

DECLARATION OF GOLF COURSE PLAY
AND OPERATIONAL EASEMENT

STATE OF COLORADO)
)
COUNTY OF GARFIELD)

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION OF GOLF COURSE PLAY AND OPERATIONAL EASEMENT (this "Declaration") is made this 25th day of September 1996, by CRYSTAL RIVER LIMITED PARTNERSHIP, a Delaware Limited Partnership.

WHEREAS, Declarant is the owner of that certain tract of land located in the Town of Carbondale, Garfield County, Colorado, descried on Exhibit "A" attached hereto and made a part hereof for all purposes (hereinafter referred to as the "Golf Land"); and

WHEREAS, Declarant is also the owner of that certain tract of land, located in the Town of Carbondale, Garfield County, Colorado, adjacent to the Golf Land described on Exhibit "B" attached hereto and made a part hereof for all purposes (hereinafter referred to as the "Community Area"); and

WHEREAS, Declarant desires to develop and construct a housing development, together with common areas, streets, roads, and other incidental uses on the Community Area; and

WHEREAS, Declarant desires to develop and construct, or cause to be developed and constructed, a public golf course containing eighteen (18) holes of golf, proshop, driving range, and other recreational improvements related thereto on the Golf Land (collectively, the "Golf Course"); and

WHEREAS, in order to facilitate the construction and future operation of the Golf Course, Declarant desires to create certain easements and to place certain restrictions and encumbrances on the Community Area for the benefit of the Golf Land; and

WHEREAS, in order to facilitate the construction and future operation of the housing development to be located on the Community Area, Declarant desires to create certain easements and to place certain encumbrances on the Golf Land for the benefit of the Community Area,

NOW THEREFORE, Declarant does hereby create and reserve, for the mutual benefit of the Golf Land and the Community Area, the following easements, restrictions, and obligations:

DELANEY & BALCOMB, P.C.
P.O. Drawer 790
Glenwood Springs, CO 81602

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I.

CONSTRUCTION EASEMENTS

Declarant hereby encumbers the Community Area for the benefit of the Golf Land with a temporary easement and right of entry onto portions of the Community Area for the construction of certain improvements as follows:

1. Construction of Golf Cart Paths, Utilities and Drainage Features. A temporary construction easement is hereby created and reserved for the construction of water supply lines, drainage features, irrigation lines, sanitary and storm sewer lines, electric and gas supply lines, telephone lines, other utility service lines, golf cart paths, and other improvements related to and reasonably necessary for the operation of the Golf Course (collectively, the "Facilities") over portions of the Community Area designated as "Master Common Areas" and/or "Utility or Drainage or Irrigation Easements" on the Plat or Plats thereof (collectively, the "Temporary Easement").

2. Construction of Golf Course. A temporary construction easement is hereby created and reserved for the construction of the Golf Course, and all other related improvements over and across portions of the Community Area adjacent to and abutting the Golf Land (the "Golf Course Construction Easement"). The Golf Course Construction Easement shall extend for twenty feet (20') onto the Community Area along the Golf Course Corridor Easement, as same shall be designated on the recorded plat or plats of the Community Area, and along the mutual property line (the "Mutual Boundary Line") between the Community Area and the Golf Land in areas without a Golf Course Corridor Easement (the Golf Course Construction Easement and Temporary Easement are collectively hereinafter referred to as the "Construction Easement").

3. Privileges and Obligations. The easement rights created and reserved herein shall include (i) the right to cut, trim, or remove any trees with prior approval by Declarant or other obstructions which may interfere with the construction, reconstruction, or operation of the Golf Course or the Facilities, pile dirt and materials, and to operate equipment on the surface of the land, within the Construction Easement tracts only, during periods of construction of the Golf Course and Facilities, and (ii) the right of ingress and egress onto said Construction Easement tracts for the purpose of exercising the rights herein granted. All such work in connection with the Construction Easement granted herein shall be conducted in such a manner as to prevent injury to person or property. The Golf Land owner and/or all persons under contract with it shall exercise all necessary precautions to prevent injury as a result of any open trench and/or construction, maintenance, and/or repair of the Golf Course and Facilities, including, but not limited to, barricades.

4. Nonexclusive Rights. The easement rights created and reserved herein shall be nonexclusive and Declarant and subsequent owners of lots within the Community Area shall have the right to use the land within said Construction Easement tracts for any purpose not inconsistent with the rights herein conveyed.

5. Underground Facilities. All utility services comprising the Facilities are to be maintained and kept underground and shall be buried at least twenty-four inches (24") below the proposed finish grade. Where Facilities are installed within a right of way, they shall be installed at such a depth as to avoid conflict with other utility installations.

6. Restoration. Within a reasonable time after completion of any portion of the Golf Course and Facilities, the surface of the Construction Easement tracts shall be restored as near as practicable to the condition found prior to the construction of such portion of the Golf Course or Facilities, including, without limitation, ground covers, plantings, roads, sidewalks, and other improvements.

7. Termination of Construction Easement. The foregoing right to enter onto the Community Area for the initial construction of the Golf Course and the Facilities shall be deemed to commence upon the recording of this Easement and shall be terminated June 1, 1997 or thirty (30) days following the completion and the placement into service of the last of the Facilities, whichever occurs first.

8. Liability During Construction. Should any damage or destruction to improvements result during the construction, replacement, or repair of the Golf Course or the Facilities, the person or party responsible for such damage or destruction shall, following written notice from the owner of such improvements, effect the repair or replacement of such damaged improvements within a reasonable time.

II.

PERMANENT EASEMENTS

Declarant hereby creates and reserves for the mutual benefit of the Golf Land and the Community Area the following permanent easements:

1. Golf Cart Paths. A nonexclusive easement is hereby created and reserved for the purpose of construction, maintenance, repair, and replacement of golf cart paths over and across the Golf Course Corridor Easements designated on any plat or plats of the Community Area, to provide ingress and egress by and between portions of the Golf Land (the "Golf Cart Path Easements"). The owner of the Golf Land shall maintain the Golf Cart Path Easements in a safe and orderly manner. Inclusive within the foregoing grant of Golf Cart Path Easements shall be the right of the owner of the Golf Land and users of the Golf Course to operate golf carts and Golf Course machinery, equipment and maintenance vehicles on all Golf Cart Path Easements. Also, inclusive within the foregoing grant of Golf Cart Path Easements shall be the right of the owner of the Golf Land to install, replace, maintain and repair directional and safety signage within the Golf Cart Path Easements, as deemed reasonably necessary. Such signage shall be made of materials and of the type as to be reasonably consistent with materials and type of signage utilized for similar purposes on the Community Area and the Golf Course.

2. Signage. An easement is hereby created and reserved for the construction, repair, maintenance, and replacement of directional and informational signage within the Community Area along the roads, streets, and rights-of-way located therein, for the purpose of providing directions to users of the Golf Course. Such signage shall be constructed of materials and of a type of signage utilized for similar purposes on the Community Area and the Golf Land.

3. Golf Course Corridor Easement. A permanent, exclusive easement is hereby created and reserved in, on, upon, over and through all areas designated as Golf Course Corridor Easements on the final plat or plats of the Golf Land and Community Area. The Golf Course Corridor Easement shall be for the following purposes:

3.1 The planting, replanting, maintenance, irrigation, repair, and removal or trimming of vegetation, the spraying of herbicides, fungicides, pesticides, insecticides, and fertilizers, and all other activities necessary for the maintenance and operation of the Golf Course, including the creation of noise related to the normal maintenance and operation of the Golf Course.

3.2 The right to utilize the Golf Course Corridor Easement for typical golf course play, including every act necessary and proper to the playing of golf. These acts shall include, but not be limited to, the placement and maintenance of "out-of-bounds" signs or markers, play of golf balls, retrieval of golf balls, the flight of golf balls over and upon the easement, the use of necessary and usual equipment to maintain and operate the Golf Course, the usual and common noise level created by the playing of the game of golf and the operation of equipment incident thereto, and all other common and usual activity associated with playing the game of golf and operating and maintaining the Golf Course.

3.3 The right to utilize the Golf Course Corridor Easement as an area for observation by tournament galleries, and the further right to utilize the Golf Course Corridor Easement for the installation of temporary above-ground utility lines for use solely in conjunction with tournaments and special events on the Golf Course. Any installations made in connection with this grant of easement set forth in this subparagraph shall be removed by the owner of the Golf Land and all damage repaired promptly upon conclusion of each such tournament or special event.

3.4 The right to landscape and make use of the Golf Course Corridor Easement as set forth in this paragraph shall be exclusive to the owner of the Golf Land. Owners of lots burdened by the Golf Course Corridor Easement shall make no improvements of any kind, including landscaping, in, upon, over or across the Golf Course Corridor Easement without the prior written consent of the owner of the Golf Land. The owner of the Golf Land shall erect no permanent structures or other permanent improvements in or upon the Golf Course Corridor Easement except for landscaping as provided herein and except for construction and maintenance of "out-of-bounds" markers or other signs or markers normally associated with the playing of the game of golf.

4. Golf Course Play Easement. There is hereby created and reserved to the owner of the Golf Land and the users of the Golf Course, a nonexclusive easement over and across the Community Area for the following purposes:

4.1 Flight of golf balls over, across, and upon the Community Area;

4.2 Doing of every act necessary and incident to the playing of golf and other recreational activities on the Golf Land, including, but not limited to, the creation of usual and common noise levels associated with such recreational activities;

4.3 Creation of noise related to the normal maintenance and operation of the Golf Course, including, but not limited to, the operation of mowing and spraying equipment, which may occur from early morning until late evening; and

4.4 An easement for the over spray of herbicides, fungicides, pesticides, fertilizers, and water over portions of the Community Area located adjacent to the Golf Land.

5. Damage by Errant Golf Balls. Declarant, for itself and each and every subsequent owner of portions of the Community Area, hereby acknowledges and agrees that the existence of the Golf Course on the Golf Land is beneficial and highly desirable; however, each such owner acknowledges and agrees that portions of the Community Area located adjacent to the Golf Land are subject to the risk of damage or injury due to errant golf balls. Owners of portions of the Community Area, their successors and assigns, hereby assume the risk of damage and injury and hereby release the Declarant and the owner of the Golf Land, its successors and assigns, from any and all liability for damage or injury caused by errant golf balls in, on, or around the Community Area, and agree to indemnify and hold the Declarant and the Owner of the Golf Land, its successors and assigns, harmless from any and all claims, actions, costs or liability arising from any damage or injury caused, directly or indirectly, by golf balls flying, landing, hitting, or resting in or around the Community Area. The obligation to indemnify, defend, and hold harmless shall pass with title to each portion of the Community Area, and once any owner of land within the Community Area has conveyed title to his, her, or its portion of the Community Area, the obligation ceases as to that owner for all subsequently occurrences and that obligation passes to the new owner. Nothing contained herein shall be deemed to limit liability of the individual golfer who has struck the errant golf ball for any damages he or she has caused.

III.

MISCELLANEOUS

1. Fencing Restrictions. No owner of land within the Community Area shall construct a fence or enclosure located along or next to the boundary lines between the Golf Land and the Community Area, without the prior written consent of Declarant, and its successors-in-interest to the Golf Land, in their sole discretion. Declarant shall develop criteria and specifications for the type,

size, and materials it deems acceptable for fences located along the Golf Land (the "Fence Criterion"), and the Fence Criterion shall be available to all owners or prospective owners of land within the Community Area. The Fence Criterion shall be subject to change, provided such changes shall not affect any fences existing at the time such changes become effective, and such changes shall not be effective until forty-five (45) days following publication of same by Declarant as owner of the Golf Land, its successors or assigns.

2. Liability for Damages. The owner of the Golf Land, its successors and assigns, agrees to repair or replace any improvements located on the Community Area damaged or destroyed due to the repair or maintenance of the Facilities. Should any damage or destruction to improvements result during the repair or maintenance of the Facilities, the owner of such improvements shall notify the owner of the Golf Land in writing of such event and allow a reasonable time, not to exceed forty-five (45) days, to repair or replace such damaged improvements.

3. Entire Agreement. This instrument contains the entire agreement between parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect except a subsequent modification in writing, signed by the party to be charged.

4. Transfer of Golf Land. Upon the transfer of the Golf Land by Declarant to a third party, all of Declarant's rights, duties and obligations arising under this Declaration as owner of the Golf Land shall be deemed transferred and assigned to such third party, whereupon, Declarant shall no longer have any further liability, obligations or duties arising under this Declaration as owner of the Golf Land.

5. Duration and Enforceability. The easements and restrictions set forth in this Easement shall constitute covenants running with the land in perpetuity, burdening the Community Area and Golf Land, and benefiting the Community Area and Golf Land, and shall be binding upon Declarant, its successors and assigns, and all persons or parties claiming through, by, or under Declarant, its successors and assigns, including, but not limited to, any property or lot owners.

6. Effectiveness of Agreement. Notwithstanding anything herein to the contrary, this Declaration shall not be effective for any purpose until all parties shown below have executed this document and it has been filed of record in Garfield County, Colorado.

7. Persons Entitled to Enforce Declaration. The owner of the Golf Land and the Master Homeowners Association composed of all lots within the Community Area shall have the right to enforce any or all of the provision, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration. The right of enforcement shall include the right to bring an action for actual damages suffered as well as an action to enjoin any violation of any provision of this Declaration.

8. Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction, and equitable servitude contained in this Declaration, whether by act or omission, is

hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any person or party entitled to enforce the provisions of this Declaration.

9. Enforcement of Self-Help. Declarant, its successors and assigns, or any authorized agent of them, may enforce, by self-help, any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration, provided such self-help is preceded by a written notice delivered to the defaulting party, at least thirty (30) days prior to the exercise of such self-help remedy.

10. Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

11. Costs and Attorneys' Fees. If there is any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees.

12. Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

13. Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado.

14. Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

15. Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine, or neuter genders shall each include the masculine, feminine, and neuter genders.

16. Captions for Convenience. The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

17. Notice to Property Owners Within Community Area. NO OWNER OF PROPERTY OR A LOT WITHIN THE COMMUNITY AREA SHALL HAVE ANY RIGHTS IN OR TO THE GOLF LAND, THE GOLF COURSE, OR ANY RECREATIONAL ACTIVITIES OCCURRING THEREON, INCLUDING, BUT NOT LIMITED TO, A VISUAL OR SIGHT EASEMENT OVER AND ACROSS ANY PORTION OF THE GOLF LAND, RIGHTS OF MEMBERSHIP IN OR TO THE GOLF COURSE, OR RIGHT OF ACCESS TO OR ACROSS THE GOLF LAND, UNLESS SUCH RIGHT OR RIGHTS HAVE BEEN GRANTED OR CONVEYED IN WRITING BY THE GOLF LAND OWNER OR ITS SUCCESSORS AND ASSIGNS. ADDITIONALLY, GOLF LAND OWNER, ITS SUCCESSORS AND ASSIGNS, HAS THE RIGHT, WITHOUT NOTICE OR

EXHIBIT "A"

LEGAL DESCRIPTION OF GOLF LAND

Golf Course Parcels 1-6, as depicted and described on the Final Plat of River Valley Ranch, Phase I, recorded September 27, 1996 at Reception No. 448429 in the office of the Clerk and Recorder of Garfield County, Colorado.

EXHIBIT "B"

LEGAL DESCRIPTION OF COMMUNITY AREA

A tract of land situate in Sections 3 and 4 and 10, Township 8th South, Range 88 West of the 6th Principal Meridain being more particularly described as follows:

Beginning at a point on the south line of said Section 3 whence the southwest corner of said Section 3 bears S 89°35'39" W 308.25 feet; thence N 37°15'00" W 1350.00 feet; thence N 30°30'00" W 2700.00 feet; thence N 00°00'00" E 983.94 feet to the south line of the Rock Creek Subdivision; thence N 88°10'32" E 927.01 feet along said south line; thence N 0°06'28" E 140.76 feet along the east line of said Rock Creek Subdivision; thence S 74°31'17" E 472.99 along the center of the Crystal River to the north line of lot 7 of said Section 4; thence N 88°10'32" E 1580.89 feet along the north lines of said lot 7 and lot 5 of Section 3; thence S 28°48'43" E 176.06 feet along a fence on the west boundary of a tract of land described in Book 494 at Page 822; thence S 55°14'39" E 827.40 feet along said west line; thence N 0°36'46" E 1000.04 along the east line described in said Book 494 at Page 822 to the westerly right-of-way line of Colorado State Highway No. 133; thence along said right-of-way line the following 4 courses: 1) S 30°22'38" E 72.13 feet; thence 2) S 28°44'08" E 1715.47 feet; thence 3) S 27°41'51" E 216.95 feet; thence 4) S 26°34'13" E 1064.03 feet to the center of the Carbondale Town Ditch; thence along the center of said ditch the following 3 courses: 1) S 11°58'10" W 67.80 feet; thence 2) S 6°47'55" E 136.26 feet; thence 3) S 7°45'46" W 99.73 feet to the south line of lot 9 of said Section 3 and the north line of a tract of land described in Book 482 at Page 949; thence S 87°47'47" W 544.21 feet; thence S 47°31'10" E 245.96 feet along the east bank of the Crystal River; thence S 25°19'55" E 44.58 feet along the east bank of the Crystal River; thence S 86°27'09" W 94.31 feet to the center of the Crystal River; thence along the center of the Crystal River the following courses: S 16°02'31" E 116.12 feet; thence S 27°48'07" E 235.74 feet; thence S 46°41'43" E 90.66 feet; thence S 56°56'24" E 331.75 feet; thence S 43°51'57" E 243.66 feet; thence S 34°57'12" E 399.30 feet; thence leaving said river center on a course bearing N 87°44'00" E 175.35 feet; thence S 29°46'00" E 122.32 feet; thence N 87°44'00" E 59.08 feet to the west right-of-way line of Colorado State Highway No. 133; thence 485.05 feet along the arc of a nontangent curve to the right, having a radius of 5149.10 feet, a central angle of 5°23'50", and subtending a chord bearing S 12°13'08" E 484.87 feet; thence 440.03 feet along the arc of a curve to the right, having a radius of 5149.10 feet, a central angle of 4°53'47", and subtending a chord bearing S 07°04'40" E 439.90 feet; thence N 88°39'41" W 113.84 feet to a point on the center of the Carbondale Town Ditch; thence N 16°30'22" W 37.93 feet along the center of said ditch to the southeast corner of a tract of land described in Book 457 at Page 552 of the records of the Clerk and Recorder of Garfield County, Colorado; thence along the east and north boundaries of said parcel the following courses: N 19°42'32" W 53.32 feet; thence

N 33°14'25" E 67.54 feet; thence N 56°11'39" W 83.62 feet; thence N 4°16'53" W 133.44 feet; thence N 89°58'45" W 164.82 feet to the center of the Crystal River; thence along the center of the Crystal River the following courses: S 9°16'11" W 194.89 feet; thence S 8°31'01" E 95.52 feet; thence leaving said river center S 77°09'01" W 211.50 feet; thence N 81°58'19" W 138.10 feet; thence N 73°22'50" W 333.18 feet; thence N 81°10'35" W 73.89 feet; thence N 76°15'03" W 69.48 feet; thence N 76°47'11" W 342.84 feet; thence S 25°55'58" E 407.71 feet; thence S 2°08'16" E 243.79 feet; thence S 58°20'23" W 162.97 feet; thence S 49°53'22" W 300.71 feet; thence S 42°08'28" W 116.64 feet; thence S 22°32'38" W 695.03 feet; thence S 10°12'58" W 299.19 feet; thence S 89°30'38" W 211.50 feet; thence S 1°38'32" W 55.91 feet; thence S 15°39'56" W 312.14 feet; thence S 78°35'15" W 718.34 feet; thence N 35°45'55" W 354.74 feet; thence N 7°12'46" E 355.38 feet; thence N 0°09'25" E 56.02 feet; thence N 3°29'27" W 243.47 feet; thence N 3°48'39" W 205.77 feet; thence N 2°05'10" W 108.92 feet; thence N 17°05'37" E 557.23 feet; thence N 5°42'30" W 223.30 feet; thence N 28°39'18" W 172.99 feet; thence N 23°02'25" W 259.91 feet; thence N 30°13'38" W 73.91 feet; thence N 3°40'01" E 189.69 feet to the south line of said Section 3; thence N 89°35'39" W 500.00 feet along the south line of Section 3 to the point of beginning, said parcel contains 518.042 acres more or less.

EXCEPT

Golf Course Parcels 1-6, as depicted and described on the Final Plat of River Valley Ranch, Phase I, recorded September 27, 1996 at Reception No. 498928 in the office of the Clerk and Recorder of Garfield County, Colorado.

AND EXCEPT

River Front Park Nos. 1-6, Triangle Park and Orchard Park, as depicted and described on said Final Plat.

AND EXCEPT

Block G, as depicted and described on said Final Plat.

