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SILVIA DAVIS PITKIN COUNTY CO

**SECOND AMENDMENT TO
MASTER DECLARATION OF
PROTECTIVE COVENANTS FOR
TOP OF MILL**

THIS SECOND AMENDMENT ("Amendment") TO MASTER DECLARATION OF PROTECTIVE COVENANTS FOR TOP OF MILL (the "Declaration"), effective this 4th day of February 2003, is made and entered into by Top of Mill Investors, LLC, a Delaware limited liability company duly authorized to transact business in the State of Colorado ("Declarant"); LPRP Mill, LLC, a Colorado limited liability company ("LPRP Mill"); and LPRP River, LLC, a Colorado limited liability company ("LPRP River"; and together with LPRP Mill, "LPRP"). Unless the context otherwise requires, defined terms from the Declaration (including but not limited to, Owner, Well, Engineer and City) appearing in this Amendment shall have the same meanings when used herein as in the Declaration. In the event of any conflict or inconsistency between the provisions of this Amendment and the Declaration, the provisions of this Amendment shall govern and control.

RECITALS

- A. The Declaration was recorded October 4, 2002 in the office of the Pitkin County Clerk and Recorder as Reception No. 473073 and was amended by that certain First Amendment thereto recorded October 18, 2002 as Reception No. 473629. The Declaration affects certain real property situated in Pitkin County, Colorado known as Top of Mill, as more particularly described on Exhibit "A" attached hereto and by reference made a part hereof.
- B. As of the date hereof, Declarant is the record owner of that portion of Top of Mill described on Exhibit "B" attached hereto and by reference made a part hereof (the "Declarant Property").
- C. As of the date hereof, LPRP is the record owner of that portion of Top of Mill described on Exhibit "C" attached hereto and by reference made a part hereof (the "LPRP Property").
- D. Parcel 9 has been conveyed to the Summit Place Owners as contemplated by Recital 3 to the Declaration and, as a result, is not a part of Top of Mill (except as provided in Section 6.15 of the Declaration). The Declarant Property and the LPRP Property comprise all of Top of Mill.
- E. Declarant and LPRP desire to amend the Declaration as provided herein.

Now Therefore, Declarant and LPRP hereby amend the Declaration as set forth below.

1. Section 10.2 of the Declaration is hereby deleted in its entirety and replaced with the following:

10.2 Timing of Mitigation.

(a) The VCUP provides that the Mitigation shall be completed by May 29, 2004 or within an extension granted by CDPHE. Declarant shall timely complete the Mitigation and hereby reserves an easement on, over, under, across and through all Parcels and roadways shown on the Final Plat for the purpose of completing the Mitigation, together with a perpetual right of ingress and egress (but once the Mitigation is completed,



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such right of ingress and egress shall be exercised only to the extent that Declarant, or its successor, performs work required by this Article 10 after an Owner fails to do so), excepting only the footprints of any buildings now or hereafter constructed on the real property shown on the Final Plat.

(b) The Mitigation shall occur at such time as Declarant determines and shall be completed before May 29, 2004 or before such other date specified in a CDPHE-approved extension. Each Owner understands and agrees that if the Mitigation on such Owner's Parcel is completed before the Owner commences construction, then the ID Barrier and/or Impermeable Membrane and Cover will be installed over the whole Parcel, including areas that may later be excavated or covered with Hard Surface Areas.

(c) If the Mitigation on any Parcel has not been completed and an Owner's work for the development of such Owner's Parcel has commenced and Declarant believes (as determined by Declarant in its sole discretion), that the Mitigation on such Parcel cannot be completed before May 29, 2004, Declarant shall apply to the CDPHE for an extension to complete the Mitigation on such Parcel. If the extension is granted, Declarant shall timely complete the Mitigation on such Parcel in accordance with the extension. If the extension is not granted, Declarant shall complete the Mitigation prior May 29, 2004 (in which case the ID Barrier or Impermeable Membrane and Cover will be installed over the whole Parcel, including areas that may later be excavated or covered with Hard Surface Areas). An extension granted for a specific parcel shall not affect completion of the Mitigation on other Parcels. Extensions shall only be requested for periods reasonably required for completion of the Mitigation taking into consideration the anticipated time necessary for completion of an Owner's work for development of a Parcel.

(d) In any case where the Mitigation is completed prior to completion of the Owner's work, such Owner shall be required to obtain the approval of the Master Association in accordance with Section 10.5 below prior to performing any work that disturbs the Cover or otherwise constitutes an Activity (as defined in Section 10.3 (a) below).

(e) In any case where the Mitigation is being performed by Declarant before or concurrently with an Owner's work for development of such Owner's Parcel, the Owner's work shall not interfere with or hinder the Mitigation performed (or to be performed) by Declarant. Declarant's schedule and staging for the Mitigation shall at all times take precedence over an Owner's schedule and staging for such Owner's work.

(f) After the Mitigation on any Parcel has been performed by Declarant, no Activity may occur on such Parcel without first obtaining the written permission of the Master Association in accordance with Section 10.5 below. The Master Association shall not grant any variances from the requirements of this Article unless first approved by CDPHE and WEI, or such other environmental engineer selected by the Master Association (the "Environmental Consultant").

(g) Within 45 days after the Mitigation for all of Top of Mill is completed, Declarant shall provide CDPHE a certification from the Environmental Consultant or other qualified environmental professional stating that the Mitigation required by the VCUP has been fully implemented and requesting a "no further action letter" from CDPHE. A copy of the certification shall also be provided to the Master Association. Within 45 days after Declarant provides CDPHE the foregoing, CDPHE shall either issue a no further action letter or provide Declarant with a reasonably detailed explanation of why CDPHE will not issue a no further action letter, together with a description of the actions that Declarant must take in order for a no further action letter to be issued.



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2. There is hereby added to the Declaration a new Section 11.7 as follows:

11.7 Changes Affecting Parcels 7 and 8. For so long as LPRP is the Owner of Parcels 7 and 8, LPRP hereby reserves the right to process one or more land use applications to accomplish further changes to Parcels 7 and 8 which involve any or all of the following:

(a) moving any Wall shown on the Plat within Parcel 7 or 8 to other locations within either Parcel 7 or 8, including, without limitation, placing a Wall along a common boundary line between said parcels; provided the Engineer and City have approved such relocation and design;

(b) obtaining approvals for the construction of one or more accessory dwelling units ("ADU") as defined by the City Municipal Code, as the same is in effect from time to time, along the common boundary line of Parcels 7 and 8 or locating the ADU for Parcel 8 on Parcel 7 (or vice versa);

(c) locating a pond and other water features on Parcel 7 and/or Parcel 8 or along their common boundary (as long as such pond or other water features do not violate the building set backs between Parcel 7 and Parcel 6 or between Parcel 8 and Parcel 1) and/or incorporating same into the Wall(s); provided the Engineer and City have approved such relocation and design if any of the foregoing are integrated into the Wall(s);

(d) transferring floor area as defined in the City Municipal Code, as the same is in effect from time to time ("FAR") from Parcel 7 to Parcel 8 (or vice versa);

(e) relocating or vacating the lot line between Parcels 7 and 8 or constructing improvements across the common boundary of Parcels 7 and 8; provided, however, that if the lot line between Parcels 7 and 8 is vacated, Parcel 7 and Parcel 8 shall become one Parcel known as Parcel 7/8; provided, however, that voting rights in the Master Association and the right to have two memberships on the Executive Board shall be as though Parcel 7/8 was two parcels; and

(f) reconfiguring the building setbacks within Parcels 7 and/or 8; provided, however, that the building setbacks between Parcel 7 and Parcel 6 shall not be reconfigured to make the area of Parcel 7 outside of the setback closer to Parcel 6 than as shown on the Plat as of the date hereof without the consent of the Owner of Parcel 6 and the building set backs between Parcel 8 and Parcel 1 shall not be reconfigured to make the area of Parcel 8 outside of the setback closer to Parcel 1 than as shown on the Plat as of the date hereof without the consent of the Owner of Parcel 1.

LPRP shall be obligated at its sole expense to obtain any permits and/or land use approvals for any of the changes described herein.

All Owners, by acceptance of any deed of conveyance to any Parcel or Unit, hereby consent to any and all of the rights reserved in this paragraph, and said Owners agree for themselves, their successors and assigns that they will not directly or indirectly oppose, object to, litigate against or otherwise contest: (i) any such land use application or (ii) any subsequent approval of such application by the City. If any such land use application is approved by the City, each Owner agrees for itself, its successors and assigns that Declarant and LPRP shall have the right, acting together, to execute, deliver and record any and all amendments to this Declaration, Plat and PUD Agreement necessary to evidence such approval and in furtherance thereof each Owner hereby irrevocably appoints Declarant its attorney-in-fact for the purpose of executing, delivering and recording any such amendments. In addition to the Master Association, LPRP shall also have the right to enforce the provisions of this section by an action for injunctive relief and/or obtain damages for its



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breach. In any such enforcement action the prevailing party shall be awarded its attorney fees and costs in addition to any other judgment that the court may render.

3. Except as amended hereby, the Declaration remains in full force and effect.

IN WITNESS WHEREOF, Declarant and LPRP have executed this Amendment to the Declaration on the date written above.

DECLARANT:
TOP OF MILL INVESTORS, LLC
a Delaware limited liability company
By: [Signature]
Sam Houston, Director

LPRP:
LPRP MILL, LLC
a Colorado limited liability company
By: [Signature]
Herbert S. Klein, Manager

LPRP RIVER, LLC
a Colorado limited liability company
By: [Signature]
Herbert S. Klein, Manager

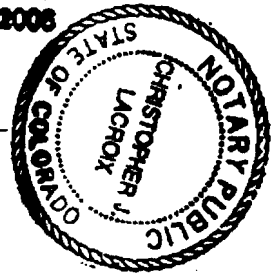
STATE OF COLORADO)
COUNTY OF PITKIN) ss.

The foregoing Second Amendment to Master Declaration of Protective Covenants for Top of Mill was acknowledged before me this 14th day of February, 2003 by Sam Houston as Director of Top of Mill Investors, LLC, a Delaware limited liability company.

WITNESS my hand and official seal.

My commission expires: _____
[Signature]
Notary Public

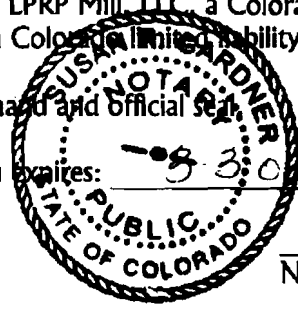
MY COMMISSION EXPIRES
DECEMBER 6, 2008



STATE OF COLORADO)
COUNTY OF PITKIN) ss.

The foregoing Second Amendment to Master Declaration of Protective Covenants for Top of Mill was acknowledged before me this 14th day of FEBRUARY, 2003 by Herbert S. Klein as Manager of LPRP Mill, LLC, a Colorado limited liability company, and as Manager of LPRP River, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.
My commission expires: 03 30 03



[Signature]
Notary Public



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Exhibit "A"

[Legal Description of Top of Mill]

LOT 3,
FIRST AMENDED PLAT ASPEN MOUNTAIN SUBDIVISION AND PLANNED UNIT
DEVELOPMENT, according to the Plat
thereof filed October 3, 1988 in Plat Book 21 at Page 35 which, pursuant to the Plat of TOP OF
MILL SUBDIVISION/PUD, a planned community, recorded August 16, 2002 in Book 62 at Page
4 as Reception No. 471099, has been laid out, platted and subdivided into Parcels 1, 2, 3, 4, 5,
6, 7, 8 and 9, Top of Mill Street and Open Space Parcels A and B.

Exhibit "B"

[Legal Description of Declarant Property]

PARCELS 1,2,3,4,5,6, Open Space Parcels A and B, and Top of Mill Street,
TOP OF MILL SUBDIVISION/PUD, A PLANNED COMMUNITY, according to the Final Plat for
Top of Mill Subdivision/PUD, a Planned Community recorded August 18, 2002, in Plat Book 62
at Page 4 as Reception No. 471099.

Exhibit "C"

[Legal Description of LPRP Property]

PARCELS 7 and 8,
TOP OF MILL SUBDIVISION/PUD, A PLANNED COMMUNITY, according to the Final Plat for
Top of Mill Subdivision/PUD, a Planned Community recorded August 18, 2002, in Plat Book 62
at Page 4 as Reception No. 471099.