

DEED RESTRICTIONS

ASPEN MESA  
Unit II

MID-VALLEY LAND COMPANY, an Arizona corporation qualified to do business in the State of Colorado, being the owner of the following described real property, to-wit:

ASPEN MESA, Unit II, as recorded \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

and desiring to establish the nature of the use and enjoyment of each lot therein in contemplation of sales of lots to the general public, hereby declares that the following covenants, conditions, restrictions and reservations shall attach to the said real property and every parcel thereof and shall constitute covenants running with the land.

1. Residential Use: No parcel shall be used for any purposes other than residential purposes, and no parcel may be re-subdivided into smaller parcels. No buildings, improvements or structures shall be constructed on any parcel other than a single family dwelling and such improvements or structures as are incidental or appurtenant to a single family dwelling. No parcel shall be occupied at any time by more than a single family, its guests and its domestic servants. No property shall be used at any time for business or commercial activity. Notwithstanding the foregoing, any parcel may be used by Mid-Valley Land Company or its nominee for a model home or sales office for the purpose of selling parcels or homes.

2. Benefits of Restrictions: These restrictions are made for the benefit of the property hereinabove described and the owner or owners thereof.

3. New Construction: All improvements erected upon said property shall be of new construction and no buildings or structures shall be moved from other locations onto said property other than approved new modular type homes.

4. Animals and Commercial Use: No animals, livestock or poultry shall be kept on any parcel other than household pets, except that two horses for each parcel shall be allowed; provided, that no horses shall be kept on any parcel of less than one acre after facilities become available at the Aspen Mesa community stables. No store, office, or other place of business of any kind, and no institution or other place for the care or treatment of the sick or disabled, physically or mentally, shall be placed or permitted to remain on any of said parcels, nor shall any theatre, bar, restaurant, saloon or other place of entertainment ever be erected or permitted upon the premises or any part thereof, and no business of any kind or character whatsoever shall be conducted in or from any residence, nor shall any unsightly object or nuisance be erected, placed or maintained on any of said parcels, nor shall any use or thing be permitted which may endanger the health or unreasonably disturb the holder of any parcel in the property.

5. Oil, Gas and Mineral Development: Reservation by Mid-Valley of Oil, Gas and Mineral Rights shall not entitle Mid-Valley, its successors or assigns to make any surface encroachment upon any parcel for purposes of exploitation of Oil, Gas or Minerals.

6. Irrigation Rights: Reservation by Mid-Valley of all irrigation water rights shall entitle Mid-Valley to enter upon any parcel or parcels at reasonable times for the purpose of repair, construction, or maintenance of irrigation canals or ditches located upon existing easements. Mid-Valley shall further be entitled to apply irrigation water at reasonable times to common green belt easements located upon any parcel or parcels as Mid-Valley in its discretion may determine necessary and desirable.

7. Signs: No sign and no advertising device of any nature shall be placed upon the property except a small sign on a parcel, no larger than 6" x 18", in form and design approved by the Architectural Control Authority, showing the owner's name and/or the property address of the parcel, and except a small sign on a parcel, no larger than 18" x 36", in form and design approved by the Architectural Control Authority, to indicate the lot is for sale and the party, the address and/or telephone number to contact for information about such sale, and except such other type of sign or signs as may be approved in writing by the Architectural Control Authority.

8. Sewerage Disposal: Each lot owner will be required to construct an individual sanitary sewage disposal system. The system shall consist of a septic tank and seepage pit designed as prescribed in the U. S. Department of Health, Education and Welfare manual of Septic Tank Practice. Each lot owner shall apply for septic tank site approval before constructing a residence. The application shall be made on a form to be furnished by the Colorado Water Pollution Control Commission. Other types of individual home treatment facilities may be used provided they are approved by the Colorado Water Pollution Control Commission.

9. Drainage Control: Lot owners shall provide culverts where driveways cross road ditches and irrigation ditches. The minimum size culvert shall be 15 inches in diameter.

10. Temporary Structures: No tent or shack shall be placed upon any parcel and no temporary building, improvement or structure shall be placed upon any parcel, including any trailer, except during such reasonable period as may be necessary for the construction of approved improvements on such parcel. No such temporary building, improvement or structure and no garage or barn and no building, improvement or structure in the course of construction shall be used, even temporarily, as a residence.

11. Enclosure of Unsightly Facilities and Equipment: All unsightly structures, facilities, equipment and other items, including but not limited to those specified below, shall be enclosed within a solid, covered structure or screened from view. Any trailer, boat, truck, tractor, snow removal or garden equipment, and any similar items shall be kept at all times, except when in actual use, in an enclosed

garage or other enclosed structure. Any refuse or trash container, utility meter or other utility facility, gas, oil or water tank, service area, storage pile, or area for hanging clothing or other household fabrics shall be enclosed or appropriately screened from view by planting or fencing approved by the Mid-Valley Land Company and adequate to conceal the same from neighbors, streets and private roads and access drives. No lumber, metals, bulk materials, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any parcel except building materials during the course of construction and only for such reasonable period of time as is necessary prior to collection of disposal thereof. No unsightly weeds shall be permitted to grow or remain on any parcel.

12. Antennae, Wires and Poles: No poles, wires or antennae or facilities for the transmission or reception of electricity, telephone messages, television or radio shall be placed or maintained above the surface of the ground on any parcel. Notwithstanding the foregoing, if, at the time of occupancy of any house, connections to convenient and nearby underground electricity or telephone lines or television cable are not available, then temporary poles and wires for electricity or telephone or temporary antennae for television may be installed to a height no higher than 10 feet above the highest point of the house and provided that such poles, wires or antennae shall be promptly removed after the availability of connections to convenient and nearby underground electricity and telephone lines and television cable.

13. Exterior Lighting: No exterior lights shall be permitted on any parcel which would cause unreasonable glare to neighboring property

14. Sounds and Smells, Noxious or Offensive Activities: No use or activity shall be permitted on any parcel which causes noxious or offensive odor or unreasonably loud sound to be transmitted to any other property, nor shall anything be done or permitted which may be or become a nuisance to other property or to the owners thereof, their guests or servants.

15. Snow Removal and Parking: Residents shall be responsible for snow removal out of their own driveways. Also, there shall be no on-street parking.

16. Open Fires: No open fire shall be lighted or permitted on any parcel except in a contained permanent or movable barbecue unit when in use for cooking purposes only.

17. Firearms: No firearms shall be discharged upon any property, except in defense of self or family.

18. Maintenance of Trees and Shrubs: No tree or trees or shrubs on any parcel shall be marred, defaced or damaged, and no tree or trees or shrubs shall be removed except with the prior written approval of Mid-Valley Land Company.

19. Architectural Control Authority: Mid-Valley Land Company, or its nominee, shall be and constitute the Architectural Control Authority until such time as it assigns or delegates the function of Architectural Control Authority to the Aspen Mesa Homeowner's Association by instruments recorded in the records of the County Clerk and Recorder of Eagle County, Colorado.

20. Aspen Mesa Homeowner's Association: A non-profit corporation will be created to further the interests of the property owners at Aspen Mesa and to assume the responsibility of Architectural Control upon delegation of such authority by Mid-Valley Land Company. The owners of all parcels shall be members and shall be required to main-

tain membership in such Association and shall be entitled to one vote for each parcel owned and shall be required to pay assessments levied by the Association which assessments shall be prorated equally among the parcels. If the owner or owners of any parcel fail, after demand, to pay the assessments levied by the Homeowners' Association, then the Homeowners' Association or Mid-Valley Land Company, whichever incurred such costs, shall have a lien, from and after the time of notice of such failure to pay is recorded in the office of the County Clerk and Recorder of Eagle County, Colorado, against the parcel of such owner or owners for the amount due and not paid, plus interest from the date of demand for payment at the rate of 6% per annum, plus all costs and expenses of collecting the unpaid amount, including reasonable attorney's fees. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Colorado.

21. Approval of Structures: No structure shall be placed upon or permitted to remain upon any parcel, or altered in any way which will change its exterior appearance without the prior approval, in writing, of Mid-Valley Land Company or its assigns.

22. "Structure" Defined: "Structure" as used herein shall mean any tangible thing above or below the surface of the ground which might affect the appearance of the property or the health or safety of any person including, by way of illustration and not limitation, any building, garage, porch, shed, greenhouse, lathhouse, coop, cage, patio, swimming pool, tennis court, swimming or tennis cabana, stable, barn, fence, wall, sign, barbecue pit, tank, playhouse, treehouse, gazebo, pool, pond, excavation, pipe, pole, wire, cable or any plants, lawn, shrubbery or trees or other landscaping features.

23. "Primary Structures": "Primary Structure" shall mean any enclosed structure which occupies more than 80 square feet in area or more than 600 cubic feet in volume. The primary structures permitted on any single parcel shall consist of no more than one single family dwelling house with an interior living floor area of at least 1,000 square feet exclusive of accessory buildings, garages, porches, or patios, together with no more than two non-dwelling unit unconnected enclosed structures such as swimming or tennis cabanas, stables, garages, or greenhouses. No structure shall be erected or installed except concurrently with or after construction of said single family dwelling house. All primary structures shall conform in appearance with said dwelling house.

24. Procedure for Approval of Structures: Mid-Valley Land Company may impose reasonable requirements with respect to information to be furnished and the form and manner of presenting the same in order to obtain approval for any structure, including, but not limited to, all landscaping. For all primary structures, complete plans and specifications shall be submitted to Mid-Valley Land Company, which shall be drawn to a minimum scale of 1/20" equals 1"; shall show location of all existing and proposed structures on the parcel, all parcel lines; all existing and proposed contours and contour elevations, renderings of all sides of the structures; shall indicate materials and colors to be used; shall be accompanied by samples of materials and colors to be used upon request; shall be submitted in duplicate together with a fee of \$100.00 to be paid to Mid-Valley Land Company to compensate it for the time and effort required for review prior to approval. \$75.00 of said fee shall be waived if said plans are signed by a licensed architect. Prior to the submission of complete plans and specifications as provided above, preliminary or tentative plans and specifications, including preliminary plot plan and preliminary renderings of all sides of all structures, shall be submitted to Mid-Valley Land Company, which shall clearly and completely show and

set forth the essential features and intent of the construction subject to the preparation, submission and approval of the final building plans, plot plan and specifications as provided herein.

25. Criteria for Architectural Control: Mid-Valley Land Company shall have complete discretion in determining whether to approve or disapprove structures. This discretion shall be exercised with at least the following objectives in mind:

a) To direct the positioning, elevation, profile and surface treatment of all structures so as to minimize their obstruction or diminution of quality of the principal views from each site.

b) Preserve or enhance existing features of natural beauty such as trees, shrubs, topography, and undefined openness or transition between areas.

c) To minimize the effect that improvements will have in destroying the visual continuity of the area and transition between improved and unimproved areas so that when viewed from across the valley the subdivision does not appear as a patchwork of contrasting improvements.

d) Promote the design of structures so that their siting, form, and surface treatment harmonizes with the rustic and natural setting and with other structures on adjacent property.

e) Promote the use of new landscape materials that are indigenous to or existing in the area and which have low maintenance effort requirements so that natural and landscaped areas are not sharply contrasted and well-maintained and poorly-maintained areas are not sharply contrasted.

f) Prevent landscaping or structural improvements from defining the boundaries of property ownership.

g) Promote the use of structural materials that have minimum maintenance requirements so as to assure a better appearing area under all conditions.

h) Promote the design and construction of improvements that incorporate the best visual, functional and material quality elements possible so that each parcel will serve its owner better and enhance the value of adjacent property by its presence.

i) Consider the long-term future effect of decisions on the nature of improvements allowed in the area.

26. Minimum Architectural Control Procedures: Mid-Valley Land Company will prepare, maintain, publish, and furnish on request by parcel owners a dated document that:

a) Advises the parcel owner on how to proceed with the planning, design, and approval of improvements to his parcel.

b) Outlines in adequate detail the requirements of Mid-Valley Land Company in order to get architectural approval.

c) Furnishes available ecological data useful or necessary in the proper design of improvements to the property.

d) Advises the owner and/or architect on how the criteria for approvals might be currently interpreted and applied such as roof lines, colors, and surface materials that are most likely to be unapproved.

e) Helps the architect understand visual and functional goals for the area so that his design effort starts out in the right direction.

Failure of Mid-Valley Land Company to prepare, maintain, publish or furnish such a document shall not operate to waive the requirement for approval of structures by Mid-Valley Land Company.

At least one agent or employee of Mid-Valley Land Company will physically visit the building site with any primary structure plans submitted for approval prior to approving or rejecting the request in order to assure a thorough and accurate review of the proposed improvements.

27. Approval or Disapproval: Any structure shall be deemed and considered disapproved unless approval is expressly given and is evidenced in writing executed by Mid-Valley Land Company. Notwithstanding the foregoing, if Mid-Valley Land Company fails to approve a structure and does not expressly indicate disapproval or affirmatively impose additional requirements or request additional information be furnished, either verbally or in writing, within thirty days after a written request for written approval, the structure shall be deemed approved by Mid-Valley Land Company. In addition, as to any bona fide purchaser or encumbrancer for value and without notice, any structure which has been completed or installed for 120 days shall be deemed to have been approved unless Mid-Valley Land Company shall have recorded an instrument in writing indicating disapproval in the office of the County Clerk and Recorder of Eagle County, Colorado, prior to the date on which such bona fide purchaser or encumbrancer became such for value.

28. Prompt Completion of Structures: Construction or installation of any structure shall proceed promptly and diligently after approval by Mid-Valley Land Company. Unless the time is extended in writing by Mid-Valley Land Company, failure to complete the structure within one year after the date of approval shall constitute an automatic revocation of the approval and any partially completed or installed structure shall not then be thereafter be permitted to remain on the property for a period longer than three months after the Mid-Valley Land Company requests removal of the partially constructed or installed structure.

29. Right of Inspection: The Mid-Valley Land Company and its duly appointed agents or employees may enter upon any property at any reasonable time or times for inspection of any structure.

30. Change of Grade: No grade, stream bed, ground level or drainage pattern on any parcel shall be altered or changed without obtaining the prior approval, in writing, of Mid-Valley Land Company.

31. Variances: Mid-Valley Land Company may allow variances from compliance with any of the terms or provisions of these restrictions when circumstances such as topography, natural obstructions or hardship may require and, if such variance is granted, no violation of the covenants, restrictions and conditions of these restrictions shall be deemed to have

occurred with respect to the matter for which the variance was granted. Such variances must be evidenced in writing. The granting of such variance shall not operate to waive any of the terms and provisions of these restrictions for any purpose except as to the particular property and particular provision hereof covered by the variance. In no event may a variance be granted which would permit any business or commercial activity.

32. Enforcement Rights: The covenants, restrictions and conditions contained in these restrictions may be enforced at any time by the owner or owners of any property, by a group of owners of the property described herein, by the Aspen Mesa Homeowners' Association provided for herein, or, notwithstanding the fact that it may no longer hold title to any property herein described, Mid-Valley Land Company.

33. Remedies: The covenants, restrictions and conditions contained in these restrictions shall be enforceable by proceeding for prohibitive or mandatory injunction. Damages shall not be deemed an adequate remedy for breach or violation but, in an appropriate case, punitive damages may be awarded. In any action to enforce any covenant, restriction or condition contained in these restrictions, the party or parties bringing such action, if successful in the action, shall be awarded reasonable attorney's fees.

34. Additional Remedy: In addition to the remedies stated above, Mid-Valley Land Company, or nominee, upon violation or breach of any covenant, restriction or condition contained in these restrictions, may enter upon any property where such violation or breach exists and may abate or remove the thing or condition causing the violation or breach or may otherwise cure the violation or breach. The costs incurred shall be billed to and paid by the owner or owners of the property. If the owner or owners of the property fail, after demand, to pay such costs then Mid-Valley Land Company, or nominee, whichever incurred such costs, shall have a lien, from and after the time a notice of such failure to pay is recorded in the office of the County Clerk and Recorder of Eagle County, Colorado, against the property of such owner or owners for the amount due and not paid, plus interest from the date of demand for payment at the rate of 6% per annum, plus all costs and expenses of collecting the unpaid amount, including reasonable attorney's fees. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Colorado.

35. Remedy of Mid-Valley Land Company: In addition to the remedy stated above, if, with respect to any property, there is a breach of, or failure to comply with, any of the covenants, restrictions or conditions contained in these restrictions, then Mid-Valley Land Company, its successors and assigns, shall have the right, immediately or at any time during the continuation of such breach or failure, to re-enter and take possession of the above-described property and, upon the exercise of this right of re-entry, title to said property shall thereupon vest in Mid-Valley Land Company, its successors or assigns. The right of re-entry and for re-vesting of title provided under this Section shall be subject to the provisions of Section 36 of these restrictions entitled Protection of Encumbrancer. The provisions of this Section for a right of re-entry and for re-vesting of title in Mid-Valley Land Company shall not be subject to the provisions of Section 38 of these restrictions entitled Amendment and Termination.

36. Protection of Encumbrancer: No violation or breach of any restriction, covenant or conditions contained in these restrictions

and no action to enforce the same shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith for value or the title or interest of the holder thereof or the title acquired by any purchaser upon foreclosure of any such mortgage or deed of trust. Any such purchaser shall, however, take subject to these restrictions, except only that violations or breaches of these restrictions which occurred prior to such foreclosure shall not be deemed breaches or violations hereof.

37. **Severability:** Each of the covenants, restrictions and conditions contained in these restrictions shall be deemed independent and separate and the invalidation of any one shall not affect the validity and continued effect of any other.

38. **Amendment and Termination:** The restrictions, covenants and conditions in these restrictions shall continue until January 1, 1982, and from year to year thereafter until amended or terminated by written instrument executed by the Aspen Mesa Homeowners' Association or by the owners of a majority of the parcels of the property described herein. Prior to January 1, 1982, these restrictions may be amended or terminated by recorded instrument executed by the record owners of a majority of the parcels of the property herein described or by the Aspen Mesa Homeowners' Association and with the written consent of Mid-Valley Land Company.

39. **Paragraph Headings:** The paragraph headings in this instrument are for convenience only and shall not be considered in construing the restrictions, covenants and conditions herein contained.

40. **Waiver:** Waiver or failure to enforce any restriction, covenant or condition in these restrictions shall not operate as a waiver of any other restriction, covenant or condition.

IN WITNESS WHEREOF, Mid-Valley Land Company has caused these Deed Restrictions to be executed as of the 17th day of February, 1970.

MID-VALLEY LAND COMPANY

By C. T. Garth, Jr.  
C. T. Garth, Jr., President

Angus A. Anderson  
Angus A. Anderson, Secretary

ATTEST:

STATE OF COLORADO }  
COUNTY OF PITKIN } SS.

On this 17th day of February, 1970, before me, the undersigned Notary Public, personally appeared C. T. Garth, Jr. and Angus A. Anderson to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed for the purposes therein contained.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

My commission expires:

Warren H. Tschopp  
Notary Public

February 19, 1973

112730

STATE OF COLORADO, }  
EAGLE COUNTY. } ss.

I hereby certify that this instrument  
was filed for record in my office the  
3 day of March, 1970 at  
3:38 o'clock P.M., and is duly recorded  
in Book 217 Page 168.

Maxwell R. Bary  
County Clerk and Recorder

By \_\_\_\_\_

Deputy  
Fee \$ 12.00 Pd