

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

THIS FIRST AMENDMENT ("Amendment") TO MASTER DECLARATION OF PROTECTIVE COVENANTS FOR TOP OF MILL (the "Declaration"), effective this 18th day of October 2002, 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").

RECITALS

A. Declarant is the record owner of that certain real property situated in Pitkin County, Colorado, as more particularly described on Exhibit "A" attached hereto and by reference made a part hereof (the "Property") known as Top of Mill.

B. The Declaration was recorded October 4, 2002 in the office of the Pitkin County Clerk and Recorder as Reception No. 473073.

C. Declarant desires to amend the Declaration as provided herein.

Now Therefore, Declarant hereby amends the Declaration as set forth below.

1. There is hereby added to the Declaration a new Section 9.17 as follows:

9.17 Lawn, Garden and Landscape Irrigation. Lawns, gardens and landscaping shall be irrigated only by means of drip or sprinkler irrigation systems. The total area within Top of Mill eligible to be irrigated with treated water provided by the City shall not exceed 101,500 square feet, which shall be allocated among the Parcels as follows:

Parcels 1 and 2: no more than 13,500 sq. feet per Parcel shall be irrigated

Parcel 3: no more than 10,000 sq. feet shall be irrigated

Parcels 4 and 5: no more than 5,000 sq. feet per Parcel shall be irrigated

Parcel 6: no more than 7,000 sq. feet shall be irrigated

Parcel 7: no more than 13,000 sq. feet shall be irrigated

Parcel 8: no more than 15,000 sq. feet shall be irrigated

Open Space Parcel A: no more than 10,000 square feet shall be irrigated

Open Space Parcel B: no more than 9,500 square feet shall be irrigated in any one irrigation season pursuant to a rotational irrigation phasing plan approved by the City. Upon termination of the phased irrigation plan, a maximum of 9,500 sq. feet may be irrigated on a permanent basis, said irrigated area to be restricted to the area behind Parcel 1.

Water rates for water deliveries in excess of 7500 gallons per ECU per month shall be twice the water rates charged for water deliveries up to 7500 gallons per ECU per month. There shall be no landscape irrigation using raw water unless a separate raw water agreement is entered into with the City (which the City has no obligation to do) and there shall be no permanent (after conclusion of the "phased irrigation plan") landscape irrigation with either treated water or raw water on Open Space Parcel B,



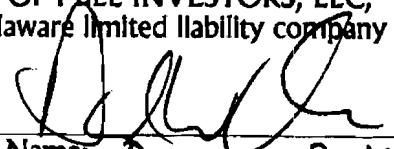
except 9,500 sq. feet in the area behind Parcel 1. Where two or more Parcels are owned or controlled by a common Owner, the allowable irrigated acreage can be shared among such Parcels, provided that the cumulative square footage of Irrigated acreage for all such Parcels held by a common Owner does not exceed the amounts set forth above for all such commonly-held Parcels. Prior to development of Improvements on any Parcel, the ECU's allocated to said Parcel, and for which payment has been made to the City may be used for irrigation purposes to the extent of the allowable irrigable acreage for such Parcel. Provided however, single family parcels shall not be allocated more than 4.0 ECU's per parcel. Upon development of the Parcel, the ECU's shall be re-inventoried in accordance with Section 25.12.070 of the City Code. All water use will be consistent with the City's Water Policy Resolution (Resolution No. 5, as amended, (Series of 1993), and water conservation ordinances.

For purposes hereof, the "phased irrigation plan" shall consist of a plan prepared by Declarant (or the Master Association, as the case may be) and submitted to the City prior to each irrigation season, which shows not more than 9,500 sq. feet of temporary irrigation to facilitate establishment of a drought tolerant native grass and/or wildflower vegetative cap on Open Space Parcel B. Each area marked for temporary irrigation shall be discontinued and temporary irrigation lines removed after no more than three consecutive irrigation seasons and the water shall then be rotated to the next area not exceeding 9,500 sq. feet, which has not previously been irrigated. One 9,500 square foot area may be irrigated temporarily for up to three consecutive irrigation seasons; however, Declarant and the City anticipate that the vegetative cap can be established for the entire Open Space Parcel B by the end of six years, commencing with the 2003 irrigation season. Should the vegetative cap not be established for the entire Open Space Parcel B by the end of the 2008 irrigation season, and should Declarant (or the Master Association, as the case may be) wish to continue phased irrigation of 9,500 square foot portions of Open Space Parcel B as herein provided, Declarant (or the Master Association, as the case may be) may do so, but the water rates to be paid to the City for continued phased irrigation of Open Space Parcel B after the 2008 irrigation season shall be twice the water rates that would otherwise be charged for such water deliveries. At such time as Declarant (or the Master Association, as the case may be) determines that the vegetative cap has been established on Open Space Parcel B, or that no further phased irrigation will be undertaken, permanent irrigation of Open Space Parcel B, not exceeding 9,500 sq. feet of coverage shall be installed within the area adjacent to Parcel 1, and the water rates for such permanent irrigation shall be those established from time to time by the City.

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

IN WITNESS WHEREOF, the Declarant has executed this Amendment to the Declaration this 18th day of October 2002.

Declarant:
TOP OF MILL INVESTORS, LLC,
a Delaware limited liability company

By: 
Print Name: DAVID W. Parker
Title: Director

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ACKNOWLEDGEMENT TO
FIRST AMENDMENT TO MASTER DECLARATION OF PROTECTIVE COVENANTS
FOR TOP OF MILL

STATE OF ColorADO)
COUNTY OF PITKIN) ss.

The foregoing First Amendment to Master Declaration of Protective Covenants for Top of Mill was acknowledged before me this 18th day of October, 2002 by David W. Parker (name), Director (title) of Top of Mill Investors, LLC, a Delaware limited liability company.

WITNESS my hand and official seal.

MY COMMISSION EXPIRES

My commission expires: 11/09/2002

Linda A. Christence
Notary Public



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Exhibit "A"
Legal Description of Property

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.



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