record in my office on

APR - 5 1976

at 1:20 o'clock P M and recorded  
in Book 245 Page 642  
MAXWELL B. BARZ, County Clerk & Recorder  
By Steve Ball Deputy

\$4.00 pd

# Attachment A: Benchmark Covenants

## DECLARATION OF ADDITIONAL PROTECTIVE COVENANTS

This Declaration of Additional Protective Covenants made this 11th day of June, 1976 by BENCHMARK AT BEAVER CREEK, a Limited Partnership (the "Declarant").

### WITNESSETH

WHEREAS, the Declarant is the present owner of certain property situated in the County of Eagle, State of Colorado more particularly described in Exhibit A attached hereto and hereby incorporated by reference, which land is sometimes herein referred to as the "Property", and

WHEREAS, the Property is subject to certain existing restrictions of record set forth in instrument recorded in Book 233 at Page 565, and in Amended Declaration recorded in Book 239 at Page 249, and Second Amendment to Declaration of Protective Covenants recorded in Book 245 at Page 642, and

WHEREAS, Declarant is desirous of subjecting the Property to the additional restrictions hereinafter set forth which shall be in addition to the above-described restrictions, to insure proper use and appropriate improvement of said Property as follows:

1. No lot nor any portion thereof of the Property shall at any time be used for any of the following purposes:

(a) A package liquor store operated primarily and exclusively for such purpose.

(b) A public movie theatre.

(c) A hardware store.

(d) A grocery store whether independent or chain operated but not, including other stores which may offer on an ancillary basis certain selected items for sale which may also be sold by an independent or chain operated grocery store.

## Attachment A: Benchmark Covenants

(e) A department or variety department store, but not including a store or stores utilizing no more than 5,000 square feet within each such store for the sale of certain items which may also be sold by a variety department store.

(f) A bowling alley for public bowling, but not including bowling facilities which may be provided by lodging or resort facilities on the Property for the primary use of the patrons of such facilities.

(g) No more than two gasoline service stations.

(h) Medical/dental clinic offices, but not including individual medical or dental offices which may be established within structures not established primarily for the purposes of containing medical/dental clinic offices.

(i) Public laundromat or laundry and dry cleaning facilities, but not including such facilities which may be operated by a lodging or resort facility which may be established on the Property for the primary benefit of the patrons of such facility.

(j) A bank, state or federally chartered.

(k) Savings and loan association, state or federally chartered.

(l) Finance company.

2. Each of the foregoing restrictions shall run with the Property, and a breach of any one of them or continuance thereof, may at the option of the Declarant, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings, in addition to any other remedy at law or in equity. The attorneys fees and expenses of the prevailing party in any such action shall be included in the amount of any judgment obtained against the other party. It is understood, however,

## Attachment A: Benchmark Covenants

that the breach of any of the foregoing covenants, conditions and restrictions shall not defeat or render invalid the lien of any mortgage or deed of trust on the Property made in good faith and for value; provided, however, (i) that any breach or continuance thereof may be enjoined, abated or remedied by the proper proceeding as aforesaid; and (ii) that each and all of the foregoing restrictions shall at all times remain in full force and effect against said premises or any part thereof, notwithstanding any foreclosure of any such mortgage or deed of trust. No assent, expressed or implied, to any breach of any one or more of the within restrictions shall be deemed to be taken to be a waiver of any succeeding or other breach.

3. If any provisions of these additional protective covenants are held invalid as a matter of law, such invalidity shall not affect the other provisions of these covenants, all of which shall remain in full force and effect as herein set forth.

4. These additional protective covenants shall remain in full force and effect until June 11, 1983; provided, however, by written recorded instrument, the Declarant, its successors or assigns, may waive or terminate the additional protective covenants, or any restriction included herein prior to that date. The benefits and burdens of these covenants are expressly intended to be limited to the parties hereto and their successors and do not create any rights or obligations in third parties of any kind.

IN WITNESS WHEREOF, the Declarant has caused these covenants to be executed the day and year first above written.

BENCHMARK AT BEAVER CREEK, a  
limited partnership

BY: BENCHMARK-AVON PROPERTIES, a  
partnership, the sole general  
partner

BY: Ronald D. Allred  
RONALD D. ALLRED, a Managing  
Partner

BY: Doyle S. Fulton  
DOYLE S. FULTON, a Managing Partner

BY: A. J. Wells  
A. J. WELLS, a Managing Partner

STATE OF COLORADO )  
CITY AND ) SS.  
COUNTY OF DENVER )

The foregoing Declaration of Additional Protective Covenants was subscribed and sworn to before me this 11th day of June, 1976 by RONALD D. ALLRED, DOYLE G. FULTON and A. J. WELLS, as Managing Partners of Benchmark <sup>-Aven Properties</sup> ~~At Beaver~~ Creek, a limited partnership.

Witness my hand and official seal.

My commission expires: Nov 4, 1978

George Rosenberg  
Notary Public



## Attachment A: Benchmark Covenants

EXHIBIT A TO DECLARATION OF ADDITIONAL PROTECTIVE COVENANTS  
DATED JUNE 11, 1976 BY BENCHMARK AT BEAVER CREEK, A LIMITED  
PARTNERSHIP.

Lots 25 through 32, and Lot 35, Block 2, BENCHMARK AT BEAVER CREEK SUBDIVISION, according to the recorded plats thereof in the Office of the Clerk and Recorder of Eagle County, Colorado, as recorded December 24, 1974, in Book 238 at Page 41, and April 27, 1976, in Book 246 at Page 44, the above-described Lots 25 and 26 being more particularly described as follows:

LOT 25:

A parcel of land in the County of Eagle and State of Colorado, being a portion of Benchmark at Beaver Creek as recorded December 24, 1974, in Book 238 at Page 41, and April 27, 1976, in Book 246 at Page 44, lying within the Northwest one-quarter of Section 12, Township 5 South, Range 82 West of the Sixth Principal Meridian; said parcel of land being more particularly described as follows:

Commencing at the point of intersection of the Westerly right-of-way line of tract "F" (also known as Avon Road) with the Southerly right-of-way line of Interstate Highway No. 70, said point also being the Northeasterly corner of Lot 29, Block 2, of said Benchmark at Beaver Creek Subdivision; thence S 54°11'08" E and along said Southerly right-of-way line 99.75 feet; thence continuing along said Southerly right-of-way line S 61°46'15" E 524.56 feet to the true point of beginning; thence continuing along said Southerly right-of-way line S 61°46'15" E 541.94 feet to a point of intersection with the Northerly right-of-way line of Beaver Creek Boulevard; thence along said Northerly right-of-way line 311.98 feet along the arc of a 325.00 foot radius curve to the left having a central angle of 55°00'00" and whose long chord bears S 89°16'15" W 300.14 feet; thence continuing along said Northerly right-of-way line S 63°13'45" W 90.00 feet to a point of curve; thence continuing along said Northerly right-of-way line 310.22 feet along the arc of a 372.63 foot radius curve to the right having a central angle of 47°41'57" and whose long chord bears S 87°04'44" W 301.34 feet; thence N 33°28'26" E 369.74 feet to the true point of beginning. Said parcel of land contains 2.1843 acres, more or less.

LOT 26:

A parcel of land in the County of Eagle and State of Colorado, being a portion of Benchmark at Beaver Creek as recorded December 24, 1974, in Book 238 at Page 41, and April 27, 1976, in Book 246 at Page 44, lying within the Northwest one-quarter of Section 12, Township 5 South, Range 82 West of the Sixth Principal Meridian; said parcel of land being more particularly described as follows:

Commencing at the point of intersection of the Westerly right-of-way line of tract "F" (also known as Avon Road) with the Southerly right-of-way line of Interstate Highway No. 70, said point also being the Northeasterly corner of Lot 29, Block 2, of said Benchmark at Beaver Creek Subdivision; thence S 54°11'08" E and along said Southerly right-of-way line 99.75 feet; thence continuing along said Southerly right-of-way line S 61°46'15" E 201.00 feet to the true point of beginning; thence continuing along said Southerly right-of-way line S 61°46'15" E 323.56 feet; thence S 33°28'26" W 369.74 feet to a point on the Northerly right-of-way line of Beaver Creek Boulevard; thence N 69°04'18" W and along said Northerly line, 174.91 feet; thence N 11°38'42" E 407.36 feet to the true point of beginning. Said parcel of land contains 2.1746 acres, more or less.

143173

STATE OF COLORADO }  
County of EAGLE } ss.  
I hereby certify that this instrument was  
Filed for record in my office on

JUN 14, 1976

for \$ 10.00 of which \$ 9.47 was recorded  
in Book 246 Page 947  
MARSHALL R. BART, County Clerk & Recorder  
Steve Hall Deputy  
\$10.00

Return to:  
Benchmark at Beaver Creek  
Box 5  
Avon, Colo 81657

Attachment A: Benchmark Covenants

#146410-Filed for Record: Nov. 18, 1976 at 1 P M 250/143

146410

11/18/76 @ 1PM

250/143

RESTATEMENT OF AND THIRD AMENDMENT TO  
DECLARATION OF PROTECTIVE COVENANTS FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership, is the beneficial owner of all that real property within the subdivision named BENCHMARK AT BEAVER CREEK in Eagle County, Colorado, the Final Plat, as amended, of which has been filed under Reception No. 129460 and recorded in Map Case #2, Drawer "B" of Plats in Book 233 at Page 566 in the records of the Eagle County Clerk and Recorder, the Revised Final Plat of which has been filed under Reception No. 134061 and recorded in Map Case #2, Drawer "B" in Book 238 at Page 41 in the records of the Eagle County Clerk and Recorder; Final Plat Amendment No. 1 filed under Reception No. 142223 and recorded in Book 246 at Page 43; Final Plat Amendment No. 2 filed under Reception No. 142224 and recorded in Book 246 at Page 244, and Final Plat Amendment No. 3 filed under Reception No. 145347 in Book 249 at Page 93, all respectively in the records of the Eagle County Clerk and Recorder.

BENCHMARK AT BEAVER CREEK, Grantor, as the owner of at least 51% of the land included within the boundaries of said Subdivision, hereby amends in total the previously filed Declaration of Protective Covenants for said Subdivision as recorded in Book 233 at Page 565 and the Amended Declaration of Protective Covenants as recorded in Book 245 at Page 642, both respectively recorded in the records of the Eagle County Clerk and Recorder; provided, however, that this instrument shall in no wise affect that certain instrument entitled Declaration of Additional Protective Covenants recorded in Book 246 at Page 947 in the records of the Clerk and Recorder of Eagle County, Colorado; and

BENCHMARK AT BEAVER CREEK, Grantor, hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and as binding upon Grantor and upon all persons claiming under Grantor and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

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

- 1. Commercial - Lots in the Commercial Zone are intended to provide for the broad range of commercial operations and services required for the proper and convenient functioning of Commercial Centers serving large areas of the County. Uses permitted are intended to include all retail and service operations that may be appropriately located within a shopping district and that are normally required to sustain a community, including but not limited to the following: Wholesale and retail establishments, including sale of food, beverages, drygoods, furniture, appliances, bakery, automotive and vehicular equipment, hardware, clothing, building materials, feed, garden supply, equipment rental and plant

Attachment A: Benchmark Covenants

materials, personal service establishments, including banks, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals only, mortuary, photo studio, shoe repair, tailor shop, bowling alley, restaurant, cocktail lounge, private reading club, theater and indoor recreation; general service establishments, including automobile service stations, vehicular rental service and repair shops, motel-hotel-lodges up to 750 units, boarding and rooming houses, offices for conduct of a business or profession, studios for conduct of arts and crafts, dental and medical clinics. Also, any use by Right of the C/L District and C/G District permitted under the Zoning Resolution of Eagle County, Colorado.

2. **Committee** - A group of five persons who shall be responsible for the administration and enforcement of these protective covenants. All such persons shall be appointed by Grantor.
3. **Common Open Space** - That portion of the Subdivision held in trust by Benchmark at Beaver Creek and Eagle County and used to provide common access to the public domain by residents and visitors to the Subdivision and the public in general.
4. **Community Facilities** - A lot which may be used for religious purposes, fire station, police or sheriff's station, or similar governmental purposes, public nursery or day-care center.
5. **Condominium**- A lot which may be used for multiple family residential purposes, residential duplex, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants. Condominium units are as defined in Section 38-33-101 et seq. C.R.S. 1973 as amended (Colorado Condominium Ownership Act). Duplex is defined herein as a building containing two dwelling units; dwelling units defined herein-below under the term "single family."
6. **Industrial** - A lot which may be used for the broad range of Manufacturing, Warehousing, Storage, Retail and Sales Operations required for the proper and convenient functioning of industrial centers serving large areas of Eagle County, including but not limited to all of the uses by right contained in the Zoning Resolution for the County of Eagle, State of Colorado, and/or also an electric utility substation including the placement of all equipment, the

# Attachment A: Benchmark Covenants

construction of roads, and all other appurtenances necessary to operate an electric substation, also including warehouse, storage, garage and office use thereto.

7. Lot - A lot located within Benchmark at Beaver Creek Subdivision.
8. Mobile Home Park - A lot which may be used for mobile home park purposes; which shall be subject to any rules and regulations for such purposes as are established by the State of Colorado and County of Eagle; and further shall be subject to any rules and regulations for mobile home parks which may be established by the Planning and Architectural Control Committee of the Benchmark at Beaver Creek Subdivision.
9. Multiple Family - A lot which may be used for multiple family residential apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
10. Single Family - A lot which may be used for the construction of only one dwelling unit and containing not less than 1,500 sq. ft. of habitable floor area. A dwelling unit is defined as one or more rooms in one building occupied by one family living independently of any other family, used solely for residential (human) occupancy, and not having more than one cooking facility. The term dwelling unit shall not include a mobile home whether or not fixed to the ground by a permanent continuous foundation. The term dwelling unit as used herein under this definition shall be exclusive and shall not include hotels, motels, boarding houses, clubs, or any institution, such as an asylum, hospital or jail.
11. Subdivision- Benchmark at Beaver Creek Subdivision.

2. GENERAL PURPOSES: These covenants are for the mutual benefit and protection of the owners and lessees of the lots in the Subdivision and are made for the purposes of creating and keeping the Subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference or destruction of the natural beauty of the Subdivision.

3. USES: All lots in the Subdivision shall fall within the following land use definitions:

# Attachment A: Benchmark Covenants

<u>Definition</u>	<u>Lot Description</u>
1. Commercial, also designated general commercial or bank or motel-lodge or hotel-lodge or shopping center	Block 1: Lots 1 through and including 50 and 62, 63, 64, 65, 67 and 68 Block 2: Lots 20, Tract Q, 21 through and including 32, 35, 47 through and including 74 Block 3: Lots 3, 4, 7, 8
2. Common Open Space	Tracts A, B, and C
3. Community Facilities	Block 2: Lot 34 Block 3: Lot 3
4. Condominium, also designated apartment or duplex	Block 1: Lots 51, 52, 53, 54, 55, 57, 66 Block 2: Lots 2 through and including 19, 33, 34, 36 through and including 56, 58, 61, 62, 63, 64, 65 Block 3: Lots 1, 2, 5, 6, 9 through and including 14
5. Industrial	Block 1: Lots 10 through and including 37
6. Multiple Family, also designated apartment or condominium	Block 1: Lots 55, 57, 66 Block 2: Lots 2, 3, 4, 7, 11 through and including 19, 34, 41 through and including 47, 49, 51, 52, 54, 55, 56, 61, 62, 63, 64, 65 Block 3: Lots 1, 2, 5, 9 through and including 14
7. Mobile Home Park	Block 2: Lot 1
8. Single Family	Block 1: Lots 56, 58, 59, 60, 61, 69

4. PLANNING AND ARCHITECTURAL CONTROL COMMITTEE:

The Planning and Architectural Control Committee, hereinafter referred to as the Committee, shall consist of five members who shall be appointed and serve at the pleasure of the Grantor, Benchmark at Beaver Creek, its successors or assigns, to review, study, and approve or reject proposed improvements of any nature whatsoever within the area described in the Final Plat and any and all amendments thereto of Benchmark at Beaver Creek of which these protective covenants are made a part. The Grantor shall have the exclusive right to remove and/or replace any member of the Committee as the Grantor in its sole opinion shall deem necessary, including but not limited to the replacement of a committee member upon said member's resignation, disability or death. Said replacement shall be forthwith at the discretion of the Grantor. A majority of the Committee shall govern its actions. However, Grantor at its sole discretion may alter in part or in total any decision of the Committee. Any vacancy on the Committee shall be filled by appointment by the Grantor; in the event Grantor fails to make such appointment for a continuous period of 30 days, then in said event any vacancy may be filled by appointment of the Board of County Commissioners of Eagle County, Colorado.

(a) The Committee shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings.

(b) In passing upon any plans and specifications submitted for its approval the Committee shall consider:

## Attachment A: Benchmark Covenants

(i) the suitability of the improvement, including materials of which it is to be constructed, to the site upon which it is to be located;

(ii) the nature of adjacent and neighboring improvements;

(iii) the quality of the materials to be utilized in any proposed improvement; and

(iv) the effect of any proposed improvement on the outlook of any adjacent or neighboring property.

(c) It shall be an objective of the Committee to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values, monetary or aesthetic, will be impaired.

(d) In the event the Committee fails to approve or disapprove plans and specifications submitted to it within thirty days of submission and no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and the related covenants shall be determined to have been fully complied with.

(e) The Committee is hereby authorized to collect reasonable fees as it may deem necessary from parties seeking or requiring the services of the Committee pursuant to these Protective Covenants and any and all rules and regulations adopted pursuant thereto. Said fees shall be the property of and inure to the benefit of Benchmark at Beaver Creek, a limited partnership and/or its successors and assigns. Said fees may be used by the Committee for its expenses.

5. APPROVAL OF CONSTRUCTION PLANS: All plans for construction and alteration shall be first submitted to the Committee as herein provided:

(a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of final plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor plan, elevation showing all sides, plot and grading plans; provisions for off-street parking and locations of driveway access; the specifications for exterior materials, color schemes; landscape drawings and plant specifications; the location, character and method of utilization of all utilities have been submitted to the Committee and approved by it in writing. Owners and lessees of lots within the Subdivision are encouraged to consult with the Committee prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay in approval.

(b) The Committee shall be authorized to levy a reasonable charge, not exceeding ten cents for each square foot of enclosed floor space, for the review of final plans and specifications, which charge shall be paid in advance. The Committee shall publish as a part of its rules and regulations a schedule setting forth the various fees to be charged for the various types of submittals for approval.

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(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) The Committee shall use reasonable judgment in passing upon all such plans and specifications, but the Committee shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the Committee acted with malice or wrongful intent.

6. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the Subdivision free and clear and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the Committee. No vehicle entrance to any lot in the Subdivision from any dedicated road or street shall be constructed or used unless serviced by a constructed drainage culvert located and sized in a manner which shall first be approved in writing by the Committee. The Committee's action in reviewing such drainage plans shall be guided by the recommendations of the Planning Department of Eagle County, Colorado.

7. EASEMENTS: Easements and rights-of-way as shown or described on the recorded plat of the Subdivision are hereby reserved. In addition the following easements and rights-of-way are reserved:

(a) Easement reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Grantor for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage, sewer, sanitation, telephone, natural gas, liquid propane gas, television cable, lighting, heating, bridle path, pedestrian traffic, and similar services. Provided, however, that the use and exercise of said easement shall not disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

8. FENCES: No fence, wall, or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the Committee as an integral or decorative part of a building to be erected on a lot.

9. SIGNS: No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot or structure for any purpose whatsoever, except such commercial signs as have been approved by the Committee either for identification of residences or places of business or other commercial uses. The Committee shall establish comprehensive sign regulations for the Subdivision providing for the administration and enforcement of same; regulate the erection, construction, restoration, alteration, location, landscaping and maintenance of signs, window signs, flags, pennants, banners and bunting,

# Attachment A: Benchmark Covenants

display boxes, residential name plate signs, subdivision interest signs, temporary site development signs, traffic control signs for private property, murals and supergraphics; establishment of an approved sign program; establishment of a design review procedure and guidelines. The Committee shall review the appearance, lighting, form, color, character, dimensions, and materials of all signs requiring approval under this covenant and any rules and regulations created pursuant hereto. The Committee shall make such aesthetic judgments necessary to insure that all signs requiring approval under this covenant or any rules and regulations made pursuant hereto are in conformance with such sign rules and regulations and in harmony with the character of the Subdivision. The Committee may adopt from time to time such rules and regulations as it may deem necessary to perform its prescribed duties. Review shall be in conformance with the procedure outlined in such rules and regulations.

10. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by Grantor or any successive person or entity. No private wells or sanitation system shall be used within the Subdivision.

11. TRASH: No trash, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and protected from disturbance.

12. LIVESTOCK: No animals, livestock, horses or poultry (except dogs, cats and other household pets for personal enjoyment and not for commercial purposes and except horses owned and used in conjunction with an equestrian-livery operation approved by the Committee) shall be kept, raised or bred in the Subdivision. The keeping of dogs, cats and other household pets for personal enjoyment shall be strictly governed by all applicable rules and regulations adopted by the County of Eagle, Colorado, any successor governmental entity, the Committee aforementioned, or any homeowners association created for the benefit of property owners and lessees of the Subdivision.

13. TREES: Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the Committee.

14. SET BACK REQUIREMENTS: The Committee may determine the location of improvements in relation to property lines, and all actual construction sites must receive the advance written approval of the Committee prior to the commencement of construction. In determining the proper location for each improvement, the Committee shall consider the location of existing and future improvements on adjacent property, the wishes of adjacent property owners, and such other economic or aesthetic considerations as it may deem appropriate.

15. BUILDING HEIGHT: All building height maximums shall be as determined by the Committee. Building height is defined as the distance, measured vertically, from the finished grade at the midpoint between the front and rear walls of a building to the top of a flat roof or mansard roof, or to the midpoint between the eave line and the peak of a gable, gambrel, hip, shed or similar pitched roof, and measured to a slope not to exceed 12:24.

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16. PARKING REQUIREMENTS: Parking requirements shall be determined by the Committee. The following provisions shall apply to off-street parking and loading facilities:

The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. The Committee shall not approve any construction until plans are presented and approved by the Committee that show property that is available and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the Committee's approval is granted shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this covenant. Should the owner or occupant of any lot or building change the use to which the lot or building is utilized, thereby increasing off-street parking and loading requirements, it shall be a violation of this covenant to begin or maintain such altered use until such time as the increased off-street parking and loading requirements are complied with. With respect to additional general provisions, design requirements, minimum off-street loading requirements, minimum off-street parking space requirements, clear-vision area requirements, the Committee shall be guided by the standards set forth in the Eagle County Zoning Resolution, as amended.

17. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 5 hereof. The Committee shall make rules and regulations specifying the location, type, and quantities of ground cover, plants, shrubbery, trees, and similarly related natural and/or artificial materials used and submitted in connection with said landscaping plans.

18. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, trailer or tent shall be permitted in the Subdivision, except as may be determined to be necessary during construction and specifically authorized by the Committee in writing.

19. CONTINUITY OF CONSTRUCTION: All structures commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless an exception is granted in writing by the Committee.

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

21. TRADE NAMES: No word, name, symbol, or combination thereof shall be used to identify for commercial purposes a house, structure, business or service within the Subdivision unless the same shall have been first approved in writing by the Committee. "Benchmark", as a word, name, symbol, or any combination thereof, shall not be used to identify for commercial purposes any house, structure, business, or service within the Subdivision unless the same shall have been first approved in writing by the Grantor.

# Attachment A: Benchmark Covenants

22. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the Subdivision or herein may be granted in writing by the Committee upon approval thereof by the Board of County Commissioners of Eagle County, Colorado.

23. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the Subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 2000, at which time they shall be automatically extended for five successive terms of ten years each.

24. AMENDMENT: The conditions, restrictions, stipulations, agreements, and covenants contained herein may be abandoned, terminated, or amended by the Grantor until such time as 70% of the land included within the boundaries of the Subdivision has been sold by the Grantor, at which time the then owners of 51% of the land in the Subdivision may call an election to select a "Landowners Committee" comprised of five individual owners in the subdivision, one of whom shall be the Grantor, if the Grantor shall at such time still be an owner of property in the Subdivision, and said Committee, by 4/5 majority vote, may amend, alter, revoke or modify the conditions, restrictions, stipulations, agreements and covenants contained herein. In determining the land included within the boundaries of the Subdivision, those parcels designated on the final plat as "public tracts" shall be counted and shall be deemed to be owned by Benchmark at Beaver Creek.

25. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the Board of County Commissioners of Eagle County, Colorado, or any person or persons owning real property in the Subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorneys' fees, for such violations.

26. PENALTIES AND EXPENSES OF ENFORCEMENT; LIENS FOR NON-PAYMENT OF SAME: If any person shall violate any of the provisions of this instrument or the rules and regulations promulgated by the Committee pursuant to this instrument for which penalties are provided, or cause expenses to the Committee as a result of such violations, and fail to or refuse to pay such penalties or expenses, then such unpaid penalties or expenses shall be chargeable to the owner, including interest, and shall constitute a lien thereon superior (prior) to all other liens and encumbrances except:

a) Tax and special assessment liens in favor of any assessing unit; and

b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance and including additional advances made thereon prior to the creation of such a lien.

To evidence such a lien the Committee shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of record of the subject property, and the legal description of the subject property. Such notice shall

## Attachment A: Benchmark Covenants

be signed by a member of the Committee and shall be recorded in the office of the Clerk and Recorder of the County of Eagle, State of Colorado. Such lien for the penalties or expenses shall attach from the date of the failure of payment of said assessment of penalties or expenses, and may be enforced by foreclosure on the defaulting owner's property by the Committee. In the event of such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees. The Grantor hereunder shall have the power to bid in said real property at any foreclosure sale and to acquire and hold, lease, mortgage or convey the same.

The amount of any such penalties or expenses assessed against such real property shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid penalties or expenses may be maintained without foreclosing or waiving the lien securing said debt.

Any mortgage holder or similar encumbrancer holding a lien on any real property in the Subdivision may pay any unpaid penalties or expenses created hereunder with respect to such real property, and upon such payment such encumbrancer shall have a lien on such real property for the amounts paid, said lien to be of the same priority as the lien of his respective encumbrance.

27. NON-CONFORMING USES AND BUILDINGS: The lawful use of a building or structure, or the lawful use of any land as existing and lawful at the time of recording of this instrument, or in the case of amendment of this instrument then at the time of such amendment, may be continued although such use does not conform to the provisions of this instrument or amendments thereto; and such use may be extended throughout the same building, provided no structural alteration of such structure is proposed or made for the purpose of such extension.

27.1. Repaid and Maintenance. Repair and maintenance of a non-conforming building shall be permitted.

27.2. Restoration. A non-conforming building which has been damaged or destroyed by fire or other causes may be restored to its original condition, provided such work is commenced within one year of such event, and completed within 18 months of such commencement.

27.3. Change in Use. A non-conforming use shall not be replaced by a use considered to exhibit a greater degree of non-conformity than the existing use; a non-conforming use may be replaced by a use considered to exhibit an equal or lesser degree of non-conformity, to be determined by the Committee based on the intent and purposes of this instrument.

27.4. Abandonment. Whenever a non-conforming use of a building or land has been abandoned for a period of one year, future use of the land or building shall be in conformity with all applicable provisions of this instrument or rules and regulations promulgated by the Committee pursuant to this instrument.

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28. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

29. WEED ABATEMENT: Any other provision contained herein to the contrary notwithstanding, all lots shall be maintained in a neat appearance, and where said lot shall be without any structure, any natural or artificial growth, i.e., natural grasses, bushes, etc., shall be maintained and controlled. In the event said growth on any lot shall become uncontrolled and unsightly, then in said event the Committee shall have the right to cut, trim, or remove said growth at the sole expense of the respective owner of any such lot.

30. UTILITIES: All utilities servicing any lot respectively in the Subdivision shall be by means of underground facilities, and all extensions for all utility services through the Subdivision or any part thereof shall be only by means of underground facilities, unless the respective owner of any lot shall have obtained the prior express written approval of the Grantor or its successors in interest for any utility facilities or extensions thereof by means of overhead facilities.

Executed this 18th day of November, 1976.

BENCHMARK AT BEAVER CREEK, a Colorado Limited Partnership,

By BENCHMARK-AVON PROPERTIES, a Partnership, Its Sole General Partner,

By Ronald D. Allred  
Ronald D. Allred, a Managing Partner

STATE OF COLORADO )  
COUNTY OF EAGLE ) SS.

The above and foregoing instrument was acknowledged before me this 18th day of November, 1976, by RONALD D. ALLRED, a Managing Partner of Benchmark-Avon Properties, a Partnership.

My commission expires:  
WITNESS my hand and official seal.



Margo Woods  
Notary Public

Attachment A: Benchmark Covenants

RECEPTION NO.

184517

KATHARINE PHILLIPS, RECORDER

28.00 pd.

RESTATEMENT OF AND FOURTH AMENDMENT TO  
DECLARATION OF PROTECTIVE COVENANTS FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION

BENCHMARK AT BEAVER CREEK, a limited partnership, exercises its power pursuant to paragraph 24 of the Restatement of and Third Amendment to Declaration of Protective Covenants for the Benchmark at Beaver Creek Subdivision, as recorded in Book 250 at Page 143 in the records of the Eagle County Clerk and Recorder, Eagle, Colorado, and hereby amends in total the above referenced Restatement and Third Amendment, provided however, that this instrument shall in no wise affect the additional Protective Covenants recorded in Book 246 at Page 947 in the records of the Clerk and Recorder of Eagle County, Colorado; and

BENCHMARK AT BEAVER CREEK, Grantor, hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and as binding upon Grantor and upon all persons claiming under Grantor and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

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

1. Commercial - The commercial zone is intended to provide for the broad convenient functioning of commercial centers serving large areas of the County. Uses permitted are intended to include all retail and service operations, including but not limited to the following: wholesale and retail establishment, including sale of food, beverages, drygoods, furniture, appliances, bakery, automotive and vehicular equipment, hardware, clothing, building materials, feed, garden

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supply, equipment rental and plant materials; personal service establishment including bank, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals only, mortuary, photo studio, shoe repair, tailor shop, bowling alley, restaurant, cocktail lounge, private club, theater and indoor recreation; general service establishment including service of automobiles, automobile service stations, vehicular rental service and repair shops, hotel-lodges up to 750 units, boarding and rooming house, offices for conduct of a business or profession, studio for conduct of arts and crafts, dental and medical clinics.

2. Committee - A group of five persons who shall be responsible for the administration and enforcement of these protective covenants. All such persons shall be appointed by Grantor.
3. Common Open Space - That portion of the Subdivision held in trust by Benchmark at Beaver Creek and used to provide common access to the public domain by residents and visitors to the Subdivision and the public in general.
4. Community Facilities - A lot which may be used for religious purposes, fire station, police or sheriff's station, or similar governmental purposes, public nursery or day-care center.
5. Condominium- A lot which may be used for multiple family residential purposes, residential duplex, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants. Condominium units are as defined in Section 38-33-101 et seq. C.R.S. 1973 as amended (Colorado Condominium Ownership Act). Duplex is defined herein as a building containing two dwelling units; dwelling units defined hereinbelow under the term "single family."

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6. Industrial -- A lot which may be used for the broad range of Manufacturing, Warehousing, Storage, Retail and Sales Operations required for the proper and convenient functioning of industrial centers serving large areas of Eagle County, including but not limited to all of the uses by right contained in the Zoning Resolution for the County of Eagle, State of Colorado, and/or also an electric utility substation including the placement of all equipment, the construction of roads, and all other appurtenances necessary to operate an electric substation, also including warehouse, storage, garage and office use thereto.
7. Lot - A lot located within Benchmark at Beaver Creek Subdivision.
8. Mobile Home- A lot which may be used for mobile home park purposes; Park which shall be subject to any rules and regulations for such purposes as are established by the State of Colorado and Town of Avon; and further shall be subject to any rules and regulations for mobile home parks which may be established by the Planning and Architectural Control Committee of the Benchmark at Beaver Creek Subdivision.
9. Multiple - A lot which may be used for multiple family residential Family apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
10. Single - A lot which may be used for the construction of only Family one dwelling unit and containing not less than 1,500 sq. ft. of habitable floor area. A dwelling unit defined as one or more rooms in one building occupied by one family living independent of any other family, used solely for residential (human) occupancy, and not having more than one cooking facility. The term

# Attachment A: Benchmark Covenants

dwelling unit shall not include a mobile home whether or not fixed to the ground by a permanent continuous foundation. The term dwelling unit as used herein under this definition shall be exclusive and shall not include hotels, motels, boarding houses, clubs, or any institution, such as an asylum, hospital or jail.

11. Subdivision- Benchmark at Beaver Creek Subdivision.

2. GENERAL PURPOSES: These covenants are for the mutual benefit and protection for the owners and lessees of the lots in the Subdivision and are made for the purposes of creating and keeping the Subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference or destruction of the natural beauty of the Subdivision.

3. USES: All lots in the Subdivision shall fall within the following land use definitions:

<u>Definition</u>	<u>Lot Description</u>
1. Commercial, also designated general commercial or bank or motel-lodge or hotel-lodge or shopping center.	Block 1: Lots 1 thru 5, Lots 10 through 42, Lots 67 and 68. Block 2: Lots 20 thru 32, Lot 35, Lots 47 thru 75, Tract Q. Block 3: Lots 3 thru 8.
2. Common Open Space	Tracts A, B, and C.
3. Community Facilities	Tracts G and P.
4. Condominium, also designated apartment or duplex	Block 1: Lots 6 thru 9, Lots 43 thru 51 and Lot 70. Block 2: Lots 2 thru 19, Lots 23, 33 and 34; Lots 36 thru 56, Lot 58, Lots 61 thru 69, Lots 71 and 72, Lot 75. Block 3: Lots 1 thru 3, Lots 5 thru 9.
5. Industrial	Block 1: Lots 10 thru 29, 32 thru 41.
6. Multiple Family, also designated apartment or condominium	Block 1: Lots 6 thru 9, Lots 43 thru 51, Lot 70. Block 2: Lots 2,3,4,7, Lots 11 thru 19, Lots 23, 34, 41 thru 56, 58 Lots 61 thru 69, 71 and 72, 75. Block 3: Lots 1 thru 3, Lots 5 and 6, and Lots 8 and 9.
7. Mobile Home Park	Block 2: Lot 1
8. Single Family	Block 1: Lots 52 thru 57, Lot 69.
9. I-70 right-of-way exception	Tract D.
10. Avon Road right-of-way	Tract E, F.

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|---|-------------------|
| 11. Eagle River-Drainage use and conservation                             | Tract H, I, K, L. |
| 12. Old River Bridge and conservation                                     | Tract J.          |
| 13. Denver and Rio Grande Western Railroad right-of-way exception to Plat | Tract M.          |
| 14. Upper Eagle Valley Sanitation District exception to Plat              | Tract N, O.       |
| 15. Shopping Center Phase 1   | Tract Q.          |
| 16. Shopping Center sign  | Tract R.          |
| 17. Access, irrigation ditch drainage, utility                            | Tract S.          |
| 18. Private landscape and drainage  | Tract T, U, V.    |
| 19. Access, drainage, utility   | Tract W.          |
| 20. Private access  | Tract X.          |

4. PLANNING AND ARCHITECTURAL CONTROL COMMITTEE: The Planning and Architectural Control Committee, hereinafter referred to as the Committee, shall consist of five members who shall be appointed and serve at the pleasure of the Grantor, Benchmark at Beaver Creek, its successors or assigns, to review, study, and approve or reject proposed improvements of any nature whatsoever within the area described in the Final Plat and any and all amendments thereto of Benchmark at Beaver Creek of which these protective covenants are made a part. The Grantor shall have the exclusive right to remove and/or replace any member of the Committee as the Grantor in its sole opinion shall deem necessary, including but not limited to the replacement of a committee member upon said member's resignation, disability or death. Said replacement shall be forthwith at the discretion of the Grantor. A majority of the Committee shall govern its actions. However, Grantor at its sole discretion may alter in part or in total any decision of the Committee. Any vacancy on the Committee shall be filled by appointment by the Grantor; in the event Grantor fails to make such appointment for a continuous period of 30 days, then in said event any vacancy may be filled by appointment of the Board of County Commissioners of Eagle County, Colorado.

(a) The Committee shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings.

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(b) In passing upon any plans and specifications submitted for its approval the Committee shall consider:

(i) The suitability of the improvement, including materials of which it is to be constructed, to the site upon which it is to be located;

(ii) the nature of adjacent and neighboring improvements;

(iii) the quality of the materials to be utilized in any proposed improvement; and

(iv) the effect of any proposed improvement on the outlook of any adjacent or neighboring property.

(c) It shall be an objective of the Committee to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values, monetary or aesthetic, will be impaired.

(d) In the event the Committee fails to approve or disapprove plans and specifications submitted to it within thirty days of submission and no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and the related covenants shall be determined to have been fully complied with.

(e) The Committee is hereby authorized to collect reasonable fees as it may deem necessary from parties seeking or requiring the services of the Committee pursuant to these Protective Covenants and any all rules and regulations adopted pursuant thereto. Said fees shall be the property of and inure to the benefit of Benchmark at Beaver Creek, a limited partnership and/or its successors and assigns. Said fees may be used by the Committee for its expenses.

5. APPROVAL OF CONSTRUCTION PLANS: All plans for construction and alteration shall be first submitted to the Committee as herein provided:

(a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of final plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor plan, elevation showing all sides, plot and grading plans; provisions for off-street parking and locations of driveway access; the specifications; the location, character and method of utilization of

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all utilities have been submitted to the Committee and approved by it in writing. Owners and lessees of lots within the Subdivision are encouraged to consult with the Committee prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay in approval.

(b) The Committee shall be authorized to levy a reasonable charge, not exceeding ten cents for each square foot of enclosed floor space, for the review of final plans and specifications, which charge shall be paid in advance. The Committee shall publish as a part of its rules and regulations a schedule setting forth the various fees to be charged for the various types of submittals for approval.

(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) The Committee shall use reasonable judgment in passing upon all such plans and specifications, but the Committee shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the Committee acted with malice or wrongful intent.

6. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the Subdivision free and clear and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the Committee. No vehicle entrance to any lot in the Subdivision from any dedicated road or street shall be constructed or used unless serviced by a constructed drainage culvert located and sized in a manner which shall first be approved in writing by the Committee. The Committee's action in reviewing such drainage plans shall be guided by the recommendations of the Planning Department of Eagle County, Colorado.

7. EASEMENTS: Easements and rights-of-way as shown or described on the recorded plat of the Subdivision are hereby reserved. In addition the following easements and rights-of-way are reserved:

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(a) Easement reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Grantor for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage, sewer, sanitation, telephone, natural gas, liquid propane gas, television cable, lighting, heating, bridle path, pedestrian traffic, and similar services. Provided, however, that the use and exercise of said easement shall not disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

8. FENCES: No fence, wall, or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the Committee as an integral or decorative part of a building to be erected on a lot.

9. SIGNS: No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot or structure for any purpose whatsoever, except such commercial signs as have been approved by the Committee either for identification of residences or places of business or other commercial uses. The Committee shall establish comprehensive sign regulations for the Subdivision providing for the administration and enforcement of same; regulate the erection, construction, restoration, alteration, location, landscaping and maintenance of signs, window signs, flags, pennants, banners and buntings, display boxes, residential name plate signs, subdivision interest signs, temporary site development signs, traffic control signs for private property, murals and supergraphics; establishment of an approved sign program; establishment of a design review procedure and guidelines. The Committee shall review appearance, lighting, form, color, character, dimensions, and materials of all signs requiring approval under this covenant and any rules and regulations created pursuant hereto. The Committee shall make such aesthetic judgments necessary to insure that all signs requiring approval under this covenant or any rules and regulations made pursuant hereto are in conformance with such

## Attachment A: Benchmark Covenants

sign rules and regulations and in harmony with the character of the Subdivision. The Committee may adopt from time to time such rules and regulations as it may deem necessary to perform its prescribed duties. Review shall be in conformance with the procedure outlined in such rules and regulations.

10. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by Grantor or any successive person or entity. No private wells or sanitation system shall be used within the Subdivision.

11. TRASH: No trash, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and protected from disturbance.

12. LIVESTOCK: No animals, livestock, horses or poultry (except dogs, cats and other household pets for personal enjoyment and not for commercial purposes and except horses owned and used in conjunction with an equestrian-livery operation approved by the Committee) shall be kept, raised or bred in the Subdivision. The keeping of dogs, cats and other household pets for personal enjoyment shall be strictly governed by all applicable rules and regulations adopted by the Town of Avon, Colorado, any successor governmental entity, the Committee aforementioned, or any homeowners association created for the benefit of property owners and lessees of the Subdivision.

13. TREES: Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the Committee.

14. SET BACK REQUIREMENTS: The Committee may determine the location of improvements in relation to property lines, and all actual construction sites must receive the advance written approval of the Committee prior to the commencement of construction. In determining the proper location for each improvement, the Committee shall consider the location of existing and future improvements on adjacent property, the wishes of adjacent property owners, and such other economic or aesthetic considerations as it may deem appropriate.

15. BUILDING HEIGHT: All building height maximums shall be as determined by the Committee. Building height is defined as the distance, measured

## Attachment A: Benchmark Covenants

vertically, from the finished grade at the midpoint between the front and rear walls of a building to the top of a flat roof or mansard roof, or to the midpoint between the eave line and the peak of a gable, gambrel, hip, shed or similar pitched roof, and measured to a slope not to exceed 12:24.

16. PARKING REQUIREMENTS: Parking requirements shall be determined by the Committee. The following provisions shall apply to off-street parking and loading facilities:

The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. The Committee shall not approve any construction until plans are presented and approved by the Committee that show property that is available and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the Committee's approval is granted shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this covenant. Should the owner or occupant of any lot or building change the use to which the lot or building is utilized, thereby increasing off-street parking and loading requirements, it shall be a violation of this covenant to begin or maintain such altered use until such time as the increased off-street parking and loading requirements, minimum off-street loading requirements, clear-vision area requirements, the Committee shall be guided by the standards set forth in the Town of Avon Zoning Resolution.

17. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 5 hereof. The Committee shall make rules and regulations specifying the location, type, and quantities of ground cover, plants, shrubbery, trees, and similarly related natural and/or artificial materials used and submitted in connection with said landscaping plans.

18. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, trailer or tent shall be permitted in the Subdivision, except as may be determined to be necessary during construction and specifically authorized by the Committee in writing.

19. CONTINUITY OF CONSTRUCTION: All structures commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless an exception is granted in writing by the Committee.

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

21. TRADE NAMES: No word, name, symbol, or combination thereof shall be used to identify for commercial purposes a house, structure, business or service within the Subdivision unless the same shall have been first approved

## Attachment A: Benchmark Covenants

in writing by the Committee. "Benchmark", as a work, name, symbol, or any combination thereof, shall not be used to identify for commercial purposes any house, structure, business, or service within the Subdivision unless the same shall have been first approved in writing by the Grantor.

22. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the Subdivision or herein may be granted in writing by the Committee upon approval thereof by the Town of Avon, Colorado.

23. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the Subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 2000, at which time they shall be automatically extended for five successive terms of ten years each.

24. AMENDMENT: The conditions, restrictions, stipulations, agreements, and covenants contained herein may be abandoned, terminated, or amended by the Grantor until such time as 70% of the land included within the boundaries of the Subdivision has been sold by the Grantor, at which time the then owners of 51% of the land in the Subdivision may call an election to select a "Landowners Committee" comprised of five individual owners in the subdivision, one of whom shall be the Grantor, if the Grantor shall at such time still be an owner of property in the Subdivision, and said Committee, by 4/5 majority vote, may amend, alter, revoke or modify the conditions, restrictions, stipulations, agreements and covenants contained herein. In determining the land included within the boundaries of the Subdivision, those parcels designated on the final plat as "public tracts" shall be counted and shall be deemed to be owned by Benchmark at Beaver Creek.

25. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the Town of Avon, Colorado, or any person or persons owning real property in the Subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable

## Attachment A: Benchmark Covenants

attorneys' fees, for such violations.

26. PENALTIES AND EXPENSES OF ENFORCEMENT; LIENS FOR NON-PAYMENT OF SAME: If any person shall violate any of the provisions of this instrument

or the rules and regulations promulgated by the Committee pursuant to this instrument for which penalties are provided, or cause expenses to the Committee as a result of such violations, and fail to or refuse to pay such penalties or expenses, then such unpaid penalties or expenses shall be chargeable to the owner, including interest, and shall constitute a lien thereon superior (prior) to all other liens and encumbrances except:

(a) Tax and special assessment liens in favor of any assessing unit; and

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance and including additional advances made thereon prior to the creation of such a lien.

To evidence such a lien the Committee shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of record of the subject property, and the legal description of the subject property. Such notice shall be signed by a member of the Committee and shall be recorded in the office of the Clerk and Recorder of the County of Eagle, State of Colorado. Such lien for the penalties or expenses shall attach from the date of the failure of payment of said assessment of penalties or expenses, and may be enforced by foreclosure on the defaulting owner's property by the Committee. In the event of such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees. The Grantor hereunder shall have the power to bid in said real property at any foreclosure sale and to acquire and hold, lease, mortgage or convey the same.

The amount of any such penalties or expenses assessed against such real property shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid penalties or expenses may be maintained without foreclosing or waiving the lien securing said debt.

Any mortgage holder or similar encumbrancer holding a lien on any

## Attachment A: Benchmark Covenants

real property in the Subdivision may pay any unpaid penalties or expenses created hereunder with respect to such real property, and upon such payment such encumbrancer shall have a lien on such real property for the amounts paid, said lien to be of the same priority as the lien of his respective encumbrance.

27. NON-CONFORMING USES AND BUILDINGS: The lawful use of a building or structure, or the lawful use of any land as existing and lawful at the time of recording of this instrument, or in the case of amendment of this instrument then at the time of such amendment, may be continued although such use does not conform to the provisions of this instrument or amendments thereto; and such use may be extended throughout the same building, provided no structure is proposed or made for the purpose of such extension.

27.1 Repair and Maintenance. Repair and maintenance of a non-conforming building shall be permitted.

27.2. Restoration. A non-conforming building which has been damaged or destroyed by fire or other causes may be restored to its original condition, provided such work is commenced within one year of such event, and completed within 18 months of such commencement.

27.3. Change in Use. A non-conforming use shall not be replaced by a use considered to exhibit a greater degree of non-conformity than the existing use; a non-conforming use may be replaced by a use considered to exhibit an equal or lesser degree of non-conformity, to be determined by the Committee based on the intent and purposes of this instrument.

27.4 Abandonment. Whenever a non-conforming use of a building or land has been abandoned for a period of one year, future use of the land or building shall be in conformity with all applicable provisions of this instrument or rules and regulations promulgated by the Committee pursuant to this instrument.

28. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

Attachment A: Benchmark Covenants

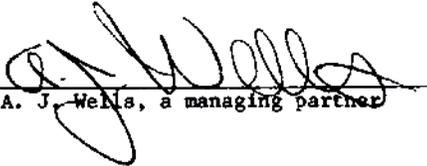
29. WEED ABATEMENT: Any other provision contained herein to the contrary notwithstanding, all lots shall be maintained in a neat appearance, and where said lot shall be without any structure, any natural or artificial growth, i.e., natural grasses, bushes, etc., shall be maintained and controlled. In the event said growth on any lot shall become uncontrolled and unsightly, then in said event the Committee shall have the right to cut, trim, or remove said growth at the sole expense of the respective owner of any such lot.

30. UTILITIES: All utilities servicing any lot respectively in the Subdivision shall be by means of underground facilities, and all extensions for all utility services through the Subdivision or any part thereof shall be only by means of underground facilities, unless the respective owner of any lot shall have obtained the prior express written approval of the Grantor or its successors in interest for any utility facilities or extensions thereof by means of overhead facilities.

Executed this 9th day of July, 1979.

BENCHMARK AT BEAVER CREEK, a Colorado limited partnership,

By BENCHMARK-AVON PROPERTIES, a partnership and general partner,

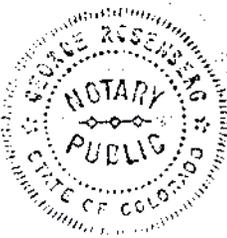
By  A. J. Wells, a managing partner

STATE OF COLORADO )  
                          ) SS.  
COUNTY OF EAGLE   )

The above and foregoing instrument was acknowledged before me this 9th day of July, 1979, by A. J. WELLS, a managing partner of Benchmark-Avon Properties, a partnership.

My commission expires: Nov. 4, 1982

WITNESS my hand and official seal



  
Notary Public

PLAT OF SUBDIVISION  
No. 288/567  
July 12, 1977

DECLARATION OF ADDITIONAL PROTECTIVE COVENANTS

No fee  
Still on  
288/567

Benchmark at Beaver Creek, a Colorado limited partnership, ("Declarant") is the beneficial owner of all that real property located in Eagle County, Colorado and described on Exhibit A attached hereto and made a part hereof ("subject Property").

Declarant hereby makes and declares the following limitations, restrictions and uses upon and of the subject property as restrictive and protective covenants running with the land and binding upon Declarant and upon all persons claiming under Declarant and upon all future owners of any part of the subject property so long as these restrictive and protective covenants shall remain in effect.

1. Definitions. As used herein the following word or term shall have the following meaning:

Unit - a unit consists of one or more rooms in one building which may be occupied under the zoning regulations of the appropriate local governmental entity from time to time in force, by one family living independently of any other family for residential (human) occupancy. The term unit as used herein shall not include dormitories, boarding houses or any institutions such as an asylum, hospital or jail but shall include hotel or lodge rooms or separately rentable suites and shall include mobile home units for the purposes of which each separate mobile structure shall constitute one unit. Except as herein specified no room, building or other improvement shall be deemed a "unit".

2. Density Control. No more than 1,335 units shall be constructed on the subject property. Upon sale of lots within the subject property upon which a cumulative total of 1,335 units may be constructed, pursuant to the more restrictive of the subdivision plats or deed restrictions, no further lots within the subject property shall be sold unless use thereof is so restricted as to prevent construction of more than 1,335 units on the subject property.

3. Effect and Duration of Covenants. The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot within the subject property and each owner of any portion of the subject property or any interest therein, its successors, representatives and assigns, and shall continue in full force and effect until January 1, 2000 at which time they shall automatically be extended for five successive terms of ten years each.

4. Amendment. The conditions, restrictions, stipulations, agreements and covenants contained herein may be abandoned, terminated or amended by the Declarant until such time as 70% or more of the land area within the



EXHIBIT A

All that real property within the subdivision named BENCHMARK AT BEAVER CREEK in Eagle County, Colorado, the Final Plat of which has been filed under Reception No. 129460 in Map Case #2, Drawer "B" of Plats, and recorded in Book 233 at Page 566 in the records of the Eagle County Clerk and Recorder; the Revised Final Plat of which has been filed under Reception No. 134061 in Map Case #2, Drawer "B", and recorded in Book 238 at Page 41, as corrected by Corrected Plat recorded August 11, 1976 in Book 247 at Page 989; the Final Plat Amendment No. 1 of which has been filed under Reception No. 142223 in Map Case #2, Drawer "3" and recorded in Book 246 at Page 43; the Final Plat Amendment No. 2 of which has been filed under Reception No. 142224 in Map Case #2, Drawer "B" and recorded in Book 246 at Page 44, and the Final Plat Amendment No. 3 of which has been filed under Reception No. 145347 in Map Case #2, Drawer "B" and recorded in Book 249 at Page 93, all of such records,

Except the following:

Tracts H, O and Q

Block 1;

Lots 1, 4, 10, 12, 14-21, 26, 27, 29-33, 36, 67 and 69

Block 2;

Lots 1, 2, 5-7, 9-11, 21, 22, 24-33, 35-37, 40, 57-59, 67-69 and 72

Lot 23 BK 2  
Lot 66

Attachment A: Benchmark Covenants

126  
17  
No. 5174  
Fifth Amendment

RESTATEMENT OF AND FIFTH AMENDMENT TO  
DECLARATION OF PROTECTIVE COVENANTS FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION

Pursuant to paragraph 24 of the Restatement of and Fourth Amendment to Declaration of Protective Covenants for the Benchmark at Beaver Creek Subdivision, as recorded in Book 288 at Page 116 in the records of the Eagle County Clerk and Recorder, Eagle, Colorado, the undersigned constituting at least 4/5 of the duly elected Landowners Committee do hereby amend in total the above referenced Restatement of and Fourth Amendment, provided however, that this instrument shall in no wise affect the Additional Protective Covenants recorded in Book 246 at Page 947 in the records of the Clerk and Recorder of Eagle County, Colorado; and

The Landowners Committee (hereinafter referred to as Committee), hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and binding upon all present owners of real property in said subdivision and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

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

- 1.1 Commercial - A lot, tract of land or building space within a commercial zone intended to provide for the broad convenient functioning of commercial centers serving large areas of the Town of Avon and of Eagle County. Uses permitted are intended to include all retail and service operations, including but not limited to the following: wholesale and retail establishments, including sale of food, beverages, dry goods, furniture, appliances, bakery, automotive and vehicular equipment, hardware, clothing, building materials, feed, garden supply, equipment rental and plant materials; personal service establishments including a bank, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals only, mortuary, photo studio, shoe repair, tailor shop, bowling alley, restaurant, cocktail lounge, private club, theater and indoor recreation; general service establishments including service of automobiles, automobile service stations, vehicular rental service and repair shops, condominium-hotel/lodge, hotel/lodge, boarding and rooming house, offices for conduct of a business or profession, studio for conduct of arts and crafts, dental and medical clinics.

## Attachment A: Benchmark Covenants

- 1.2 Landowners Committee - A group of five persons who shall be responsible for the administration and amendment of these protective covenants and who shall have the right to enforce these protective covenants. All such persons shall be elected as set forth in paragraph 24 of these covenants.
- 1.3 Common - That portion of the Subdivision held by Benchmark at Beaver Creek and/or its successors or assigns and used as private pen space.
- 1.4 Community Facilities - A lot, tract of land or building space which may be used for religious purposes or governmental purposes, such as, fire station, police station, water and sewer services, etc. or employee housing, public nursery or daycare center.
- 1.5 Condominium - A lot, tract of land or building space which may be used for multiple family residential purposes, residential duplex, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants. Condominium units are as defined in Section 38-33-101 et seq. C.R.S. 1973 as amended (Colorado Condominium Ownership Act). Duplex is defined herein as a single building containing two dwelling units.
- 1.6 Industrial - A lot, tract of land or building space which may be used for the broad range of Manufacturing, Warehousing, Storage, Retail and Sales Operations required for the proper and convenient functioning of industrial centers serving large areas of the Town of Avon and Eagle County, including but not limited to all of the uses by right contained in the Zoning Code for the Town of Avon, State of Colorado, and/or also an electric utility substation including the placement of all equipment, the construction of roads, and all other appurtenances necessary to operate an electric substation; also, including warehouse, storage, garage and office use.
- 1.7 Lot - A parcel or tract of land as described and located within Benchmark at Beaver Creek Subdivision.
- 1.8 Mobile Home Park - A lot or tract of land which may be used for mobile home park purposes; which shall be subject to any rules and regulations for such purposes as are established by the State of Colorado and Town of Avon; and further shall be subject to any rules and regulations for mobile home parks which may be established by the Planning and Architectural Control Committee of the Benchmark at Beaver Creek Subdivision.

## Attachment A: Benchmark Covenants

- 1.9 Multiple Family - A lot, tract of land or building or building space which may be used for multiple family residential apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
- 1.10 Private Park - A lot, tract of land or building space which may be used for a Recreation and Commercial related thereto clubhouse for indoor and outdoor sports activities and customary support facilities, such as, but not limited to, swimming pools, tennis courts, archery range, restaurant/lounge, pro shop, and other similar activities or services.
- 1.11 Single Family - A lot, tract of land or building which may be used for the construction of only one dwelling unit and containing not less than 1,500 sq. ft. of habitable floor area.
- 1.12 Dwelling Unit - A dwelling unit is defined as one or more rooms in a building occupied by one family living independent of any other family, used solely for residential (human) occupancy, and not having more than one cooking facility. The term dwelling unit shall not include a mobile home whether or not fixed to the ground by a permanent continuous foundation. The term dwelling unit as used herein under this definition shall be exclusive and shall not include hotels, motels, boarding houses, clubs, or any institution, such as an asylum, hospital or jail.
- 1.13 Subdivision - Benchmark at Beaver Creek Subdivision.
- 1.14 Town - The Town of Avon, Colorado.
- 1.15 BM@BC - Benchmark at Beaver Creek, a Colorado limited partnership.

2. GENERAL PURPOSES: These covenants are for the mutual benefit and protection of the owners and lessees of the lots and tracts in the Subdivision and are made for the purposes of creating and keeping the Subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference with or destruction of the Subdivision.

3. USES: All lots and Tracts of land in the Subdivision shall fall within the following respective land use definitions:

<u>Definition</u>	<u>Lot Description</u>
3.1 Commercial, also designated general commercial or condominium-hotel/lodge or hotel/lodge or shopping center.	Block 1: Lots 1 thru 5, Lots 10 thru 42, Lots 52A and 52B, Lots 67 and 68. Block 2: Lots A, B and C, Lots 20 thru 25, Lots 29 thru 32, Lots 55 thru 75, and Tract Q. Block 3: Lot 2.

## Attachment A: Benchmark Covenants

3.2 Common Open Space, also designated open space and conservation	Tracts A, B, and C.
3.3 Community Facilities	Tracts G and P.
3.4 Condominium, also designated apartment, multiple family duplex, or condominium-hotel-lodge	Block 1: Lots 5 thru 9, Lot 38, Lots 40 thru 51, Lot 70 and Lot 70A. Block 2: Lots A, B and C, Lots 2 thru 19, Lot 23, Lot 25, Lots 29 thru 34, Lots 36 thru 46, Lot 58, Lots 60 thru 69, Lots 71 thru 75. Block 3: Lot 1, 3, 8 and 9.
3.5 Industrial	Block 1: Lots 10 thru 37, Lot 39 and Lot 42.
3.6 Mobile Home Park	Block 2: Lot 1.
3.7 Private Park, Recreation and Commercial	Block 1: Lots 52A and 52B.
3.8 I-70 right-of-way exception	Tract D.
3.9 Avon Road right-of-way	Tract E, F.
3.10 Eagle River-Drainage use and conservation	Tract H, I, K, L.
3.11 Old River Bridge and conservation	Tract J.
3.12 Denver and Rio Grande Western Railroad right-of-way exception to Plat	Tract M.
3.13 Upper Eagle Valley Sanitation District exception to Plat	Tract N, O.
3.14 Shopping Center Phase I	Tract Q.
3.15 Shopping Center sign	Tract R.
3.16 Private landscape and drainage	Tract V.
3.17 Access, drainage, utility	Tract W.

4. PLANNING AND ARCHITECTURAL CONTROL COMMITTEE: The Planning and Architectural Control Committee, hereinafter referred to as the PACC, shall consist of five members who shall be appointed and serve at the pleasure of the Committee to review, study, and approve or reject proposed improvements of any nature whatsoever within the area described in the Final Plat and any and all amendments thereto of the Benchmark at Beaver Creek Subdivision of which these protective covenants are made a part. The Committee shall have the exclusive right to remove and/or replace any member of the PACC as the Committee in its sole opinion shall deem necessary, including but not limited to the replacement of a PACC member upon said member's resignation, disability or death. Said replacement shall be forthwith at the discretion of the Committee. A majority of the PACC shall govern its actions. However, Committee at its sole discretion may alter in part or in total any decision of the PACC. Any vacancy on the

## Attachment A: Benchmark Covenants

PACC shall be filled by appointment by the Committee; in the event Committee fails to make such appointment for a continuous period of 30 days, then in said event any vacancy may be filled by appointment by the Council of the Town of Avon, Colorado.

(a) The PACC shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings.

(b) In passing upon any plans and specifications submitted for its approval the PACC shall consider:

(i) the suitability of the improvement (including materials of which it is to be constructed) to the site upon which it is to be located;

(ii) the nature of adjacent and neighboring improvements;

(iii) the quality of the materials to be utilized in any proposed improvement; and

(iv) the effect of any proposed improvement on the outlook of any adjacent or neighboring property.

(c) It shall be an objective of the PACC to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values (monetary or aesthetic) will be impaired.

(d) In the event the PACC fails to approve or disapprove plans and specifications submitted to it within thirty (30) days of submission and no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and the related covenants shall be determined to have been fully complied with.

(e) The PACC is hereby authorized to collect reasonable fees as it may deem necessary from parties seeking or requiring the services of the PACC pursuant to these Protective Covenants and any and all rules and regulations adopted pursuant thereto. Said fees shall be the property of and inure to the benefit of the Committee and/or its successors and assigns. Said fees may be used by the PACC for its expenses.

5. APPROVAL OF CONSTRUCTION PLANS: All plans for construction and alteration shall be first submitted to the PACC as herein provided:

(a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of final plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor plan, elevation showing all sides, plot and grading plans; provisions for off-street parking and locations of driveway access; the specifications; the location, character and method of utilization of

## Attachment A: Benchmark Covenants

all utilities have been submitted to the PACC and approved by it in writing. Owners and lessees of lots within the Subdivision are encouraged to consult with the PACC prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay in approval.

(b) The PACC shall be authorized to levy a reasonable charge, not exceeding ten cents for each square foot of enclosed floor space, for the review of final plans and specifications, which charge shall be paid in advance. The PACC shall publish as a part of its rules and regulations a schedule setting forth the various fees to be charged for the various types of submittals for approval.

(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) The PACC shall use reasonable judgment in passing upon all such plans and specifications, but the PACC shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the PACC acted with malice or wrongful intent.

6. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the Subdivision free and clear and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the PACC. No vehicle entrance to any lot in the Subdivision from any dedicated road or street shall be constructed or used unless serviced by a constructed drainage culvert located and sized in a manner which shall first be approved in writing by the PACC. The PACC's action in reviewing such drainage plans shall be guided by the recommendations of the Engineer for the Town of Avon, Colorado.

7. EASEMENTS: Easements and rights-of-way as shown or described on the recorded plat of the Subdivision are hereby reserved. In addition the following easements and rights-of-way are reserved:

(a) Easements reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Benchmark at Beaver Creek for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage, sewer, sanitation, telephone, natural gas, liquid propane gas, television cable, lighting, heating, bridle path, pedestrian traffic, and similar services.

## Attachment A: Benchmark Covenants

Provided, however, that the use and exercise of said easement shall not permanently disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

8. FENCES: No fence, wall, or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the PAAC as an integral or decorative part of a building to be erected on a lot.

9. SIGNS: No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot or structure for any purpose whatsoever, except such commercial signs as have been approved by the PACC either for identification of residences or places of business or other commercial uses. The PACC shall establish comprehensive sign regulations for the Subdivision providing for the administration and enforcement of same; regulate the erection, construction, restoration, alteration, location, landscaping and maintenance of signs, window signs, flags, pennants, banners and buntings, display boxes, residential name plate signs, subdivision interest signs, temporary site development signs, traffic control signs for private property, murals and supergraphics; establishment of an approved sign program; establishment of a design review procedure and guidelines. The PACC shall review appearance, lighting, form, color, character, dimensions, and materials of all signs requiring approval under this covenant and any rules and regulations created pursuant hereto. The PACC shall make such aesthetic judgments necessary to insure that all signs requiring approval under this covenant or any rules and regulations made pursuant hereto are in conformance with such sign rules and regulations and in harmony with the character of the Subdivision. The PACC may adopt from time to time such rules and regulations as it may deem necessary to perform its prescribed duties. Review shall be in conformance with the procedure outlined in such rules and regulations.

10. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by the appropriate governmental entity or any successive person or entity. No private wells or sanitation system shall be used within the Subdivision.

11. TRASH: No trash, garbage, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and protected from disturbance.

## Attachment A: Benchmark Covenants

12. LIVESTOCK: No animals, livestock, horses or poultry (except dogs, cats and other household pets for personal enjoyment and not for commercial purposes and except horses owned and used in conjunction with an equestrian-livery operation approved by the PACC) shall be kept, raised or bred in the Subdivision. The keeping of dogs, cats and other household pets for personal enjoyment shall be strictly governed by all applicable rules and regulations adopted by the Town of Avon, Colorado, any successor governmental entity, the PACC aforementioned, or any homeowners association created for the benefit of property owners and lessees of the Subdivision.

13. TREES: Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the PACC.

14. SETBACK REQUIREMENTS: The PACC may determine the location of improvements in relation to property lines, and all actual construction sites must receive the advance written approval of the PACC prior to the commencement of construction. In determining the proper location for each improvement, the PACC shall consider the location of existing and future improvements on adjacent property, the wishes of adjacent property owners, and such other economic or aesthetic considerations as it may deem appropriate.

15. BUILDING HEIGHT: All building height maximums shall be as determined by the PACC. Building height is defined as the distance, measured vertically, from the finished grade at the midpoint between the front and rear walls of a building to the top of a flat roof or mansard roof, or to the midpoint between the eave line and the peak of a gable, gambrel, hip, shed or similar pitched roof, and measured to a slope not to exceed 12:24.

16. PARKING REQUIREMENTS: Parking requirements shall be determined by the PACC. The following provisions shall apply to off-street parking and loading facilities:

The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. The PACC shall not approve any construction until plans are presented and approved by the PACC that show property that is available and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the PACC's approval is granted shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this covenant. Should the owner or occupant of any lot or building change the use to which the lot or building is utilized, thereby increasing off-street parking and loading requirements, it shall be a violation of this covenant to begin or maintain such altered use until such time as the increased off-street parking and loading requirements, minimum off-street loading requirements, and clear-vision area requirements shall be met. The PACC shall be guided by the standards set forth in the Town of Avon Zoning Ordinance.

17. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 5 hereof. The PACC shall make rules and regulations specifying the location, type, and quantities of ground cover, plants, shrubbery, trees, and similarly related natural and/or artificial materials used and submitted in connection with said landscaping plans.

## Attachment A: Benchmark Covenants

18. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, trailer or tent shall be permitted in the Subdivision, except as may be determined to be necessary during construction and specifically authorized by the PACC in writing.

19. CONTINUITY OF CONSTRUCTION: All structures commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless an exception is granted in writing by the PACC.

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

21. TRADE NAMES: No word, name, symbol, or combination thereof shall be used to identify for commercial purposes a house, structure, business or service within the Subdivision unless the same shall have been first approved in writing by the PACC. "Benchmark", as a word, name, symbol, or any combination thereof, shall not be used to identify for commercial purposes any house, structure, business, or service within the Subdivision unless the same shall have been first approved in writing by BM@BC

22. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the Subdivision or herein may be granted in writing by the PACC upon approval thereof by the Town of Avon, Colorado.

23. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the Subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 2000, at which time they shall be automatically extended for five successive terms of ten years each.

24. AMENDMENT: The conditions, restrictions, stipulations, agreements, and covenants contained herein may be abandoned, terminated, or amended by the Landowners Committee comprised of five individual owners in the Subdivision and elected by the owners of 51% of the land in the subdivision, one of whom shall be BM@BC, if BM@BC shall at such time of election still be an owner of property in the Subdivision, and said Committee, by 4/5 majority vote, may amend, alter, revoke or modify the conditions, restrictions, stipulations, agreements and covenants contained herein. The Committee shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings. In determining the ownership of the land included within the boundaries of the Subdivision, those parcels designated on the final plat as "Tracts A thru F, Tracts H, I, K, L, P, R, V and W" shall be counted and shall be deemed to be owned by BM@BC.

## Attachment A: Benchmark Covenants

25. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the PACC, the Town of Avon, Colorado, or any person or persons owning real property in the Subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorneys' fees, for such violation.

26. PENALTIES AND EXPENSES OF ENFORCEMENT; LIENS FOR NON-PAYMENT OF SAME: If any person shall violate any of the provisions of this instrument or the rules and regulations promulgated by the PACC pursuant to this instrument for which penalties are provided, or cause expenses to the PACC as a result of such violations, and fail to or refuse to pay such penalties or expenses, then such unpaid penalties or expenses shall be chargeable to the owner, including interest, and shall constitute a lien thereon superior (prior) to all other liens and encumbrances except:

(a) Tax and special assessment liens in favor of any assessing unit; and

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance and including additional advances made thereon prior to the creation of such a lien.

To evidence such a lien the PACC shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of record of the subject property, and the legal description of the subject property. Such notice shall be signed by a member of the PACC and shall be recorded in the office of the Clerk and Recorder of the County of Eagle, State of Colorado. Such lien for the penalties or expenses shall attach from the date of the failure of payment of said assessment of penalties or expenses, and may be enforced by foreclosure on the defaulting owner's property by the PACC. In the event of such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees.

The amount of any such penalties or expenses assessed against such real property shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid penalties or expenses may be maintained without foreclosing or waiving the lien securing said debt.

Any mortgage holder or similar encumbrancer holding a lien on any real property in the Subdivision may pay any unpaid penalties or expenses created hereunder with respect to such real property, and upon such payment such encumbrancer shall have a lien on such real property for the amounts paid, said lien to be of the same priority as the lien of his respective encumbrance.

## Attachment A: Benchmark Covenants

27. NON-CONFORMING USES AND BUILDINGS: The lawful use of a building or structure, or the lawful use of any land as existing and lawful at the time of recording of this instrument, or in the case of amendment of this instrument then at the time of such amendment, may be continued although such use does not conform to the provisions of this instrument or amendments thereto; and such use may be extended throughout the same building, provided no structure is proposed or made for the purpose of such extension.

27.1 Repair and Maintenance. Repair and maintenance of a non-conforming building shall be permitted.

27.2 Restoration. A non-conforming building which has been damaged or destroyed by fire or other causes may be restored to its original condition, provided such work is commenced within one year of such event, and completed within 18 months of such commencement.

27.3 Change in Use. A non-conforming use shall not be replaced by a use considered to exhibit a greater degree of non-conformity than the existing use; a non-conforming use may be replaced by a use considered to exhibit an equal or lesser degree of non-conformity, to be determined by the PAAC based on the intent and purposes of this instrument.

27.4 Abandonment. Whenever a non-conforming use of a building or land has been abandoned for a period of one year, future use of the land or building shall be in conformity with all applicable provisions of this instrument or rules and regulations promulgated by the PAAC pursuant to this instrument.

28. WEED ABATEMENT: Any other provision contained herein to the contrary notwithstanding, all lots shall be maintained in a neat appearance, and where said lot shall be without any structure, any natural or artificial growth, i.e., natural grasses, bushes, etc., shall be maintained and controlled. In the event said growth on any lot shall become uncontrolled and unsightly, then in said event, the PACC shall have the right to cut, trim, control or remove said growth at the sole expense of the respective owner of any such lot.

29. UTILITIES: All utilities servicing any lot respectively in the Subdivision shall be by means of underground facilities, and all extensions for all utility services through the Subdivision or any part thereof shall be only by means of underground facilities, unless the respective owner of any lot shall have obtained the prior express written approval of the PACC or its successors in interest for any utility facilities or extensions thereof by means of overhead facilities.

30. LIABILITY: The Committee, PACC or any other owner of real property in the Subdivision shall not be liable for damages to any person or association submitting any plans and specifications or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any such plans and

## Attachment A: Benchmark Covenants

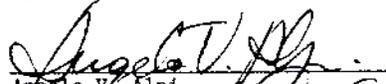
specifications or for any other action taken pursuant to these covenants in the reasonable exercise of their respective rights and powers hereunder. Any owner submitting or causing to be submitted any plans and specifications to the PACC agrees and covenants that he will not bring any action or suit to recover damages against the Committee, PACC, or any other owner, collectively, its members individually or its advisors, employees or agents. In the event of any legal action against the Committee or PACC, the prevailing party shall be entitled to reasonable attorney's fees.

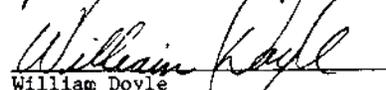
31. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

Executed this 4th day of MARCH, 1982.

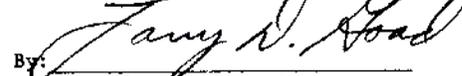
LANDOWNERS' COMMITTEE

By:

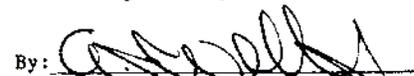
  
\_\_\_\_\_  
Angelo V. Alpi

  
\_\_\_\_\_  
William Doyle

Wildridge Development Company, a  
Colorado partnership

By:   
\_\_\_\_\_  
Larry D. Goad, Agent

Benchmark at Beaver Creek, a  
limited partnership, by Benchmark  
Company, a general partnership,  
the sole general partner

By:   
\_\_\_\_\_  
A. J. Wells, Attorney-in-Fact

Attachment A: Benchmark Covenants

STATE OF COLORADO )  
 ) SS.  
COUNTY OF EAGLE )

The above and foregoing instrument was acknowledged before me this 4th day of March, 1982, by A. J. Wells as Attorney-in-Fact for Benchmark Company, a partnership and general partner of Benchmark at Beaver Creek, a limited partnership, and by Angelo V. Alpi, and by William Doyle, and by Larry D. Goad as Agent for Wildridge Development Company, a Colorado partnership, all as members of the Landowners' Committee.

My commission expires: 6-30-84.

WITNESS my hand and official seal.



*Alma Rodgers*  
Notary Public  
Box 20  
Wor. Co. 81620  
Address

RESTATEMENT OF AND FIFTH AMENDMENT TO  
DECLARATION OF PROTECTIVE COVENANTS FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION

BOOK 337  
PAGE 366  
JOHNNETTE PHILLIPS  
EAGLE COY. RECORDER

APR 29 11 35 AM '05

Pursuant to paragraph 24 of the Restatement of and Fifth Amendment to Declaration of Protective Covenants for the Benchmark at Beaver Creek Subdivision, as recorded in Book 337 at Page 366 in the records of the Eagle County Clerk and Recorder, Eagle, Colorado, the undersigned constituting at least 4/5 of the duly elected Landowners Committee do hereby amend in total the above referenced Restatement of and Fifth Amendment, provided however, that this instrument shall in no wise affect the Additional Protective Covenants recorded in Book 246 at Page 947 in the records of the Clerk and Recorder of Eagle County, Colorado; and

The Landowners Committee (hereinafter referred to as Committee), hereby makes and declares the following limitations, restrictions and uses upon and of such real property as restrictive and protective covenants running with the land, and binding upon all present owners of real property in said subdivision and upon all future owners of any part of such real property, so long as these restrictive and protective covenants shall remain in effect:

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

- 1.1 Commercial - A lot, tract of land or building space within a commercial zone intended to provide for the broad convenient functioning of commercial centers serving large areas of the Town of Avon and of Eagle County. Uses permitted are intended to include all retail and service operations, including but not limited to the following: wholesale and retail establishments, including sale of food, beverages, dry goods, furniture, appliances, bakery, automotive and



Attachment A: Benchmark Covenants

vehicular equipment, hardware, clothing, building materials, garden supply, equipment rental and plant materials; personal service establishments including a bank, barber or beauty shop, laundromat, laundry or dry cleaning plant serving individuals; mortuary, photo studio, shoe repair, tailor shop, bowling alley, restaurant, cocktail lounge, private club, theater and indoor recreation; general service establishments including service of automobiles, automobile service stations, vehicular rental service and repair shops, condominium-hotel/lodge, hotel/lodge, boarding and rooming house, offices for conduct of a business or profession, studio for conduct of arts and crafts, dental and medical clinics.

1.2 Landowners Committee

- A group of five persons who shall be responsible for the administration and amendment of these protective covenants and who shall have the right to enforce these protective covenants. All such persons shall be elected as set forth in paragraph 24 of these covenants.

1.3 Common

- That portion of the Subdivision held by Benchmark at Beaver Creek and/or its successors or assigns and used as private Open space.

1.4 Community Facilities

- A lot, tract of land or building space which may be used for religious purposes or governmental purposes, such as, fire station, police station, water and sewer services, etc. or employee housing, public nursery or daycare center.

1.5 Condominium

- A lot, tract of land or building space which may be used for multiple family residential purposes, residential duplex, condominiums or apartments, limited retail shops, limited service shops, offices and restaurants. Condominium units are as defined in Section 38-33-101 et seq. C.R.S. 1973 as amended (Colorado Condominium Ownership Act). Duplex is defined herein as a single building containing two dwelling units.

Attachment A: Benchmark Covenants

- 1.6 Industrial - A lot, tract of land or building space which may be used for the broad range of Manufacturing, Warehousing, Storage, Retail and Sales Operations required for the proper and convenient functioning of industrial centers serving large areas of the Town of Avon and Eagle County, including but not limited to all of the uses by right contained in the Zoning Code for the Town of Avon, State of Colorado, and/or also an electric utility substation including the placement of all equipment, the construction of roads, and all other appurtenances necessary to operate an electric substation; also, including warehouse, storage, garage and office use.
- 1.7 Lot - A parcel or tract of land as described and located within Benchmark at Beaver Creek Subdivision.
- 1.8 Mobile Home - Park - A lot or tract of land which may be used for mobile home park purposes, which shall be subject to any rules and regulations for such purposes as are established by the State of Colorado and Town of Avon; and further shall be subject to any rules and regulations for mobile home parks which may be established by the Planning and Architectural Control Committee of the Benchmark at Beaver Creek Subdivision.
- 1.9 Multiple Family - A lot, tract of land or building or building space which may be used for multiple family residential apartment purposes, limited service shops, limited retail shops, restaurants, offices, medical and dental clinics.
- 1.10 Private Park - Recreation and Commercial related thereto - A lot, tract of land or building space which may be used for a clubhouse for indoor and outdoor sports activities and customary support facilities, such as, but not limited to, swimming pools, tennis courts, archery range, restaurant/lounge, pro shop, and other similar activities or services.

Attachment A: Benchmark Covenants

- 1.11 Single Family - A lot, tract of land or building which may be used for the construction of only one dwelling unit and containing not less than 1,500 sq. ft. of habitable floor area.
- 1.12 Dwelling Unit - A dwelling unit is defined as one or more rooms in a building occupied by one family living independent of any other family, used solely for residential (human) occupancy, and not having more than one cooking facility. The term dwelling unit shall not include a mobile home whether or not fixed to the ground by a permanent continuous foundation. The term dwelling unit as used herein under this definition shall be exclusive and shall not include hotels, motels, boarding houses, clubs, or any institution, such as an asylum, hospital or jail.
- 1.13 Subdivision - Benchmark at Beaver Creek Subdivision.
- 1.14 Town - The Town of Avon, Colorado.
- 1.15 BM@BC - Benchmark at Beaver Creek, a Colorado limited partnership.
- 1.16 WWR - Wildwood Resort.

2. GENERAL PURPOSES: These covenants are for the mutual benefit and protection of the owners and leasees of the lots and tracts in the Subdivision and are made for the purposes of creating and keeping the Subdivision desirable, attractive, beneficial and suitable in architectural design, materials and appearance and guarding against unnecessary interference with or destruction of the Subdivision.

3. USES: All lots and Tracts of land in the Subdivision shall fall within the following respective land use definitions:

<u>Definition</u>	<u>Lot Description</u>
3.1 Commercial, also designated general commercial or condominium-hotel/loge or hotel/ lodge or shopping center	Block 1: Lots 1 thru 4, Lot 5 thru 42, WWR Lots 1 thru 3, Lots 67 and 68. Block 2: Lots A, B and C, Lots 29 thru 25, Lots 29 thru 32, Lots 55 thru 75, and Tract O. Block 3: Lot 2.

Our Lots 23 & 66

Attachment A: Benchmark Covenants

- |      |  |  |
|------|--|--|
| 3.2  | Common Open Space, also designated open space and conservation                             | Tracts A, B, and C.  |
| 3.3  | Community Facilities   | Tracts G and P.  |
| 3.4  | Condominium, also designated apartment, multiple family duplex, or condominium-hotel-lodge | Block 1: Lot 4, Lots 6 thru 9, Lot 32, Lots 40 thru 51, Lot 70 and Lot 70A.<br>Block 2: Lots A, B and C, Lots 2 thru 19, Lot 23, Lot 25, Lots 29 thru 34, Lots 36 thru 46, Lot 58, Lots 60 thru 69, Lots 71 thru 75.<br>Block 3: Lot 1, 3, 8 and 9.<br>WWR: Lot 1 and Lot 3. |
| 3.5  | Industrial   | Block 1: Lots 10 thru 37, Lot 39 and Lot 42.   |
| 3.6  | Mobile Home Park   | Block 2: Lot 1.  |
| 3.7  | Private Park, Recreation and Commercial  | WWR Lot 2.   |
| 3.8  | I-70 right-of-way exception  | Tract D.   |
| 3.9  | Avon Road right-of-way   | Tract E, F.  |
| 3.10 | Eagle River-Drainage use and conservation  | Tract H, I, K, L.  |
| 3.11 | Old River Bridge and conservation  | Tract J.   |
| 3.12 | Denver and Rio Grande Western Railroad right-of-way exception to Plat                      | Tract M.   |
| 3.13 | Upper Eagle Valley Sanitation District exception to Plat                                   | Tract N, O.  |
| 3.14 | Shopping Center Phase 1  | Tract Q.   |
| 3.15 | Shopping Center sign   | Tract R.   |
| 3.16 | Private landscape and drainage   | Tract V.   |
| 3.17 | Access, drainage, utility  | Tract W.   |
| 3.18 | Open Space, drainage, landscaping & signage  | WWR Lot 4  |
| 3.19 | Snow Storage, Landscaping, Drainage, Signage and Open Space                                | WWR Tract AA.  |

3.20 Snow Storage, Landscaping,  
Drainage, Parking, Signage  
and Open Space

See Tract 88.

4. PLANNING AND ARCHITECTURAL CONTROL COMMITTEE: The Planning and Architectural Control Committee, hereinafter referred to as the PACC, shall consist of five members who shall be appointed and serve at the pleasure of the Committee to review, study, approve or reject proposed improvements of any nature whatsoever within the area described in the Final Plat and any and all amendments thereto of the Benchmark at Beaver Creek Subdivision of which these protective covenants are made a part. The Committee shall have the exclusive right to remove and/or replace any member of the PACC as the Committee in its sole opinion shall deem necessary, including but not limited to the replacement of a PACC member upon said member's resignation, disability or death. Said replacement shall be forthwith at the discretion of the Committee. A majority of the PACC shall govern its actions. However, Committee at its sole discretion may alter in part or in total any decision of the PACC. Any vacancy on the PACC shall be filled by appointment by the Committee; in the event Committee fails to make such appointment for a continuous period of 30 days, then in said event any vacancy may be filled by appointment by the Council of the Town of Avon, Colorado.

(a) The PACC shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings.

(b) In passing upon any plans and specifications submitted for its approval the PACC shall consider:

(i) the suitability of the improvement (including materials of which it is to be constructed) to the site upon which it is to be located;

(ii) the nature of adjacent and neighboring improvements;

(iii) the quality of the materials to be utilized in any proposed improvement; and

(iv) the effect of any proposed improvement on the outlook of any adjacent or neighboring property.

## Attachment A: Benchmark Covenants

(c) It shall be an objective of the PACC to make certain that no improvement will be so similar or so dissimilar to others in the vicinity that values (monetary or aesthetic) will be impaired.

(d) In the event the PACC fails to approve or disapprove plans and specifications submitted to it within thirty (30) days of submission and no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and the related covenants shall be determined to have been fully complied with.

(e) The PACC is hereby authorized to collect reasonable fees as it may deem necessary from parties seeking or requiring the services of the PACC pursuant to these Protective Covenants and any and all rules and regulations adopted pursuant thereto. Said fees shall be the property of and inure to the benefit of the Committee and/or its successors and assigns. Said fees may be used by the PACC for its expenses.

4. APPROVAL OF CONSTRUCTION PLANS. All plans for construction and alteration shall be first submitted to the PACC as herein provided:

(a) No building or other structure shall be constructed, erected, altered or maintained on any lot, nor shall any addition thereto or change or alteration therein be made until two complete sets of final plans and specifications including, but not limited to, a color rendering; geologic soils site investigation and foundation report; floor plan, elevation showing all sides, plot and grading plans, provisions for off-street parking and locations of driveway access; the specifications; the location, character and method of utilization of all utilities have been submitted to the PACC and approved by it in writing. Owners and lessees of lots within the Subdivision are encouraged to consult with the PACC prior to and during the preparation of such plans and specifications in order to avoid unnecessary delay in approval.

## Attachment A: Benchmark Covenants

(b) The PACC shall be authorized to levy a reasonable charge, not less than ten cents for each square foot of enclosed floor space, for the review of plans and specifications, which charge shall be paid in advance. The PACC shall publish as a part of its rules and regulations a schedule setting forth the various fees to be charged for the various types of submittals for approval.

(c) Each building or other structure shall be constructed, erected and maintained in strict accordance with the approved plans and specifications.

(d) The PACC shall use reasonable judgment in passing upon all such plans and specifications, but the PACC shall not be liable to any person for its actions in connection with submitted plans and specifications, unless it be shown that the PACC acted with malice or wrongful intent.

6. DRAINAGE: All plans and specifications for structures and the construction of such structures shall maintain the drainage easements and rights-of-way within the Subdivision free and clear and unobstructed. No structure, road or other facility which encroaches upon or crosses any such drainage easement or right-of-way shall be constructed without prior approval in writing by the PACC. No vehicle entrance to any lot in the Subdivision from any dedicated road or street shall be constructed or used unless serviced by a constructed drainage culvert located and sized in a manner which shall first be approved in writing by the PACC. The PACC's action in reviewing such drainage plans shall be guided by the recommendations of the Engineer for the Town of Avon, Colorado.

7. EASEMENTS: Easements and rights-of-way as shown or described on the recorded plat of the Subdivision, as amended from time to time, are hereby reserved. In addition the following easements and rights-of-way are reserved:

(a) Easements reserved in the right-of-way of each road and street for water and all other utilities together with the installation, repair, and maintenance thereof.

Attachment A: Benchmark Covenants

(b) General easement maintained in perpetuity over and across all tracts and lots in the Subdivision in favor of Benchmark at Beaver Creek for installation, repair, improvement, removal and maintenance of utility facilities including water, water drainage, water storage, energy transmission, energy storage, sewer, sanitation, telephone, natural gas, liquid propane gas, television cable, lighting, heating, bridle path, pedestrian traffic, and similar services. Provided, however, that the use and exercise of said easement shall not permanently disturb improvements, excluding walks, drives, fences or landscaping, existing upon a lot or tract at the time of exercise or use of said easement.

8. FENCES: No fence, wall, or similar type barrier of any kind shall be constructed, erected or maintained on any lot, except such functional or decorative fences or walls as may be approved by the PAAC as an integral or decorative part of a building to be erected on a lot.

9. SIGNS: No signs, billboards or other advertising of any kind shall be erected, constructed or maintained on any lot or structure for any purpose whatsoever, except such commercial signs as have been approved by the PACC either for identification of residences or places of business or other commercial uses. The PACC shall establish comprehensive sign regulations for the Subdivision providing for the administration and enforcement of same; regulate the erection, construction, restoration, alteration, location, landscaping and maintenance of signs, window signs, flags, pennants, banners and bunting, display boxes, residential name plate signs, subdivision interest signs, temporary site development signs, traffic control signs for private property, murals and supergraphics; establishment of an approved sign program; establishment of a design review procedure and guidelines. The PACC shall review appearance, lighting, form, color, character, dimensions, and materials of all signs requiring approval under this covenant and any rules and regulations created pursuant hereto. The PACC shall make such aesthetic judgments necessary to insure that all

## Attachment A: Benchmark Covenants

signs requiring approval under this covenant or any rules and regulations adopted hereunder shall be in conformity with the provisions hereof. All signs hereto are in conformance with such sign rules and regulations and in harmony with the character of the Subdivision. The PACC may adopt from time to time such rules and regulations as it may deem necessary to perform its prescribed duties. Review shall be in conformance with the procedure outlined in such rules and regulations.

10. WATER AND SANITATION: Each structure designed for occupancy or use by human beings shall be connected with water and sanitation facilities made available at any time in the future by the appropriate governmental entity or any successive person or entity. No private wells or sanitation system shall be used within the Subdivision.

11. TRASH: No trash, garbage, ashes or other refuse shall be thrown or dumped on any land within the Subdivision. There shall be no burning or other disposal of refuse out of doors. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and protected from disturbance.

12. LIVESTOCK: No animals, livestock, horses or poultry (except dogs, cats and other household pets for personal enjoyment and not for commercial purposes and except horses owned and used in conjunction with an equestrian-livery operation approved by the PACC) shall be kept, raised or bred in the Subdivision. The keeping of dogs, cats and other household pets for personal enjoyment shall be strictly governed by all applicable rules and regulations adopted by the Town of Avon, Colorado, any successor governmental entity, the PACC aforementioned, or any homeowners association created for the benefit of property owners and lessees of the Subdivision.

13. TREES: Trees, shrubs and bushes naturally existing upon any lot shall not be cut, trimmed or removed without prior written approval of the PACC.

14. SETBACK REQUIREMENTS: The PACC may determine the location of improvements in relation to property lines, and all actual construction sites must receive the advance written approval of the PACC prior to the commencement of construction. In determining

the proper location for each improvement, the PACC shall consider the location of existing and future improvements on adjacent property, the wishes of adjacent property owners, and such other economic or aesthetic considerations as it may deem appropriate.

15. BUILDING HEIGHT: All building height maximums shall be as determined by the PACC. Building height is defined as the distance, measured vertically, from the finished grade at the midpoint between the front and rear walls of a building to the top of a flat roof or mansard roof, or to the midpoint between the eave line and the peak of a gable, gambrel, hip, shed or similar pitched roof, and measured to a slope not to exceed 12:24.

16. PARKING REQUIREMENTS: Parking requirements shall be determined by the PACC. The following provisions shall apply to off-street parking and loading facilities:

The provision and maintenance of off-street parking and loading space is a continuing obligation of the property owner. The PACC shall not approve any construction until plans are presented and approved by the PACC that show property that is available and will remain available for exclusive use as off-street parking and loading space. The subsequent use of property for which the PACC's approval is granted shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this covenant. Should the owner or occupant of any lot or building change the use to which the lot or building is utilized, thereby increasing off-street parking and loading requirements, it shall be a violation of this covenant to begin or maintain such altered use until such time as the increased off-street parking and loading requirements, minimum off-street loading requirements, and clear-vision area requirements shall be met. The PACC shall be guided by the standards set forth in the Town of Avon Zoning Ordinance.

17. LANDSCAPING: All surface areas disturbed by construction shall be promptly landscaped and maintained according to approved landscape plans pursuant to paragraph 5 hereof. The PACC shall make rules and regulations specifying the location, type, and quantities of ground cover, plants, shrubbery, trees, and similarly related natural and/or artificial materials used and submitted in connection with said landscaping plans.

## Attachment A: Benchmark Covenants

18. TEMPORARY STRUCTURES: No temporary structure, excavation, basement, or tent shall be permitted in the Subdivision, except as may be determined to be necessary during construction and specifically authorized by the PACC in writing.

19. CONTINUITY OF CONSTRUCTION: All structures commenced in the Subdivision shall be prosecuted diligently to completion and shall be completed within twelve months of commencement unless an exception is granted in writing by the PACC.

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

21. TRADE NAMES: No word, name, symbol, or combination thereof shall be used to identify for commercial purposes a house, structure, business or service within the Subdivision unless the same shall have been first approved in writing by the PACC. "Benchmark", as a word, name, symbol, or any combination thereof, shall not be used to identify for commercial purposes any house, structure, business, or service within the Subdivision unless the same shall have been first approved in writing by BM@BC.

22. VARIANCE: A variance from or exception to the provisions hereof as well as a vacation of any easement reserved or described on the recorded plat of the Subdivision or herein may be granted in writing by the PACC upon approval thereof by the Town of Avon, Colorado.

23. EFFECT AND DURATION OF COVENANTS: The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and binding upon each lot in the Subdivision, and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect until January 1, 2000, at which time they shall be automatically extended for five successive terms of ten years each.

24. AMENDMENT: The conditions, restrictions, stipulations, agreements, and covenants contained herein may be abandoned, terminated, or amended by the Landowners Committee comprised of five individual owners in the Subdivision and elected by the

## Attachment A: Benchmark Covenants

members of 5/12 of the land in the subdivision, one of whom shall be BM@BC, shall at such time of election still be an owner of property in the Subdivision, and said Committee, by 4/5 majority vote, may amend, alter, revoke or modify the conditions, restrictions, stipulations, agreements and covenants contained herein. The Committee shall make such rules and regulations and adopt such procedures as it may deem necessary and appropriate to govern its proceedings. In determining the ownership of the land included within the boundaries of the Subdivision, those parcels designated on the final plat as "Tracts A thru F, Tracts H, I, K, L, P, R, V and W" shall be counted and shall be deemed to be owned by BM@BC.

25. ENFORCEMENT: If any person shall violate or threaten to violate any of the provisions of this instrument, it shall be lawful for the Committee, the PACC, the Town of Avon, Colorado, or any person or persons owning real property in the Subdivision to institute proceedings at law or in equity to enforce the provisions of this instrument, to restrain the person violating or threatening to violate them, and to recover damages, actual and punitive, together with reasonable attorneys' fees, for such violation.

26. PENALTIES AND EXPENSES OF ENFORCEMENT; LIENS FOR NON-PAYMENT OF SAME: If any person shall violate any of the provisions of this instrument or the rules and regulations promulgated by the PACC pursuant to this instrument for which penalties are provided, or cause expenses to the PACC as a result of such violations, and fail to or refuse to pay such penalties or expenses, then such unpaid penalties or expenses shall be chargeable to the owner, including interest, and shall constitute a lien thereon superior (prior) to all other liens and encumbrances except:

- (a) Tax and special assessment liens in favor of any assessing unit; and
- (b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance and including additional advances made thereon prior to the creation of such a lien.

To evidence such a lien the PACC shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of record of the subject

property, and the legal description of the subject property. Such notices shall be signed by a member of the PACG and shall be recorded in the office of the County Recorder of the County of Eagle, State of Colorado. Such lien for the penalties and expenses shall attach from the date of the failure of payment of said assessments, penalties or expenses, and may be enforced by foreclosure on the defaulting owner's property by the PACG. In the event of such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorneys' fees.

The amount of any such penalties or expenses assessed against such real property shall also be a debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid penalties or expenses may be maintained without foreclosing or waiving the lien securing said debt.

Any mortgage holder or similar encumbrancer holding a lien on any real property in the Subdivision may pay any unpaid penalties or expenses created hereunder with respect to such real property, and upon such payment such encumbrancer shall have a lien on such real property for the amounts paid, said lien to be of the same priority as the lien of his respective encumbrance.

27. NON-CONFORMING USES AND BUILDINGS: The lawful use of a building or structure, or the lawful use of any land as existing and lawful at the time of recording of this instrument, or in the case of amendment of this instrument then at the time of such amendment, may be continued although such use does not conform to the provisions of this instrument or amendments thereto; and such use may be extended throughout the same building, provided no structure is proposed or made for the purpose of such extension.

27.1 Repair and Maintenance. Repair and maintenance of a non-conforming building shall be permitted.

## Attachment A: Benchmark Covenants

27.2 Restoration. A non-conforming building which has been damaged or destroyed by fire or other causes may be restored to its original condition, provided such work is commenced within one year of such event, and completed within 18 months of such commencement.

27.3 Change in Use. A non-conforming use shall not be replaced by a use considered to exhibit a greater degree of non-conformity than the existing use; a non-conforming use may be replaced by a use considered to exhibit an equal or lesser degree of non-conformity, to be determined by the PAAC based on the intent and purposes of this instrument.

27.4 Abandonment. Whenever a non-conforming use of a building or land has been abandoned for a period of one year, future use of the land or building shall be in conformity with all applicable provisions of this instrument or rules and regulations promulgated by the PAAC pursuant to this instrument.

28. WEED ABATEMENT: Any other provision contained herein to the contrary notwithstanding, all lots shall be maintained in a neat appearance, and where said lot shall be without any structure, any natural or artificial growth, i.e., natural grasses, bushes, etc., shall be maintained and controlled. In the event said growth on any lot shall become uncontrolled and unsightly, then in said event, the PACC shall have the right to cut, trim, control or remove said growth at the sole expense of the respective owner of any such lot.

29. UTILITIES: All utilities servicing any lot respectively in the Subdivision shall be by means of underground facilities, and all extensions for all utility services through the Subdivision or any part thereof shall be only by means of underground facilities, unless the respective owner of any lot shall have obtained the prior express written approval of the PACC or its successors in interest for any utility facilities or extensions thereof by means of overhead facilities.

30. LIABILITY: The Committee, PACC or any other owner of real property in the Subdivision shall not be liable for damages to any person or association submitting any

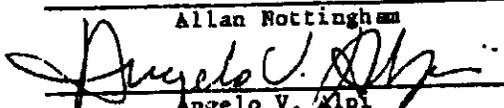
plans and specifications or to any other action taken pursuant to these covenants in the reasonable exercise of their respective rights and powers hereunder. Any owner submitting or causing to be submitted any plans and specifications to the PACC agrees and covenants that he will not bring any action or suit to recover damages against the Committee, PACC, or any other owner, collectively, its members individually or its advisors, employees or agents. In the event of any legal action against the Committee or PACC, the prevailing party shall be entitled to reasonable attorney's fees.

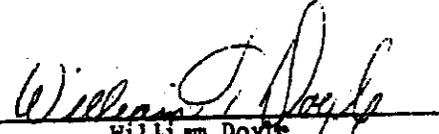
31. SEVERABILITY: Invalidation of any one of the provisions of this instrument by judgment or court order or decree shall in no wise affect any of the other provisions which shall remain in full force and effect.

Executed this 9th day of April, 1985.

LANDOWNERS' COMMITTEE

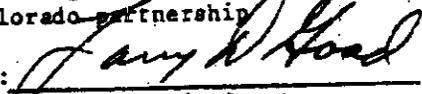
BY:

Allan Nottingham  
  
Angelo V. Alpi

  
William Doyle

Wildridge Development Company, a Colorado Partnership

BY:

  
Larry D. Goad, Agent

Benchmark at Beaver Creek, a limited partnership, by Benchmark Company, a partnership and sole general partner

BY:

  
A. J. Miller, Attorney-in-Fact

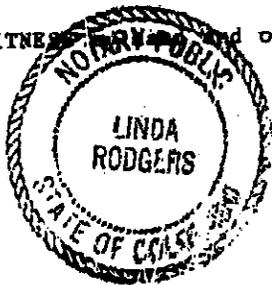
Attachment A: Benchmark Covenants

STATE OF COLORADO )  
 ) SS.  
COUNTY OF EAGLE )

The above and foregoing instrument was acknowledged before me this 9th day of April, 1985, by A. J. Wells as Attorney-in-Fact for Benchmark Company, a partnership and general partner of Benchmark at Beaver Creek, a limited partnership, and by Angelo V. Alpi, ~~partner~~ ~~partner~~ and by Willis Doyle, and by Larry D. Goad as Agent for Wildridge Development Company, a Colorado partnership, all as members of the Landowners' Committee.

My commission expires: 6-30-88

WITNESSETH my hand and official seal.



Linda Rodgers  
Notary Public

\_\_\_\_\_  
Address

**AMENDMENT TO DECLARATION OF  
PROTECTIVE COVENANTS FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION**

Pursuant to paragraph 24 of the Restatement of and Sixth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision, as recorded in Book 411 at Page 960 in the records of the Eagle County Clerk and Recorder, Eagle County, Colorado, at a duly called meeting of the Landowners' Committee of the Benchmark at Beaver Creek Subdivision held on June 12, 1986 in the Conference Room of Benchmark Companies, Benchmark Plaza, Avon, Colorado, 4 of the 5 members of the Landowners' Committee were present and adopted the following amendment to the Restatement of and Sixth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision:

Paragraph 4.(d) of the Restatement of and Sixth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision was amended in total to read as follows:

4.(d) "All other provisions of these Covenants to the contrary notwithstanding, all plans for construction and alteration which have been previously submitted to and approved by the Planning & Zoning Commission of the Town of Avon shall not be required to be submitted to PACC. Provided, however, the PACC may, at its sole option, within sixty (60) days from the initial filing or the resubmittal of an initial filing of any such construction plans with the Town of Avon, notify the Owner of the lot for which said construction plans have been submitted that it will be necessary for the owner to submit its plans for approval to the PACC in accordance with the Protective Covenants. Provided, further, in the event the Town of Avon through the Planning & Zoning Commission or similar body shall no longer exercise planning and architectural controls within the subdivision, then, in said event, all plans for construction and alteration shall be first submitted to the PACC as herein provided.

Provided, further, after the approval by the Town of Avon of an initial submittal, said approval shall be deemed an approval by the PACC unless, within ten (10) days of the approval by the Town, the PACC notifies the owner of the lot that it will be necessary for the owner to submit its' plans for approval to the PACC in accordance with the Protective Covenants.

In the event of any submissions of construction plans to the PACC as may be required herein, the PACC shall have thirty (30) days to approve or disapprove plans and specifications submitted. In the event the PACC shall fail to take action on any submittal, then, in said event, approval shall not be required and the Covenants shall be deemed to have been fully complied with."

12000

The above represents a true and correct statement of the Amendment to Restatement of and Sixth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision as adopted by 4 of the 5 members of the Landowners' Committee at the meeting stated above.

*Angelo V. Alpi*  
Angelo V. Alpi,  
Acting Secretary of the Landowners'  
Committee for the June 12, 1986 meeting

Subscribed, s<sup>v</sup> for, and acknowledged before me this 10<sup>th</sup> day  
of January, 1986 by Angelo V. Alpi who is known to me to have been the  
Acting Secretary of Benchmark at Beaver Creek Subdivision Landowners' Committee  
for the June 12, 1986 Landowners' Committee meeting.

*Pinda Lodge*  
Notary Public

*My Commission Expires: 1-5-92*

24465001-15

# Attachment B: Notice to Benchmark Owners

## BENCHMARK AT BEAVER CREEK SUBDIVISION OWNERS

October 14, 2016

### Notice of Avon Town Council Public Meeting and Notice of Special Owners Meeting

#### **BY USPS FIRST CLASS MAIL**

To All Owners Within Benchmark at Beaver Creek Subdivision:

**The Town of Avon invites all Owners of property within Benchmark at Beaver Creek Subdivision (the "Benchmark Subdivision") to attend the Avon Town Council meeting on Tuesday, October 25, 2016 at the Avon Town Hall, located at 1 Lake Street, Avon, CO 81620, and invites all Owners of property within the Benchmark Subdivision to attend a Special Owners Meeting to be held at 2:00 p.m. Mountain Time on Tuesday, November 15, 2016 in the Avon Town Hall, located at 1 Lake Street, Avon, CO 81620.**

The purpose of this Special Owners Meeting is to (1) consider revocation and termination of the restrictive covenants set forth in Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision recorded February 27, 1974 in Book 233, Page 565 of the Eagle County, Colorado real property records, as amended and/or restated by the various instruments referenced in **Exhibit A** attached hereto (collectively, the "**Declaration**"); and (2) announce the results of the Owners' vote to revoke and terminate the Declaration, as further described below.

The Declaration was adopted in 1974 before the incorporation of the Town of Avon in 1978 as part of the original Benchmark development. The Declaration encumbers a substantial portion of the Town's municipal boundaries. Since Avon's incorporation, the Town of Avon has adopted a Home Rule Charter and Avon Municipal Code (the "Town Code"). Title 7 of the Town Code sets forth the Avon's Development Code which includes a comprehensive and cohesive set of modern land use, zoning, design and landscaping regulations applicable to all of Avon, including the Benchmark Subdivision.

The Declaration itself is outdated in that it includes provisions which are often inconsistent with the regulations in the Town Code. In addition, since the Declaration has been amended and restated multiple times, the existence of the Declaration as an encumbrance against title to properties included within the Benchmark Subdivision is extremely difficult to track since some of the amendments only affect discrete portions of the Benchmark Subdivision, but not others. Overall, the Town believes that the Declaration is convoluted, redundant and creates a second and unnecessary set of development rules that impedes economic vitality within the portions of the Town encumbered by the Declaration.

## Attachment B: Notice to Benchmark Owners

After careful consideration, the Town of Avon firmly believes that revocation and termination of the Declaration will simplify the regulation of development within the Benchmark Subdivision. The resulting clarity in regulations applicable to the Benchmark Subdivision should benefit the marketability of properties within the Benchmark Subdivision by eliminating a confusing and convoluted secondary set of regulations encumbering the Benchmark Subdivision's properties.

The Declaration and its associated restrictive covenants may be revoked and terminated, as applicable, by either (i) the written consent of the owners of at least 51% of the land within the Benchmark Subdivision, and/or (ii) the written approval of a 4/5ths majority vote of a Landowner's Committee comprised of five individual landowners within the Benchmark Subdivision, duly elected by the owners of at least 51% of the land within the Benchmark Subdivision. Termination of the Declaration would be made effective upon and evidenced by executing and recording the Termination of Protective Covenants for Benchmark at Beaver Creek Subdivision (the "**Termination**") attached hereto as **Exhibit B**.

The Special Owners Meeting will be facilitated by the Town which owns title to a majority of the land encumbered by the Declaration. After answering any questions that may be posed by owners of title to properties within the Benchmark Subdivision, the Town will tally and announce the results of the owners' voting based on the completed proxies and ballots enclosed with this notice. The voting of the Landowners Committee will also be announced at the Special Owners Meeting if available at that time. No other business will be discussed or conducted at the Special Owners Meeting. **All votes pertaining to revocation and termination of the Declaration must be cast using the enclosed form of proxy and ballot, which must be returned in accordance with the instructions stated below, no later than Friday, November 11, 2016, which is two (2) business days prior to the Special Owners Meeting.** The owners each have two votes: (i) for or against revocation and termination of the Declaration; and (ii) for or against election of the ballot's slate of five individual owners appointed to the Landowner's Committee who shall be directed to vote for revocation and termination of the Declaration.

All votes must be cast on the proxy and ballot form enclosed; must be mailed by United States Postal Service First Class Mail, faxed, or scanned and e-mailed to the address below; and must be received at such address **on or before Friday, November 11, 2016 (which is two (2) business days prior to the Special Owners Meeting).** Mail completed proxy and ballot to:

Benchmark at Beaver Creek Subdivision  
CONFIDENTIAL BALLOT  
C/O Michael J. Repucci  
Johnson & Repucci LLP  
2521 Broadway, Suite A  
Boulder, CO 80304  
Facsimile: 303-442-0191  
E-mail: tarioux@j-rlaw.com

## Attachment B: Notice to Benchmark Owners

Thank you for your participation in this important matter to assist in furthering the continued economic vitality of Avon.

Town of Avon,

Virginia Egger

Virginia Egger, Town Manager

Eric J. Heil

Eric J. Heil, Town Attorney

**Enclosures:**

1. Proxy Statement and Absentee Ballot
2. Agenda for Special Owners Meeting

## Attachment B: Notice to Benchmark Owners

### Exhibit A

DECLARATIONS AND AMENDMENTS				
<u>Reception</u> <u>Number</u>	<u>Book</u>	<u>Page</u>	<u>Recording</u> <u>Date</u>	<u>Document Title</u>
129459	233	565	2/27/1974	Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision
135288	239	249	4/7/1975	Amended Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>Amends 233/565 [References Plat 233/566]</i>
141817	245	642	4/5/1976	Second Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek <i>Amends 239/49 [References Plats 129460 and 134061]</i>
143173	246	947	6/14/1976	Declaration of Additional Protective Covenants <i>[References Decls 233/565, 239/249, and 245/642]</i>
146410	250	143	11/18/1976	Restatement of and Third Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek <i>Amends 233/565, 245/642, 246/947 [References Plats 129460, 134061, 142223, 142224, and 145347]</i>
184517	288	116	7/12/1979	Restatement of and Fourth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>[References 250/143 and 246/947]</i>
184968	288	567	7/19/1979	Declaration of Additional Protective Covenants
233718	337	366	3/5/1982	Restatement of and Fifth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision
308238	411	960	4/23/1985	Restatement of and Sixth Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>[References 246/947]</i>
418888	522	721	2/7/1990	Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>[References 411/960]</i>

# Attachment B: Notice to Benchmark Owners

## Exhibit B

### TERMINATION OF PROTECTIVE COVENANTS FOR BENCHMARK AT BEAVER CREEK SUBDIVISION

#### TERMINATION OF PROTECTIVE COVENANTS FOR BENCHMARK AT BEAVER CREEK SUBDIVISION

THIS TERMINATION OF PROTECTIVE COVENANTS FOR BENCHMARK AT BEAVER CREEK SUBDIVISION (this “**Termination**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by the Town of Avon, Colorado, a Colorado home rule municipal corporation acting on behalf of the “**Benchmark at Beaver Creek Owners**” and the “**Benchmark at Beaver Creek Landowners Committee**” (as those terms are hereinafter defined).

#### RECITALS

WHEREAS, pursuant to that certain Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision recorded February 27, 1974 in Book 233 at Page 565 of the Eagle County, Colorado real property records, as amended, restated and modified by the instruments listed in **Exhibit A** attached hereto and made a part hereof (the Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision, together with all amendments and modifications thereto, are hereinafter collectively referred to as the “**Declaration**”), certain conditions, stipulations, agreements, limitations, restrictions and uses have been made and placed of record as restrictive and protective covenants (collectively, the “**Protective Covenants**”) running with title to the real property known as Benchmark at Beaver Creek Subdivision, as such land is identified and depicted in those certain plats recorded in the real property records of Eagle County, Colorado that are listed in **Exhibit B** attached hereto and made a part hereof (the “**Subdivision**”); and

WHEREAS, pursuant to the Declaration, the Protective Covenants may be abandoned, terminated, amended, altered, revoked or modified, as applicable, by either (i) the written consent of the owners of at least 51% of the land within the Subdivision (the “**Benchmark at Beaver Creek Owners**”), and/or (ii) the written approval of at least a 4/5ths majority vote of the Landowners Committee comprised of five individual owners in the Subdivision who are duly elected by the owners of at least 51% of the land within the Subdivision (the “**Benchmark at Beaver Creek Landowners Committee**”); and

WHEREAS, pursuant to the Declaration, the Benchmark at Beaver Creek Owners have by written consent pursuant to a duly held election, and the duly elected Benchmark at Beaver Creek Landowners Committee has by at least a 4/5 majority vote, agreed and elected to terminate, abandon, and revoke the Protective Covenants in accordance with this Termination; and

## Attachment B: Notice to Benchmark Owners

WHEREAS, all other preconditions to the effectiveness of this Termination have occurred or been duly waived.

### **TERMINATION**

NOW, THEREFORE, effective immediately upon the recording of this Termination in the real property records of Eagle County, Colorado, the Declaration and all Protective Covenants contained therein shall be terminated, abandoned, and revoked and shall be of no further force or effect whatsoever.

IN WITNESS WHEREOF, the Town of Avon, owning at least 51% of the land within the Subdivision and acting on behalf of the Benchmark at Avon Owners and the Benchmark at Avon Landowners Committee, as applicable, attest to the truth of the foregoing Recitals and approve this Termination as of the date and year first written above.

Town of Avon

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Town of Avon Attorney

Attachment B: Notice to Benchmark Owners

STATE OF COLORADO     )  
  )ss.  
COUNTY OF EAGLE        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, as \_\_\_\_\_ of the Town of Avon, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF COLORADO     )  
  )ss.  
COUNTY OF EAGLE        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, as \_\_\_\_\_ of the Town of Avon, a Colorado home rule municipal corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

## Attachment B: Notice to Benchmark Owners

### Exhibit A

#### DECLARATIONS AND AMENDMENTS

<u>Reception Number</u>	<u>Book</u>	<u>Page</u>	<u>Recording Date</u>	<u>Document Title</u>
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418888	522	721	2/7/1990	Amendment to Declaration of Protective Covenants for Benchmark at Beaver Creek Subdivision <i>[References 411/960]</i>

# Attachment B: Notice to Benchmark Owners

## Exhibit B

### RECORDED PLATS

<u>Reception Number</u>	<u>Book</u>	<u>Page</u>	<u>Recording Date</u>	<u>Document Title</u>
129460	233	566	2/27/1974	Final Plat, Benchmark at Beaver Creek, Eagle County, Colo.
134061	238	41	12/26/1974	Revised Final Plat, Benchmark at Beaver Creek, Eagle County, Colo.
142223	246	43	4/27/1976	Final Plat Amendment No. 1, Lot 5, Block 1, Tract A and Tract B, Benchmark at Beaver Creek, Eagle County, Colorado
142224	246	44	4/27/1976	Final Plat Amendment No. 2, Lot 26, 27, and 28, Block 2, Benchmark at Beaver Creek, Eagle County, Colorado
145347	249	93	10/1/1976	Final Plat Amendment No. 3, Benchmark at Beaver Creek, Eagle County, Colo.

Attachment C: Proxy Statement-Absentee Ballot

**PROXY STATEMENT AND ABSENTEE BALLOT FOR  
BENCHMARK AT BEAVER CREEK SUBDIVISION**

A Special Owners Meeting of the Benchmark at Beaver Creek Subdivision (the "Owners") is scheduled for Tuesday, November 15, 2016 at 2:00 p.m. Mountain Time in the Avon Town Hall, located at 1 Lake Street, Avon, CO 81620.

*Please fill in the proxy information below if you wish to appoint someone to attend the meeting in your place. You may **ONLY** choose to name as your proxy **ONE** person who is an Owner of title to real property in the Subdivision.*

*Your votes in this matter on the two (2) questions presented **MUST** be cast via this absentee ballot and be received on or before **Friday, November 11, 2016 at the below address**. You may fill out only one (1) ballot, regardless of how many tracts, parcels, lots or units you own within the Subdivision.*

*Therefore, regardless of whether you plan to be at the meeting, please complete the absentee ballot, sign it, and timely deliver it to the address listed below.*

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**PROXY STATEMENT AND ABSENTEE BALLOT**

Your Name(s): [insert merge field]

Your Benchmark at Beaver Creek Address(es): \_\_\_\_\_  
(attach additional pages, if necessary)

**\*\*\*\*\* PROXY STATEMENT \*\*\*\*\***

KNOW ALL MEN BY THESE PRESENTS, That I/We, [insert merge field], being the Owner(s) of the real property described as Eagle County Assessor's Tax Parcel Identification Number(s) [insert merge field], do hereby irrevocably appoint any designated official of the Town of Avon, Colorado to be my/our/its Proxy, to attend in my/our/its place the Special Owners Meeting to be held on Tuesday, November 15, 2016, at 2:00 p.m. Mountain Time. This Proxy shall remain in full force and effect until such time as it shall be revoked by the undersigned in writing, but in no event later than the actual date of the Special Owners Meeting.

Your Signature: \_\_\_\_\_

Your Signature: \_\_\_\_\_

Attachment C: Proxy Statement-Absentee Ballot

\*\*\*\*\* ABSENTEE BALLOT \*\*\*\*\*

To be completed whether or not you also attend the Special Owners Meeting. There will be no voting at the Special Owners Meeting. All voting is via this absentee ballot.

I hereby vote as follows on each of the following two (2) questions:

QUESTION NO. 1 (Check only ONE from the following two choices):

- I vote FOR and consent to terminating, abandoning and revoking the Declaration described in the Notice of Special Owners Meeting dated October 14, 2016 (the "Notice") and I approve the Termination of Protective Covenants for Benchmark at Beaver Creek Subdivision attached as Exhibit B to the Notice (the "Termination").
I vote AGAINST and do not consent to terminating, abandoning and revoking the Declaration described in the Notice and I disapprove the Termination.

QUESTION 2 (Check only ONE from the following two choices):

Proposed slate of five individual Owners to constitute the Landowners Committee, each of which is an owner of land within the Subdivision:

The Town of Avon, represented by Mayor Jennie Fancher; Marka Ann McLaughlin Brenner; Ellen Mary Crosbie Revocable Trust, represented by Ellen Mary Crosbie as Trustee; Katherine E. Pakozdi; and Robert E. Tarte

- I vote FOR the above proposed slate of five individual Owners to constitute the Benchmark at Beaver Creek Landowners Committee who shall be directed to vote to terminate, abandon, and revoke the Declaration and to approve the Termination.
I vote AGAINST the above proposed slate of five individual Owners to constitute the Benchmark at Beaver Creek Landowners Committee,

Date \_\_\_\_\_ Signature of Owner \_\_\_\_\_

Date \_\_\_\_\_ Signature of Owner \_\_\_\_\_

Please fill in the information below for our files:

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Attachment C: Proxy Statement-Absentee Ballot

Home Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**This completed ballot MUST be received at the below address by Friday, November 11, 2016 via USPS First Class Mail, Facsimile or E-mail:**

Benchmark at Beaver Creek Subdivision  
CONFIDENTIAL BALLOT  
C/O Michael J. Repucci  
Johnson & Repucci LLP  
2521 Broadway, Suite A  
Boulder, CO 80304  
Facsimile: 303-442-0191  
E-mail: tarioux@j-rlaw.com