

**ASPEN MESA ESTATES
EAGLE COUNTY, COLORADO**

**2nd AMENDMENT TO
DEED RESTRICTIONS**

MAY 14 10 18 AM '86

SECOND AMENDMENT TO REORGANIZATION AND AMENDMENT
OF DEED RESTRICTIONS FOR ASPEN MESA ESTATES

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, Aspen Mesa Estates, First Filing, and Aspen Mesa Estates, Unit II, have been duly created, and the plats and other documents evidencing the existence of Aspen Mesa Estates have been recorded in the Office of the Eagle County, Colorado Clerk and Recorder; and

WHEREAS, the Deed Restrictions relating to Aspen Mesa Estates, and the amendments thereto, have been reorganized, and a Reorganization and Amendment of Deed Restrictions for Aspen Mesa Estates has been duly recorded in Book 371 at Page 47 in the Office of said Clerk and Recorder; and

WHEREAS, a First Amendment to Reorganization and Amendment of Deed Restrictions to Aspen Mesa Estates has been duly recorded in Book 411 at Page 229 in the Office of said Clerk and Recorder; and

WHEREAS, by the terms of those Deed Restrictions, as reorganized and amended, Paragraph 25 contained therein may be amended by a majority of the members voting; and

WHEREAS, in accordance with those Deed Restrictions, as reorganized and amended, and the Bylaws of the Aspen Mesa Home Owners Association, those Deed Restrictions are hereby amended as indicated herein.

NOW, THEREFORE, the Board of Directors of the Aspen Mesa Home Owners Association, being duly authorized and directed following a majority vote of the lot owners entitled to vote, a quorum existing, hereby amends the Reorganization and Amendment of Deed Restrictions for Aspen Mesa Estates, as follows, to-wit:

1. Paragraph 13 of the Reorganization and Amendment of Deed Restrictions for Aspen Mesa Estates is hereby amended to read as follows:

13. Aspen Mesa Home Owners Association.

A. The Association. A nonprofit corporation has been created to exercise any right or privilege given to it expressly in these Restrictions or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to further the interests of the lot owners in Aspen Mesa Estates. The owners of all lots shall be members, and each lot shall be entitled to one vote, it being understood that if title to a lot is held by more than one person, the membership related to that

lot shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the lot is held. Each such membership shall be appurtenant to the lot upon which it is based; it shall be transferred automatically by conveyance of that lot and shall not be transferred except in connection with such conveyance. No person or entity other than a lot owner may be a member of the Association. Each director and officer of the Association shall, at the time of his election and throughout his term of office, be a lot owner and be in compliance with these Restrictions. The Association and its officers and directors shall not be liable or accountable in damages for any action taken pursuant to authority contained in or derived from these Restrictions. Governance of the Association shall be in accordance with the Articles of Incorporation and Bylaws of the Association, as each may be amended from time to time; provided, however, that the Association may also make reasonable rules and regulations to implement and enforce the rights, privileges and responsibilities conferred upon the Association by these Restrictions. The Association shall have the right to accept title to and possession of any real property or interest therein, including improvements thereon, or to any personal property, equipment or any other asset. The Association shall also have the right to incur any debt and pay any obligation, encumbrance, tax or assessment of whatever nature relating to such property or necessary or convenient to enable the Association to further the interest of the lot owners. The Association may provide for the care, operation, management, maintenance, repair and replacement of all public roads and streets (to the extent necessary to supplement the maintenance function of Eagle County, Colorado, or any other successor governmental entity), all easements or rights-of-way established and provided for the public or some or all of the lot owners, all drainage easements or rights-of-way, pipes or facilities within Aspen Mesa Estates and all aspects of a water supply system.

B. Water Supply System. With respect to the water supply system, the Association shall specifically, but without limitation, have the right to own, lease, operate, regulate, manage and maintain any and all water rights, well permits and rights, water transmission lines, wells, storage tanks, pumps, mains, hydrants and the like within Aspen Mesa Estates and to do all things necessary, including the levying of tap fees, assessments and other charges on members, to support such activities in connection with such supply of water. Each owner shall be required to obtain all domestic water from the Association, and no water from any other source shall be allowed without the written consent of the Board of Directors of the Association first being obtained.

C. Assessments. The cost of the operation of the Association and the performance of its various functions shall be paid for by the Association's assessment of appropriate charges against any nonmembers who benefit from its activities and by its levying assessments upon the owners of the lots within Aspen Mesa Estates. Each owner of any lot, by acceptance of a deed therefor, whether or not it is so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association annual assessments made by the Association for the purposes set forth herein and any special assessments for capital improvements or other matters provided for herein.

(1) Annual Assessments. The total annual assessments against all lots shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of, or connected with, the functions of the Association as set forth herein. These estimates may include, but shall not be limited to, expenses of management, taxes and special governmental assessments, premiums for all insurance which the Association is required or permitted to maintain, charges arising out of the maintenance of the water supply system, repairs and maintenance upon other assets of the Association, wages for Association employees, legal and accounting fees, any deficit remaining from a previous period, the creation of a reasonable contingency reserve or sinking fund, and any other expenses or liabilities which may be incurred by the Association for the benefit of the owners under and by reason of these Restrictions. Annual assessments shall be apportioned among all owners in accordance with their respective lot ownership; provided, however, that this shall not prevent the Association from assessing owners for water on the basis of usage. Each such assessment shall be made on the basis of the Association's fiscal year, or such other interval as the Association may adopt. The Association shall give written notice to each owner, sent to that owner's last known address as it appears on the records of the Association, as to the amount of the annual assessment with respect to his lot on or before 30 days prior to the date upon which the assessment shall be due and payable. The Association may, at its election, permit the payment of any such assessment in a reasonable number of installments. Each annual assessment shall bear interest at the rate of 18% per annum (1.5% per month) from the date that the assessment, or the last installment of it, becomes due and payable. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the owner of any lot for such assessment,

but the date when payment shall become due in such case shall be deferred to a date 30 days after such notice shall have been given.

(2) Special Assessments. In addition to the annual assessments authorized by this Article, the Association may levy a special assessment, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement, or for any other expense incurred or to be incurred as provided in these Restrictions. Each special assessment shall be assessed in accordance with the ownership of lots. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the owners, and no payment shall be due less than 30 days after the notice shall have been given. The Association may, at its election, permit the payment of any such assessment in a reasonable number of installments. A special assessment shall bear interest at the rate of 18% per annum (1.5% per month) from the date the assessment, or the last installment of it, becomes due and payable if not paid within 30 days after such date.

D. Enforcement of Assessments. Any assessment may be enforced or collected in any one, or combination, of the manners set forth herein. The pursuit of any course of action as a means of collecting or enforcing an assessment shall not be deemed to waive the right of the Association to pursue any other method, either at the same time or subsequently. No owner may exempt himself from liability for his contribution toward any assessment by waiver of the use or enjoyment of any benefit of lot ownership or Association membership (including use of the water supply system) or by abandonment of his lot. The Association, and it alone, shall be charged with the responsibility of collecting and enforcing any assessment, and regardless of the means it employs to do so, the lot owner or other person charged with responsibility for any assessment shall pay the attorney's fees and costs incurred by the Association in collecting or enforcing the assessment.

(1) Personal Obligation of Owner and Purchaser. The payment of any assessment shall be the personal obligation of each owner to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association. In addition, a purchaser of a lot shall be jointly and severally liable with the seller for all unpaid assessments against the lot up to the time of the grant or conveyance. This liability shall be without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

(2) Lien for Non-Payment of Assessments. All sums assessed by the Association shall constitute a lien on the lot assessed, which lien shall be superior and prior to all other liens and encumbrances, excepting only: (a) tax and special assessment liens on the lot in favor of any governmental assessing entity; and (b) all sums unpaid on any first mortgage or deed of trust of record, including any unpaid obligatory advances to be made pursuant to such instrument. To evidence such a lien, the Association shall, after written demand sent to the owner of the lot at his last known address as it appears on the records of the Association, prepare a written Notice of Lien setting forth the amount of such unpaid indebtedness, the name of the owner of the lot and a description of the lot. Such Notice shall be signed by a duly authorized representative of the Association and recorded in the Office of the Eagle County, Colorado Clerk and Recorder. Such lien may be enforced by judicial foreclosure initiated by the Association in the same manner in which mortgages on real property may be foreclosed in Colorado. The lot owner shall be required to pay the Association any assessments against the lot which become due during the period of foreclosure. If requested by the Association while engaged in such foreclosure, a receiver shall be appointed with respect to the management of any property subject to a foreclosure. The Association shall have the power to bid on the lot at the foreclosure sale and to acquire and hold, convey, lease, encumber, use, or otherwise deal with the lot. The Association shall, upon request, deliver written notice to any encumbrancer of any lot concerning the amount of any unpaid assessments remaining unpaid for longer than 30 days after they have become due. Any recorded lien for nonpayment of an assessment or other charge may be released by the Association recording a Release of Lien with the Eagle County, Colorado Clerk and Recorder.

(3) Discontinuance of Water Service. The Association shall have the right to withhold or discontinue the delivery of water to any lot the owner of which is in default or is delinquent in the payment of any assessment or charge; provided, however, that such discontinuance of the water supply to a lot shall only be upon a two-thirds vote of the membership or Board of Directors of the Association at a meeting called specifically to discuss such discontinuance at which a quorum is present. Furthermore, no discontinuance shall be implemented until at least ten days following mailing of a written Notice of Intent to Discontinue Water Service sent, return receipt requested, to the owner and occupant (if any) of the affected lot at their last known addresses on the records of the Asso-

ciation. This ten-day period begins to run when all notices have either been accepted by the recipient or his agent or have been returned to the Association unclaimed.

2. Sub-paragraphs 14(A) and (B) of the Reorganization and Amendment of Deed Restrictions for Aspen Mesa Estates is hereby amended to read as follows:

14. Architectural Control.

A. Architectural Control Committee. The Board of Directors of the Association shall appoint an Architectural Control Committee to insure conformance with the Aspen Mesa Home Owners Association standards in any placement, construction or modification of any structure within the subdivision boundaries, including control of all phases of construction landscaping. The Architectural Control Committee shall be composed of no more than five (5) members and no less than three (3) members. Members' terms shall extend for a period of one (1) year. Enforcement of architectural control violations shall be vested in the Association Board of Directors.

B. Architectural Control Procedures. The Architectural Control Committee or its designee will prepare, maintain and furnish on request by parcel owners, a dated document that:

(1) advises the parcel owner on how to proceed with the planning, design and approval of improvements to his parcel; and

(2) outlines in adequate detail the requirements of the Aspen Mesa Home Owners Association in order to get approval.

Failure of the Architectural Control Committee or the Association to prepare, maintain or furnish such a document shall not operate to waive the requirement for approval of structures.

3. Paragraph 21 of the Reorganization and Amendment to Deed Restrictions for Aspen Mesa Estates is hereby amended to read as follows:

21. Enforcement Rights. Except as otherwise stated herein, these Restrictions may be enforced at any time by the owner or owners of any lot or by the Association. In addition to any other remedies that might be available to the Association, a Certificate of Non-Compliance may be recorded by the Association with the Eagle County, Colorado Clerk and Recorder specifically setting forth and describing any violation of these Restrictions, any rules or regulations or any nonpayment of any

assessment by any owner or occupant of a lot. The recording of the Certificate shall be permitted if, at any time after ten days following written Notice of Non-Compliance mailed to the owner and occupant of that lot at their last known address as indicated by the records of the Association, the violation has not been corrected. The Certificate of Non-Compliance shall constitute notice to any prospective lienholder or purchaser of the violation of these restrictions. When compliance with these restrictions has been obtained to the satisfaction of the Association, then a Certificate of Compliance shall be recorded by the Association, releasing the Certificate of Non-Compliance.

4. Paragraph 22 of the Reorganization and Amendment of Deed Restrictions for Aspen Mesa Estates is hereby amended to read as follows:

22. Remedies. These Restrictions shall be enforceable by proceedings for prohibitive or mandatory injunction. If a Certificate of Non-Compliance has been recorded prior to the transfer of title, the new owner of any lot shall be subject to such injunctive proceedings. Damages shall not be deemed to ordinarily be an adequate remedy for breach or violation, but in an appropriate case, actual and punitive damages may be awarded. In legal proceedings to enforce these Restrictions or any other action taken by the Association pursuant to the authority granted in these Restrictions, the Association or the party or parties bringing such action, if successful in the action, shall be awarded their attorney's fees and costs. In addition to any other remedies available to the Association, it may suspend any lot owner's voting rights in the Association during any period or periods during which such owner fails to comply with these Restrictions or any rules and regulations or during which any assessment that is fully due and payable remains unpaid.

5. Paragraph 23 of the Reorganization and Amendment of Deed Restrictions for Aspen Mesa Estates is hereby amended to read as follows:

23. Protection of Encumbrancer. The lien of the Association for the collection and enforcement of assessments provided for herein shall be subordinate to the lien of any first mortgage and the tax and special assessment lien of any government entity. The sale or transfer of any lot shall not release any such lien of the Association. However, the sale of any lot pursuant to foreclosure of a first mortgage shall extinguish the lien of the Association for such assessments as to payments thereon which become delinquent prior to such foreclosure, but shall not relieve such lot from the lien of any assessments or payments thereafter levied or due. As used in these Restrictions, the term "mortgage" shall include deeds of trust but shall not include involuntary liens, such as mechanic's liens and judgment liens. Except as otherwise stated herein, no violation or breach of these Restrictions and no action to enforce

them shall defeat, render invalid or impair the lien of any mortgage taken in good faith for value or the title acquired by any purchaser upon foreclosure of any such mortgage. Nothing herein shall be deemed to release any owner from his personal obligation, as described hereinabove, to pay all assessments made and levied under these Restrictions.

6. Except as amended above, the provisions of the Reorganization and Amendment of Deed Restrictions for Aspen Mesa Estates, as modified by said First Amendment, are hereby re-affirmed and remain in full force and effect.

DATED: May 1, 1986.

ASPEN MESA HOME OWNERS
ASSOCIATION

By: Benton Jones
President
For the Board of Directors

ATTEST:

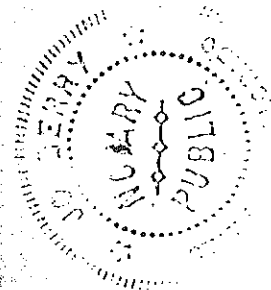
Sue Kentz
Secretary

STATE OF COLORADO)
COUNTY OF Eagle) ss.

The foregoing was acknowledged before me this 1st day of May, 1986, by Benton Jones as President, and Sue Kentz, as Secretary of the Aspen Mesa Home Owners Association.

WITNESS my hand and official seal.

My commission expires: 3/9/88



J. Berry
Notary Public
ALPINE
P. O. BOX
BASALT, CO