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Page 042

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Recorder Johnnette Phillips Eagle County

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CHAMBERTIN TOWNHOUSES  
FILING NO. 1

A REPLAT OF LOTS 46 and 47, BLOCK 1  
BENCHMARK AT BEAVER CREEK, AMENDMENT NO. 4  
TOWN OF AVON, COUNTY OF EAGLE, STATE OF COLORADO

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THIS DECLARATION, made this 19<sup>th</sup> day of December, 1980,  
by THE CHAMBERTIN COMPANY, A General Partnership, hereinafter  
referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described  
in Article II of this Declaration and desires to create thereon a  
residential community with common facilities for the benefit of the  
said community; and

WHEREAS, Declarant desires to provide for the preservation of  
the values and amenities in said community and for the maintenance  
of said common areas and facilities; and, to this end, desires to  
subject the real property described in Article II to the covenants,  
restrictions, easements, charges and liens hereinafter set forth,  
each and all of which is and are for the benefit of said property  
and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient  
preservation of the values and amenities in said community, to  
create an agency to which should be delegated and assigned the  
powers of maintaining and administering the community properties and  
facilities and administering and enforcing the covenants and  
restrictions and collecting and disbursing the assessments and  
charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State  
of Colorado, as a non-profit corporation, THE CHAMBERTIN TOWNHOUSE

CHAMBERTIN HOMEOWNERS' ASSOCIATION

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HOMEOWNERS ASSOCIATION for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Declarant declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth, all of which shall be covenants running with the land described herein and shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

In addition, this Declaration of Covenants, Conditions and Restrictions are subject to certain restrictions as contained in instrument recorded in Book 233 at Page 565, Amended Declaration recorded in Book 239 at Page 249, Second Amendment to Declaration of Protective Covenants recorded in Book 245 at Page 642, Additional Declaration of Protective Covenants recorded in Book 246 at Page 947, Third Amendment recorded November 18, 1976 in Book 250 at Page 143, Fourth Amendment recorded July 12, 1979 in Book 288 at Page 116 and additional Protective Covenants recorded July 19, 1979 in Book 288 at Page 567.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to The Chambertin Townhouse Homeowners Association, a Colorado non-profit corporation, its successors and assigns.

(b) "The properties" or "the property" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration.

(c) "Plat" shall mean and refer to the Plat of The Chambertin Subdivision, recorded in Plat Book No. 314, Page No. 993, No. \_\_, on Film \_\_, Reception No. 211368, in the records of the Clerk and Recorder of Eagle County, Colorado, and any amended, supplemental or additional plats or filings thereof designating lots, parts of lots, and living units.

(d) "Common area" shall mean and refer to the areas of land shown on the recorded subdivision plat of the properties designated as Outlot A, as shown on the recorded plat of Chambertin Townhouses, Filing No. 1, a replat of Lots 46 and 47, Block 1, Benchmark at Beaver Creek, Amendment No. 4, Town of Avon, County of Eagle, State of Colorado, which areas are intended to be devoted to the common use and enjoyment of the owners of the properties, subject to the terms and conditions hereof. However, no such dedication shall occur as to any parcel of land until that parcel has been conveyed to the Association and the deed conveying same has been recorded in the records of the Clerk and Recorder of Eagle County.

(e) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of common areas as heretofore defined.

(f) "Living unit" shall mean and refer to any portion or all of a building situated upon the properties designed and intended for use and occupancy as a residence by a single family and the lot on which it is constructed.

(g) "Declarant" shall mean and refer to The Chambertin Company, a General Partnership, its heirs, successors or assigns.

(h) "Member" shall mean and refer to all those owners who are members of the Association as provided in Article III, Section 1, hereof.

(i) "Mortgage" shall include a deed of trust or other form of hypothecation.

(j) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot situated upon the properties including Declarant but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. The Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the Town of Avon, County of Eagle, State of Colorado, and is more particularly described as follows:

Chambertin Townhouses, Filing No. 1, a replat of Lots 46 and 47, Block 1, Benchmark at Beaver Creek, Amendment No. 4, Town of Avon, County of Eagle, State of Colorado, all of which real property shall hereinafter be referred to as "the property" or "the properties".

Section 2. Additions of Specific Property to Existing Property. The balance of Lot 46/47 a replat of Lots 46 and 47, Block 1, Benchmark at Beaver Creek, Amendment No. 4, Town of Avon, County of Eagle, State of Colorado, may become a part of this Declaration at the election of the Declarant or Declarant's successor in interest. Declarant or Declarant's successor in interest may replat and resubdivide the balance of Lot 46/47, formerly Lots 46 and 47, Block 1, Benchmark at Beaver Creek, Amendment No. 4, in a manner similar to the replatting and resubdividing of Chambertin Townhouses, Filing No. 1, subject to the approval of the appropriate governmental authorities.

The additions authorized under this subsection shall be made by filing a supplementary declaration of covenants and restrictions with respect to the addition of property which shall extend the scheme of the covenants and restrictions of this Declaration to such

property. Such addition of property must be made by Declarant or Declarant's successor in interest on or before June 1, 1986.

Such supplementary declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such supplementary declaration revoke, modify or add to the covenants established by this Declaration within the existing property.

Section 3. Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration with the property together with the covenants and restrictions established on any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the property except as hereinafter provided.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any land or living unit which is or may be subject by covenants of record to assessment by the Association shall be a member of the Association, provided that

any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those owners of a fee or undivided fee interest in a living unit as defined in Section 1. When more than one person holds such interest or interests in any living unit, all such persons shall be members, and the vote for such living unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such living unit.

Class B. Class B members shall be those owners who own land or lots on which no living unit exists, and which has not been used as the land (lot) assigned to any living unit (or group of living units) and which living unit has not received a Certificate of Occupancy issued by the applicable authorities and which is not exempt from assessment under the terms of Article V, Section 12. By way of explanation, it is stated that Class B members are intended to be those owners who own land or lots within the property but the living units have not received a Certificate of Occupancy or no living units have been constructed.

Each Class B member shall be entitled to three votes for each living unit which could be constructed on his land under then applicable Town of Avon, Colorado, zoning, subdivision and Planned Unit Development regulations and permits (assuming existing site plan requirements, building permit requirements and the like were met).

Class B membership shall cease and become converted to Class A membership on the happening of the sooner of the following events:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;

(b) On October 1, 1984.

After the happening of the sooner of the above two events, any member who would have been a Class B member but for the foregoing termination of Class B membership shall have one vote for each living unit which could be constructed on his land under then-applicable Town of Avon zoning, subdivision and Planned Unit Development regulations and permits (assuming existing site plan requirements were met).

#### ARTICLE IV

##### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every Class A member shall have a right and easement of enjoyment in and to the common properties and such easement shall be appurtenant to and shall pass with the title to every living unit. Class A members may assign their easement and right of enjoyment with respect to any living unit to a tenant occupying that living unit. However, no right or easement of enjoyment shall arise in any parcel of the common areas until that parcel has been conveyed to the Association and the deed conveying same has been recorded on the records of the Clerk and Recorder of Eagle County.

Section 2. Title to Common Areas. The Declarant may retain the legal title to the common areas until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey the common areas to the Association, free and clear of all liens and encumbrances, not later than at the time of the closing of the sole of the first lot, whichever date shall first occur. The Association agrees to accept the common areas as conveyed and to operate, maintain and repair any structures, landscaping, paths,

parking areas, drainage facilities and other facilities and amenities thereon, using its powers of assessment granted herein to raise funds with which to do so.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant, their successors and assigns, and of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the common areas and in aid thereof to mortgage said properties; provided that any such mortgage shall require the same vote and quorum of members of the Association as are required for the levying of special assessments under Article V, Section 4, and the vote of not less than 75% of the first mortgagees. In the event of a default upon any such mortgage, the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members until the mortgage debt is satisfied, whereupon the possession of such properties shall be returned to the Association and all rights of the members hereunder shall be fully restored; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and

(c) The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and

(d) The right of the Association to charge reasonable admission and other fees for the use of the common areas; and

(e) The right of the Association to dedicate or transfer all or any part of the common areas to any public agency, authority, or



utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless members entitled to cast three-fourths (3/4) of the votes of each class of membership and not less than seventy-five percent (75%) of the first mortgagees of each living unit within the properties agree to such dedication, sale or transfer, purpose or condition, and an instrument reflecting such agreement is recorded with the Clerk and Recorder of Eagle County, Colorado, and written notice of the proposed agreement and action thereunder is required to be sent to every member at least ninety (90) days in advance of any action taken.

#### ARTICLE V

##### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner, except Declarant, of any Lot situated on the Property, hereinbefore described, or subsequently annexed hereto, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges; and
- (b) special assessments for capital improvements. Such assessments shall be fixed, established, and collected from time to time, as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection, including reasonable attorney fees, as hereinafter provided, shall be a charge on his Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs, and reasonable attorney fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Declarant, for each Lot owned by it within the Properties

hereinbefore described or subsequently annexed thereto, and for which a Certificate of Occupancy has been issued in regard to the living unit constructed thereon, hereby covenants and agrees to pay to the Association as hereinafter provided; provided, however, the the maximum assessment which may be assessed against Declarant shall not exceed One Hundred and Seventy Dollars (\$170.00) per Lot per month.

Section 2. Purpose of Assessments. The assessments levied by the Association through its Board of Directors shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the properties and in particular for the improvement and maintenance of the living units, properties, utility services, and facilities devoted to this purpose and related to the use and enjoyment of the common areas and of the living units situated upon the properties, including, but not limited to, the payment of taxes and all types of insurance and premiums deemed necessary by the Board of Directors, and repairs, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, and further including, but not limited to, the following: the construction, reconstruction, planting, repair, fertilization, application of herbicides and pesticides to, and cutting and trimming, irrigation and care of all manner of landscaping and irrigation systems, either on common areas or other properties; construction, reconstruction, repair and maintenance of sidewalks and bike paths, retaining walls, spas, solar units and windows; spraying of insecticides; construction, maintenance, repair and rebuilding of all manner of drainage facilities; providing adequate insurance of all types, and in such amounts deemed necessary by the Board of Directors with respect to common areas, buildings, private and and public ways; maintenance of the access easement at the East end of the property; legal and accounting fees and costs associated

with activities of the Association; carrying on all manner of recreation programs; creation of reasonable and adequate reserves for working capital or anticipated replacement or repair of property or other major expenditures including the common areas; and all things necessary or incidental thereto.

Expenditures for landscaping may be made within the properties on land other than the common area for such purposes as, by way of example, street islands or median strips.

Section 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Thousand Forty Dollars (\$2,040.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased in an amount in excess of fifteen percent (15%) by vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors of the Association shall, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year, which may be a lesser amount than the maximum.

(d) Nothing herein shall prevent the Board of Directors from collecting the annual assessment on a monthly basis.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy a special assessment, applicable to such

years as are described in the resolution authorizing the assessment, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the common properties, including the necessary fixtures and personal property related thereto, provided that a resolution establishing any such assessment shall have the assent of three-fourths (3/4) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

All or any part of the proceeds of any special assessment made as above provided, for the entire period over which the assessment is to be levied or any part thereof, may be assigned to a lender as security for repayment of a loan or loans made to pay, in whole or in part, the expenditure for which the special assessment was authorized. The rights granted to the lender under such assignment may include the right to require the Association to collect the special assessment, and the right of the lender directly to enforce any right of the Association to collect the special assessment. Any such assignment of the proceeds of any special assessment shall require approval by vote in the same manner as the special assessment itself.

Section 5. Change in Basis and Maximum of Annual Assessments.

Subject to the limitations of Section 3 hereof, and for the period therein specified, the Association may change the maximum and basis of the assessments fixed by Section 4 hereof prospectively for any such period, provided that any such change shall have the assent of three-fourths (3/4) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of

the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2, hereof, and provided further that land on which no living unit exists shall not be assessed except in the manner provided for herein.

Section 6. FHLMC Restriction. Unless at least seventy-five percent (75%) of the first mortgagees of the lots within the properties have given their prior written approval, the Association shall not be entitled to change the method of determining the obligations, assessments, dues or other charges which may be levied against a lot.

Section 7. Quorum for any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Date of Commencement of Assessments. Due Date. The annual assessments provided for herein shall commence as to each Lot on the date of conveyance thereof, and with respect to Lots owned by Declarant, upon the issuance of a Certificate of Occupancy for the living unit situated thereon. The first annual assessment shall be

adjusted according to the number of months and days remaining in the calendar year.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each lot or living unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any owner.

Written notice of the assessment shall thereupon be sent to every owner subject thereto.

The Association shall upon demand at any time furnish to any owner liable for said assessment or any mortgagee or potential mortgagee or purchaser of property subject to assessment a certification in writing signed by an officer of the Association, setting forth whether said assessment has been paid and the amount of any unpaid assessments. As to any mortgagee or purchaser who had disbursed funds in reliance thereon, such certificate shall be conclusive against the Association as to items set forth therein.

Section 10. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of the Association. If an assessment is not paid on the date when due as specified in Section 9 or as set by the Board of Directors, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property subject to the assessment, which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The assessment shall be a lien against the real property which comprises the lot or living unit assessed, and all appurtenances thereto and fixtures thereon. The real property comprising a lot or

living unit shall include fee ownership in any lot occupied by a single-family dwelling, together with the dwelling and all fixtures and appurtenances. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may assess a \$15 per month late charge. The Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property subject thereto; and there shall be added to the amount of such assessment interest as above provided plus all costs of collection, including the Association's reasonable attorney's fees incurred in connection with the default and collection of amounts due. If the Association elects to file a lien, the Association may file with the Clerk and Recorder of the County wherein the property is situate, a Statement of Lien with respect to the property, setting forth the name of the owner, the legal description of the property, the name of the Association, and the amount of delinquent assessments then owing, which Statement shall be duly signed and acknowledged by the President or a Vice President of the Association, and which shall be served upon the owner of the property by certified mail to the address of the property or at such other address as the Association may have in its records for the owner of the property. Thirty (30) days following the mailing of such notice, the Association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. In either a personal or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs and reasonable

attorney's fees with respect to the action. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his living unit.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to issue of a deed to such property pursuant to a decree of foreclosure, or a public trustee's deed pursuant to foreclosure through the public trustee, or a deed issued in any other proceeding in lieu of foreclosure. Such deed shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all common properties as defined in Article I, Section 1, hereof; (c) all properties exempted from taxation by the laws of the State of Colorado, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

Section 13. Examination of Books and Records. A first mortgagee shall have the right to examine the books and records of the Association.

Section 14. Notice to Mortgagee. Upon request of a first mortgagee of any living unit, the Association shall report to such first mortgagee any unpaid assessments or other default under the terms of this Declaration which are not cured by said mortgagee's