

SECOND AMENDED AND RESTATED DECLARATION OF PROTECTIVE
COVENANTS AND RESTRICTIIONS

SHIELD O TERRACES - A SUBDIVISION IN PITKIN COUNTY, COLORADO

This amended and restated declaration of protective covenants and restrictions is made by the Association to be effective on the ____ day of _____ 20__.

1. DECLARATION - RECITALS - DEFINITIONS – PURPOSE

1.1 Declaration

(a) Declarant for itself and its successors and assigns hereby declares that the subdivision, the property therein and the members of the Association shall be subject to the covenants, conditions, restrictions, limitations and other provisions set forth in this declaration for the duration thereof. Such provisions shall run with the title to the land to the fullest extent permitted by law, shall be binding upon all members of the Association, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each member of the Association, all to the fullest extent permitted by law.

(b) Any prior declaration, specifically as set forth in 1.2(b) below, is hereby amended and restated in its entirety as set forth in this Declaration and any prior declaration is superseded by this Declaration.

1.2 Recitals

(a) The subdivision was created by Snowmass Development Company as described in Book 235, page 137 et seq. in the office of the Pitkin County Recorder of Deeds.

(b) The Association and Architectural Review Committee and protective covenants for the subdivision were created by Snowmass Development Company by document dated May 9, 1968 and recorded June 24, 1968 in the deed records of Pitkin County in Book 235 page 137.

(c) The Association, originally an unincorporated association, became a not for profit corporation under Colorado law on June 10, 2000 pursuant to authority conferred in the original Declaration

(d) Maintenance, improvement and use of the Road is provided for in the bylaws and are subject to a written agreement with PITKIN County, dated June, 2000.

(e) The protective covenants for the subdivision were amended in May of 2003.

(e) The amendments set forth in this document are timely and made pursuant to authority conferred in the amended Declaration and have the consent and approval of two-thirds of the Members as required in the original Declaration.

1.3 Definitions

(a) The Architectural Review Committee shall be those persons designated as the Board in the Bylaws of the Association and perform those functions set forth in section 4 of this Declaration.

(b) The Association and Architectural Review Committee is Shield O Terraces Homeowners Association, a not for profit corporation under Colorado law.

(c) The Board is the Board of Directors of the Association as provided in its Articles of Incorporation, Bylaws, and the provisions of Colorado law.

(d) The Bylaws are the bylaws of the Association as established by the Board and as amended by the Board.

(e) The Members are the members of the Association as determined under its Articles of Incorporation, bylaws and the provisions of Colorado law.

(f) Owners are those persons owning beneficial interests in property in the subdivision.

(g) Residents are those persons residing in the subdivision.

(h) The Original Declaration is the document referred to in section 1.2 (b) of this Declaration.

(i) The Amended Declaration is the Amended and Restated Declaration of Protective Covenants and Restrictions to be effective the 10th day of May 2003.

(j) This Declaration is the Second Amended and Restated Declaration of Protective Covenants and Restrictions to be effective the ___ day of ____ 20__.

(k) The Protective Covenants are those provisions in this Declaration and the Original Declaration adopted for the mutual protection and enhancement of interest of the Members in their ownership, use and development of property in the subdivision.

(l) The Roads are private, serving the members of the Association.

(m) The Subdivision is that geographical area known as Shield O Terraces and described in Plat Book 235 page 137 of Pitkin County.

(n) Tract and Lot refer to parcels of land in the Subdivision.

1.4 Purpose

The purpose of the covenants and restrictions in this Declaration is to assist and help guide the development, planning, use and maintenance of the Subdivision as an exclusive, highly desirable, rural, residential area with spacious and secluded home sites, usage restricted to residential purposes, and with a natural vegetation growth preserved so far as is consistent with such use.

2. THE ASSOCIATION

2.1 The Association is the governing body for the subdivision.

2.2 The Association shall hold an annual meeting each calendar year which all Members are entitled to attend. The Members shall elect the Board at the annual meeting, and the Board shall serve for a one year term.

2.3 The Board shall have the authority to make decisions for the Association. The Officers of the Association shall be chosen by the Board. The Members shall have such authority as is conferred in the Bylaws and the statutory law of the State of Colorado.

2.4 Procedures for notices, quorums, voting and other like matters for the Board, Officers and the Members shall be determined in accordance with the Bylaws and the statutory law of the State of Colorado.

2.5 Copies of the Articles of Incorporation for the Association and the Bylaws shall be available to any Member on request to the President. Neither the Articles of Incorporation nor the Bylaws shall be amended or otherwise changed so as to be inconsistent with this Declaration. If any provision of the Bylaws shall be deemed inconsistent with the provisions of this Declaration, the provisions of this Declaration shall control.

2.6 Association Rules. The Board may adopt, amend and repeal rules and regulations to be known as the Association Rules. These rules may address all matters that are of mutual concern to the Members in the use and enjoyment of their property and the Road, including but not limited to: annual assessments, special assessments, collection costs and interest on delinquent assessments, and collection procedures for delinquent assessments. A copy of the Rules of the Association shall be available to any Member on request to the President. The Rules of the Association shall be consistent with the Declaration. If any provision of the Rules of the

Association shall be deemed to be inconsistent with the provisions of this Declaration, the provisions of this Declaration shall control.

2.7 Enforcement of Covenants and Association Rules. The Association shall have the exclusive right to enforce the covenants and restrictions set forth in this Declaration and any breach of the Association Rules. However, if the Association shall fail or refuse to enforce this Declaration or the Association Rules, then any Member may enforce them by appropriate action, in court if necessary, but only at the sole cost and expense of the Member and without cost or expense to the Association. If the Association fails to enforce this Declaration or the Association Rules over time, the Association maintains its right to enforce the covenants and restrictions set forth in this Declaration and any breach of the Association Rules.

3. THE ROAD

3.1 Shield O Road - including its branch roads, Casey Court, Blue Sage and Old Pond - is a private road, built, improved, maintained and plowed at the sole cost and expense of the Association for the exclusive use of the Members, their guests and business visitors.

3.2 The Association may adopt as part of its Association Rules reasonable provisions for the improvement, maintenance and winter snow plowing of the road and all costs and expenses associated therewith pursuant to section 2.6 of this Declaration.

3.3 The Association has entered into an agreement with Pitkin County dated June, 2000 for the emergency use of the Road and for the continued maintenance and plowing of the Road.

3.4 The Board may impose a special use fee on any Owner or Member for use and damage to the Road caused by construction vehicles during any construction period.

4. ARCHITECTURAL REVIEW COMMITTEE (ARC)

4.1 The Architectural Review Committee (ARC) (committee in this section 4 of the Declaration) shall have the same membership as the Board and/or additional members as appointed by the board. The chair of the committee shall be the President of the Association or such other member as may be designated by the Board. The committee shall meet on the call of the chair.

4.2 Submission of Plans. No improvements as defined in the Design Guidelines described in section 4.3 shall be made to any property in the subdivision until and unless complete plans therefor are submitted in writing to, and approved by, the committee prior to the commencement of any such improvements. Sketches for preliminary consideration may be submitted; however, the committee shall not be finally bound nor committed until complete architectural plans are submitted and approved.

4.3 Design Guidelines for Improvements. Every Improvement on any Lot shall comply with the Design Guidelines as adopted from time to time by the Architectural Review Committee, and no Improvement shall be made or permitted on any Lot until such Improvement has been approved by the ARC in accordance with **Error! Reference source not found.** 4.3. Any plans submitted to Pitkin County in order to obtain a building permit shall not differ in any way from the plans approved by the ARC. If the plans approved by the Pitkin County building department differ from the plans approved by the ARC, all prior approvals by the ARC with respect to such plans are automatically revoked and Applicant shall resubmit the plans for ARC approval. The ARC may grant an Applicant variances from the requirements of this Declaration and/or the Design Guidelines only upon demonstration by the Applicant that conformance to the requirements of this Declaration and/or the Design Guidelines would create an undue hardship on the Applicant.

4.4 Approval of Plans. The committee shall issue its written approval or disapproval of any written submissions to it. Failure to act on a written submission for thirty days shall be deemed approval of the submission request. Committee action shall be determined by a majority vote of all members of the committee. Failure to obtain such a majority vote on any proposal submitted to the committee shall be deemed a disapproval of that proposal.

4.5 Disapproval of Plans. The committee shall disapprove any plans which in its judgment do not satisfy the provisions of this Declaration or are insufficient for it to exercise the judgment required of the committee by this Declaration. Any decision of disapproval by the committee may be appealed to the Members of the Association, and a two-thirds vote of all Members of the Association may override the decision of the committee. Such vote may be by mail or taken at a regular or special meeting as determined by the Board.

4.6 Enforcement of Decisions: The Board shall have the authority to enforce DRC decisions by taking whatever measures are appropriate, including, if necessary, instituting proceedings in law or in equity in the courts. If the Board shall incur costs and expenses, including legal and other fees, in enforcing a decision, the applicant or Member against whom the enforcement action is taken shall pay all such reasonable costs and expenses and any legal judgment or decree shall assess all such costs and expenses to such applicant or Member.

4.7. Records. The committee shall keep written records of all applications and of all actions of approval, disapproval, or other actions taken by it under the provisions of this Declaration.

4.8 Variances: The Board may grant variances to any of the covenants contained in this Declaration, but only by a unanimous vote from all members of the ARC. If the ARC approves a variance, it shall give a written notice thereof to each Member of the Association, and the opportunity to object within thirty days of the date of mailing of the notice. If three or more Members of the Association object in writing within the thirty day period, such variance shall not be approved without a two-thirds vote of all members of the Association. Such vote may be by mail or taken at a regular or special meeting as determined by the Board. If fewer than three

Members of the Association object in writing to the variance within the thirty day period, the variance shall have the final approval of the Association.

5. COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS APPLICABLE TO OWNERS, MEMBERS AND RESIDENTS

The following covenants, conditions, restrictions and reservation of rights shall apply to all property in the subdivision and to the Members, Owners and Residents, and where an Owner is required to perform any of the following obligations, the Owner shall do so at the Owner's sole expense.

5.1 **Compliance with Law.** Nothing shall be done or kept on any Lot in violation of any applicable Law, and each Lot shall be used, kept and maintained in compliance with all applicable Laws.

5.2 **General Restrictions:** Usage shall be consistent with zoning restrictions and regulations adopted by Pitkin County. No business, charitable or not for profit activity shall be permitted in the subdivision unless approved by majority vote of the Members on recommendation of the Board. Any business use of property in the subdivision on the effective date of this Amended Declaration is approved.

5.3 **Subdivision.** No tract shall be subdivided into areas less than its original dimension except as appropriate for utility or other easements. Lot line adjustments between contiguous tracts are permitted.

5.4 **Trash and Litter.** All tracts shall be kept free of rubbish, trash, litter, and abandoned or obsolete property items. The Board may enforce this restriction by appropriate action, including legal action, and all cost and expense incident to such enforcement shall be charged to the member owning the tract.

5.5 **Utility Lines.** Any new (as of the effective date of this Declaration) water, gas, electric and telephone pipes or lines and all other utility lines shall be buried except for temporary facilities approved by the Architectural Committee.

5.6 **Signs.** No signs, billboards or advertising structures may be erected or displayed except for a single "For Sale" or "For Rent" sign.

5.7. **Animals and Wildlife.** Domestic pets - dogs and cats - shall be kept under control at all times by their owners. Horses and other animals shall be maintained solely for pleasure and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise or become a nuisance. Upon the request of any member, the Board shall determine whether a particular animal has become a nuisance. Any decision by the Board shall be final and

conclusive and may be enforced in the same manner as other covenants and restrictions contained in this declaration.

5.8. Temporary Occupancy and Temporary Buildings. No trailer, mobile home, basement of any incomplete building, shack, garage or barn, and no temporary building or structure, of any kind, shall be used at any time for a residence, either temporary or permanent. A tent or tepee may be erected for seasonal or recreational use.

5.9. Maintenance of Landscaping. Members shall make reasonable efforts to remove dead trees and bushes from their properties. Members shall make reasonable efforts to control the growth of noxious weeds, particularly on areas adjacent to any street or road, and to cooperate with the Association to prevent the spread of noxious weeds and plants.

5.10 Construction Activities. A property shall be kept and maintained in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and building materials will be piled and stored only in such areas as may be approved by the Architectural Review Committee. Construction equipment and vehicles shall be parked in areas approved by the Architectural Review Committee.

5.11 Repair of Structures. No building, structure or other improvement on any property shall be permitted to fall into disrepair or to remain otherwise than in a good, sanitary and sightful condition and adequately painted. If any building, structure or other improvement is damaged or destroyed, the Board shall notify the member, and then within 180 days after such event and subject to the provisions of section 6.1 above, such building, structure or improvement shall be immediately, repaired, rebuilt, or demolished and the site restored.

5.12 Mining, Drilling, Excavation and Removal. No property shall be used in any manner, at or below the surface, to explore for or to remove any oil or other hydrocarbons, or as a mining operation for minerals, gravel, earth or any earth substance of any kind.

5.13 Trash - Containers and Collection. No garbage or trash shall be placed or kept on any property except in a covered container, which shall not be visible except for the shortest time necessary for collection. All rubbish, trash and garbage shall be removed from a property and shall not be allowed to accumulate or be burned thereon. No outdoor incinerators shall be kept or maintained on any property.

5.14 Machinery and Equipment. No non-residential machinery or equipment of any kind shall be placed, stored, operated or maintained upon or adjacent to any property unless it is usual and customary in connection with the use, maintenance or construction of a building or other structure, driveways, or association roads.

5.15 **Sewage Disposal.** Any sewage disposal facilities, sanitary system, septic tank, sewage leach, percolating system, or drain field shall be in conformity to law and applicable health regulations and subject to approval by the Architectural Committee.

5.16 **Storage Tanks.** Any tank for the storage of fuel or other fluids installed outside any structure shall be buried below the surface of the ground or screened in a manner satisfactory to the Architectural Committee.

5.17 **Fire Protection.** The Board may take reasonable steps to protect property in the subdivision from the risks and dangers of wildfire. If the Board shall determine that a condition exists on any property that creates a substantial risk or danger of commencement or spread of wildfire, the Board shall request the Owner of the property to remove or abate the condition, and if the Owner shall neglect or refuse to do so, upon reasonable notice and acknowledgement the Board may enter upon the property and remove or abate the condition, and in either event the Owner shall bear the entire cost of the removal or abatement.

5.18 **Parking.** There shall be no overnight parking of any motor vehicles on any of the road right of ways in the subdivision.

5.19 **Right of Entry.** During reasonable hours and upon reasonable notice and acknowledgement to a Member or Resident of any property, the Board, any member thereof, or any authorized representative of the Board, shall have the right to enter upon and inspect any property, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with.

5.20 **Health, Safety and Welfare.** In the event any additional uses, activities and facilities not described herein are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Members and Residents, the Board may make rules restricting or regulating their presence in the subdivision as part of the Association Rules. Water usage from private wells may affect the water supplies of other Members of the Association. In times of drought or other water crisis the Board shall take whatever action it deems appropriate to protect water supplies of all Residents.

5.21 **Hunting and Firearms.** No hunting of mammals, reptiles, or birds shall be permitted in the subdivision without Board approval. No firearms shall be discharged within the subdivision without Board approval.

6. EASEMENTS

There is reserved to the Association, its successor and assigns, in trust for the benefit of the members perpetual easements fifteen feet in width on each side of the boundary line along the entire perimeter of each tract for the purpose of constructing, installing, maintaining,

operating, replacing, enlarging, or repairing of electrical, telephone, water irrigation, sewer and gas or other similar lines, pipes, wires, poles, ditches and conduits. Walking and riding trails and perpetual anchor easements adjacent to all such utility easements are also reserved.

8. MISCELLANEOUS

8.1 Amendments. Any of the covenants and restrictions contained in this declaration may be altered or amended by two-thirds (2/3) approval of the members at any time.

8.2 Interpretation. The Board shall determine the meaning of any provisions of this Declaration and in doing so may seek the advice of legal counsel. Any interpretation made by the Board shall be final and binding on all concerned and interested parties unless a court of competent jurisdiction shall determine otherwise.

8.3 Severability. If a court of competent jurisdiction shall finally determine for any reason that one or more provisions of this Declaration is contrary to law and unenforceable, such determination shall not affect or invalidate in any way the remaining provisions of this Declaration which shall remain in full force and effect.

8.4. Captions, Titles and Headings. All captions, titles, and headings in this declaration document are for the purpose of reference and convenience only and shall not limit, modify or otherwise affect any of the provisions hereof or be used in determining the intent or meaning thereof.

8.5. Notices and Mailing Addresses. Any notice required or permitted by this declaration shall be in writing and be given by United States mail. The Secretary of the Association shall keep an accurate list of the mailing addresses of the Members and in compiling and maintaining that list may rely on records maintained by the Pitkin County Assessor.

This amended Declaration is approved by the Board and by _____ Members of the Association effective the 10th day of May 2003. Copies of the Board resolution adopting this amended declaration and the separate approvals of the Members are attached hereto and by this reference made a part hereof. A separate copy of the membership list of all members of the Association on the date of this amended Declaration and their respective state parcel numbers is also attached to this document and by this reference made a part hereof.

Dated _____
SHIELD O TERRACES HOMEOWNERS ASSOCIATION
DECLARANT

BY: _____

President

State of Colorado
County of Pitkin

_____, President of the Shield O Terraces
Homeowners Association personally appeared before me on this date and acknowledged that he
executed the foregoing instrument as his voluntary act and deed.

Notary Public