

AMENDMENT NO. 1  
TO  
DEED RESTRICTION NO. 2

This "Amendment No. 1" to Deed Restriction No. 2 – Declaration of Deed Restriction and Agreement concerning the Sale, Occupancy and Resale of Resident Occupied Condominium Units and Single Family Homes in the Keator Grove PUD, Town of Carbondale, Garfield County, Colorado (Resale Cap – Right of First Refusal), hereinafter referred to as "Deed Restriction No. 2", is made and entered into this \_\_\_\_ day of \_\_\_\_, 2008, by and between Keator Grove, LLC as "Declarant" pursuant to Deed Restriction No. 2, Carbondale Housing Authority ("CHA"), the Aspen Skiing Company as the owner of certain Lots and Units which are subject to Deed Restriction No. 2 and the Board of Trustees of the Town of Carbondale, Colorado (the "Town").

RECITALS

A. Deed Restriction No. 2 was recorded in the Office of the Clerk and Recorder of Garfield County, Colorado on the 4<sup>th</sup> day of June, 2008 at Reception No. 749767 with respect to the Lots within Keator Grove which are described on Exhibit A and on the 29<sup>th</sup> day of August, 2008 at Reception No. 754796 with respect to the Units described on Exhibit B.

B. Pursuant to the provisions of Section 11.2 of Deed Restriction No. 2, as applied to the Lots and Units described on Exhibits A and B, the parties hereto desire to amend and restate, in its entirety, the provisions of Section 10 of Deed Restriction No. 2 and to modify the form of Memorandum of Acceptance as set forth in Exhibit B to Deed Restriction No. 2, as provided herein.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and based upon the authority reserved by CHA and the Town to modify Deed Restriction No. 2 as set forth in Section 11.12, thereof, the parties agree as follows:

1. Section 10 of Deed Restriction No. 2 shall be amended and restated to read as follows:

SECTION 10  
OWNERSHIP BY ASPEN SKIING COMPANY AND CARBONDALE AREA EMPLOYERS  
RIGHT OF RE-PURCHASE

10.1 Ownership of Units by Carbondale Area Employers. Any provision of this Agreement to the contrary, notwithstanding, Declarant may convey any Unit subject to this Agreement either to the Aspen Skiing Company ("ASC") or to a Carbondale Area Employer (the "CAE"), as that term is defined below. In addition, ASC may convey any Unit which it acquires from Declarant to a CAE. ASC and any CAE acquiring a Unit from the Declarant or ASC shall be considered to be a Qualified Buyer and Owner pursuant to this Agreement. ASC and any CAE acquiring title to a Unit shall, upon such acquisition, execute and record in the Office of the Clerk and Recorder of Garfield County, Colorado, a Memorandum of Acceptance in the form attached hereto as Exhibit C. During its ownership of a Unit, ASC and the CAE, at their

discretion, shall either pursue sale of the Unit to a Qualified Buyer or shall rent the Unit to a person who shall, except for ownership of the Unit, satisfy the requirements of a Qualified Buyer. The Unit shall not be sold to a Qualified Buyer for a price which exceeds the Maximum Resale Price allowed pursuant to this Agreement. The purchase price paid by ASC or a CAE for the purpose of calculating the Maximum Resale Price shall be set forth in the Memorandum of Acceptance required by the Section 3.2. Rental of the Unit owned by ASC or a CAE shall be pursuant to a written Lease which shall be for a minimum term of six (6) months, shall require compliance with the Town's maximum occupancy requirements and shall, otherwise, be approved by CHA, which approvals shall not be unreasonably withheld. The Town shall be entitled to revise the provisions of this Section 10.1 relating to the terms by which ASC or a CAE may rent a Unit only with regard to any Unit which remains the property of Declarant three (3) years after the Effective Date of this Amendment No. 1.

**10.2 Definition of Carbondale Area Employer.** As utilized herein, the term Carbondale Area Employer or CAE shall mean a non-profit organization, a governmental entity such as municipality or county, a quasi-governmental entity such as a school district or special taxing district or a privately owned business with employees and which operates in the Roaring Fork Valley (from and including Glenwood Springs, to and including Aspen, and also including Snowmass Village and Redstone). In the event that one or more qualified CAE's are interested in acquiring a Unit from Declarant or ASC, priority shall be given to a CAE operating within the Town of Carbondale.

**10.3 Right of Re-purchase by ASC or Assigns.** Subject to the terms and conditions set forth below, ASC shall have the right but not the obligation to repurchase any Unit sold by ASC to a Qualified Buyer or a CAE if and when the Owner of the Unit (whether the selling Owner purchased the Unit from ASC, a CAE or any subsequent Owner) desires to sell it. Prior to listing the Unit with CHA pursuant to Section 3.1, the selling Owner shall give written notice thereof to ASC at the address as shown on the Memorandum of Acceptance required by Section 12.2 (The "Notice of Intent to Sell"). Upon receipt of such Notice, ASC shall have the right to purchase the Unit for the Maximum Resale Price on the date of the Notice of Intent to Sell calculated in accordance with Section 3.2, provided that written "Notice of Election to Purchase" is given to the selling Owner by ASC within fifteen (15) days following its receipt of the Notice of Intent to Sell. ASC shall acquire the Unit at a Closing to be held within thirty (30) days after delivery of its Notice of Election to Purchase. At Closing, the selling Owner shall deliver a good and sufficient Special Warranty Deed conveying the Unit to ASC and ASC shall pay the purchase price in cash. The selling Owner shall obtain and pay for a policy of Title Insurance in the amount of the purchase price and each party shall be responsible for their own costs associated with Closing.

In the event any Owner shall attempt to sell his Unit without affording to ASC the right of purchase herein provided, such sale shall be voidable and may be voided by a certificate of non-compliance executed by ASC or the Declarant and duly recorded in the Office of The Clerk and Recorder of Garfield County, Colorado.

In no case shall the right of purchase reserved herein affect the right of an Owner to subject his Unit to a trust deed, mortgage or other security instrument, provided that such security instrument is subordinate and subject to ASC's right to purchase hereunder.

The Right of Re-purchase as set forth herein shall remain in effect for a period of thirty (30) years from the date on which a Unit is initially acquired by ASC. The failure of or refusal by ASC to exercise the right to purchase shall not constitute or be deemed to be a waiver of such right to purchase when ASC receives any subsequent Notice of Intent to Sell.

Except as is otherwise provided in Section 10.3, and except upon a transfer of title to a Public Trustee or to a first mortgagee, each grantor of a Unit, upon transferring or conveying his interest, shall incorporate in such instrument of conveyance an agreement that the grantee shall carry out the provisions of the right of re-purchase as provided in this paragraph.

ASC shall be entitled, but is not obligated, to assign its re-purchase rights as set forth above to any CAE acquiring a Unit from ASC. Such assignment shall be in writing and shall be recorded in the Office of the Clerk and Recorder of Garfield County, Colorado. A copy of the recorded assignment shall be provided to CHA and the Town.

**10.4 Exemption from Right of Purchase.** In the event of any default on the part of any Owner under any first mortgage which entitles the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be exempt from the right of re-purchase as set forth in Section 10.3. However, the purchaser or grantee of such Unit shall thereupon and thereafter be subject to the provisions of Section 10.3. If the deed given in lieu of such foreclosure shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the Unit free and clear of the provisions Section 10.3, but its grantee shall thereupon and thereafter be subject to all of the provisions of Section 10.3.

The following transfers are also exempt from the provisions of Section 10.3:

- a. The transfer by operation of law of a deceased joint tenant's interest to the surviving joint tenant;
- b. The transfer of a deceased's interest to a devisee or devisees by will or his heirs at law under intestacy laws;
- c. The transfer of an Owner's interest by treasurer's deed pursuant to a sale for delinquent taxes.

The grantee pursuant to each of the above described exempt transfers shall, upon acquiring title to the Unit, be subject to the provisions of Section 10.3.

**10.5 Certificate of Compliance - Right of Purchase.** Upon written request of any prospective transferee, purchaser, or an existing or prospective Mortgagee of any Unit, the CAE shall forthwith, issue a written and acknowledged certificate in recordable form, evidencing:

- a. With respect to a proposed sale under Section 10.3, that proper notice was given by the selling Owner and that the CAE did not elect to exercise their option to purchase;

- b. With respect to a deed to a first Mortgagee or its nominee in lieu of foreclosure, and a deed from such first Mortgagee or its nominee, pursuant to Section 10.4, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Section 10.4.

Such a certificate shall be conclusive evidence of the facts contained therein.

2. The form of the Memorandum of Acceptance to be executed by Owners other than CAE's, attached as Exhibit B to Deed Restriction No. 2, is hereby amended and replaced in its entirety with the form of Memorandum of Acceptance attached hereto and incorporated herein as Exhibit D.

3. This Amendment No. 1 modifies and amends Deed Restriction No. 2, as recorded at Reception Nos. 749767 and 754796 with respect to the Lots and Units described therein and on Exhibits A and B hereto. In all other respects, Deed Restriction No. 2 as so recorded shall remain in full force and effect. This Amendment No. 1 shall become effective upon recording in the Office of the Clerk and Recorder of Garfield County, Colorado.

Executed in triplicate originals on the day and year set forth following the signatures which follow:

KEATOR GROVE, LLC

By: 

John A. Elmore, II, Manager

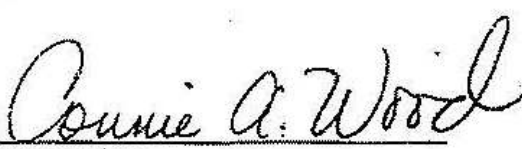
STATE OF COLORADO )  
COUNTY OF PITKIN ) ss.

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of October, 2008, by John A. Elmore, II as Manager of Keator Grove, LLC.

Witness my hand and official seal.

My commission expires 12-31-2010



  
Notary Public

CARBONDALE HOUSING AUTHORITY

By: 

Its: AGENT: MOUNTAIN REGIONAL  
HOUSING CORPORATION

STATE OF COLORADO )

COUNTY OF GARFIELD )

ss.

The above and foregoing document was acknowledged before me this 30 day of October, 2008, by JOHN R. BAKER PRES. MRHC as AGENT of the Carbondale Housing Authority.

Witness my hand and official seal.

My commission expires: 10-13-2009

PATRICIA FRIEDRICH

Notary Public  
State of Colorado

My Commission Expires 10/13/2009

Patricia Friedrich

Notary Public

ASPEN SKIING COMPANY

By: [Signature]

Its: ST. MICHAEL'S

STATE OF COLORADO )

COUNTY OF Pitkin )

ss.

The above and foregoing document was acknowledged before me this 15 day of October, 2008, by David Bellack as Sec. VP of the Aspen Skiing Company.

Witness my hand and official seal.

My commission expires: 2-25-2012

RACHEL MIDDLETON  
Notary Public  
State of Colorado

[Signature]  
Notary Public

BOARD OF TRUSTEES OF THE TOWN OF  
CARBONDALE

By: [Signature]

Mayor

ATTEST

[Signature]  
Town Clerk



STATE OF COLORADO     )  
                                  ) ss.  
COUNTY OF GARFIELD )

The above and foregoing document was acknowledged before me this 30<sup>th</sup> day of OCTOBER, 2008, by MICHAEL HASSIG as MAYOR of the Board of Trustees of the Town of Carbondale, Colorado.

Witness my hand and official seal.

My commission expires: 10.13.2009

Patricia Friedrich  
Notary Public

PATRICIA FRIEDRICH  
Notary Public  
State of Colorado  
My Commission Expires 10/13/2009

**EXHIBIT A**

Lots 2 through and including 10, and Lots 25 through and including 37, Keator Grove, as described on the Final Plat of the Keator Grove Planned Unit Development, recorded October 8, 2007, at Reception No. 734736, in the office of the Clerk and Recorder of Garfield County, Colorado, also known by the following street addresses:

Lot 2, 0202 Linden Circle, Carbondale, Colorado 81623  
Lot 3, 0204 Linden Circle, Carbondale, Colorado 81623  
Lot 4, 0206 Linden Circle, Carbondale, Colorado 81623  
Lot 5, 0208 Linden Circle, Carbondale, Colorado 81623  
Lot 6, 0311 Linden Circle, Carbondale, Colorado 81623  
Lot 7, 0315 Linden Circle, Carbondale, Colorado 81623  
Lot 8, 0319 Linden Circle, Carbondale, Colorado 81623  
Lot 9, 0325 Linden Circle, Carbondale, Colorado 81623  
Lot 10, 0333 Linden Circle, Carbondale, Colorado 81623  
Lot 25, 2750 Graceland Drive, Carbondale, Colorado 81623  
Lot 26, 2748 Graceland Drive, Carbondale, Colorado 81623  
Lot 27, 2746 Graceland Drive, Carbondale, Colorado 81623  
Lot 28, 2744 Graceland Drive, Carbondale, Colorado 81623  
Lot 29, 2742 Graceland Drive, Carbondale, Colorado 81623  
Lot 30, 0140 Ash Lane, Carbondale, Colorado 81623  
Lot 31, 2739 Graceland Drive, Carbondale, Colorado 81623  
Lot 32, 2741 Graceland Drive, Carbondale, Colorado 81623  
Lot 33, 2743 Graceland Drive, Carbondale, Colorado 81623  
Lot 34, 2745 Graceland Drive, Carbondale, Colorado 81623  
Lot 35, 2747 Graceland Drive, Carbondale, Colorado 81623  
Lot 36, 2749 Graceland Drive, Carbondale, Colorado 81623  
Lot 37, 2751 Graceland Drive, Carbondale, Colorado 81623

## EXHIBIT B

Units TH-1 through and including TH-8, Keator Grove, as described on the Condominium Map of Keator Grove Condominiums, Filing No. 1, recorded August 29, 2008, at Reception No. 754794, in the office of the Clerk and Recorder of Garfield County, Colorado, also known by the following street addresses:

TH-1, 0110 Linden Circle, Carbondale, Colorado 81623  
TH-2, 0112 Linden Circle, Carbondale, Colorado 81623  
TH-3, 0114 Linden Circle, Carbondale, Colorado 81623  
TH-4, 0116 Linden Circle, Carbondale, Colorado 81623  
TH-5, 0118 Linden Circle, Carbondale, Colorado 81623  
TH-6, 0120 Linden Circle, Carbondale, Colorado 81623  
TH-7, 0122 Linden Circle, Carbondale, Colorado 81623  
TH-8, 0124 Linden Circle, Carbondale, Colorado 81623

**EXHIBIT C**

**MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY AND RESALE OF RESIDENT OCCUPIED CONDOMINIUM UNITS AND SINGLE FAMILY HOMES IN THE KEATOR GROVE PUD, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO  
(REALE CAP - RIGHT OF FIRST REFUSAL)**

**RECITALS:**

\_\_\_\_\_, (hereinafter referred to as "Employer Owner"), has simultaneous with execution of this Memorandum purchased a residential dwelling unit (the "Unit") described as:

Unit Number \_\_\_\_\_ of the Keator Grove Condominiums, according to the Condominium Map thereof recorded as Reception Number 754796 in the Office of the Clerk and Recorder of Garfield County, Colorado,

or

Lot \_\_\_\_\_ Keator Grove, according to the Final Plat thereof recorded as Reception Number 734736 in the Office of the Clerk and Recorder of Garfield County, Colorado.

As a condition of the sale transaction, Employer Owner acknowledges and agrees to the terms, conditions and restrictions found in that certain instrument entitled Deed Restriction No. 2 - Declaration of Deed Restriction and Agreement Concerning the Sale, Occupancy and Resale of Resident Occupied Condominium Units and Single Family Homes in the Keator Grove PUD, Town of Carbondale, Garfield County, Colorado (Resale Cap - Right of First Refusal) recorded on June 4, 2008 at Reception Number 749767 and Amendment No. 1 to said Deed Restriction No. 2 recorded on \_\_\_\_\_, 2008 at Reception No. \_\_\_\_\_, both in the Office of the Clerk and Recorder of Garfield County, Colorado (hereinafter the "Declaration and Agreement").

NOW, THEREFORE, as required by the Declaration and Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Employer Owner agrees and acknowledges as follows:

1. Employer Owner hereby acknowledges having carefully read the entire Declaration and Agreement, has had the opportunity to consult with legal and financial counsel concerning it, fully understands its terms and conditions and agrees to comply with all covenants, restrictions and requirements thereof. In particular, Employer Owner acknowledges and agrees that its rights, options and obligations with respect to the Unit are governed by Section 10 of the Declaration and Agreement, as amended, and that Employer Owner will be required to document the cost of and obtain approval of Improvements to be included in the Maximum Resale Price. Employer Owner's

purchase price for the purpose of determining such Maximum Resale Price is  
\$ \_\_\_\_\_.

2. Employer Owner acknowledges that any written lease of the Unit shall require compliance with the maximum occupancy limitations of the Town of Carbondale, to wit:
  - A. Within every dwelling unit in the town of Carbondale there shall be provided at least 200 square feet of habitable space for the first occupant thereof and 150 square feet of additional habitable space for each additional occupant said dwelling unit.
  - B. For the purposes of this Chapter, habitable space shall mean a space in a building or a dwelling unit intended for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage, utility spaces, garages, attics, unfinished basements without a bathroom and/or required ingress/egress, and other similar space are considered non-habitable spaces.
  - C. Occupancy of non-habitable spaces, as identified in Section 7.15.020(B) shall not be permitted.
  - D. Except when authorized as a group home or otherwise required by law under Title 18, occupancy of any dwelling unit within any residential zone district in excess of such other limitations set forth in Section 18.70.300 also shall be prohibited.
3. The address of Employer Owner and its agent for the purpose of Sections 10 and 11.1 of the Declaration and Agreement and the Master Declaration of Protective Covenants, Conditions and Restrictions for Keator Grove, and all amendments and supplements thereto is as follows:

EMPLOYER OWNER:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

AGENT:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

4. This Memorandum shall be recorded in the Office of the Clerk and Recorder of Garfield County, Colorado.

EMPLOYER OWNER:

Dated: \_\_\_\_\_

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The above and foregoing document was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Agreed and Approved with regard to Employer Owner's purchase price as stated in Paragraph 1, above.

TOWN OF CARBONDALE

By: \_\_\_\_\_  
\_\_\_\_\_, Town Manager

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Town Clerk

EXHIBIT D

EXHIBIT B

MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION AND  
AGREEMENT CONCERNING THE SALE, OCCUPANCY AND RESALE OF RESIDENT  
OCCUPIED CONDOMINIUM UNITS AND SINGLE FAMILY HOMES IN THE KEATOR  
GROVE PUD, TOWN OF CARBONDALE, GARFIELD COUNTY, COLORADO  
(RESALE CAP - RIGHT OF FIRST REFUSAL)

RECITALS:

\_\_\_\_\_, (hereinafter referred to as "Owner"), has simultaneous  
with execution of this Memorandum purchased a residential dwelling unit described as:

Unit Number \_\_\_\_\_ of the Keator Grove Condominiums,  
according to the Condominium Map thereof recorded as Reception  
Number 754796 in the Office of the Clerk and Recorder of Garfield  
County, Colorado,

OR

Lot \_\_\_\_\_ Keator Grove, according to the Final Plat thereof  
recorded as Reception Number 734736 in the Office of the Clerk and  
Recorder of Garfield County, Colorado.

As a condition of the sale transaction, the Owner acknowledges and agrees to the terms,  
conditions and restrictions found in that certain instrument entitled Deed Restriction No. 2 -  
Declaration of Deed Restriction and Agreement Concerning the Sale, Occupancy and Resale of  
Resident Occupied Condominium Units and Single Family Homes in the Keator Grove PUD,  
Town of Carbondale, Garfield County, Colorado (Resale Cap - Right of First Refusal) recorded  
on June 4, 2008 at Reception Number 749767 and Amendment No. 1 to said Deed Restriction  
No. 2 recorded on \_\_\_\_\_, 2008 at Reception No. \_\_\_\_\_, both in the Office of the  
Clerk and Recorder of Garfield County, Colorado (hereinafter the "Declaration and  
Agreement").

NOW, THEREFORE, as required by the Declaration and Agreement and in consideration  
of the covenants and agreements contained therein and contained herein, the Owner agrees and  
acknowledges as follows:

1. Owner hereby acknowledges having carefully read the entire Declaration and  
Agreement, has had the opportunity to consult with legal and financial counsel  
concerning it, fully understands its terms and conditions and agrees to comply with all  
covenants, restrictions and requirements thereof. In particular, Owner acknowledges  
and agrees that \_\_\_\_\_ shall be entitled to  
exercise the rights and options to purchase the Unit or Lot as set forth in Section 10 of  
the Declaration and Agreement, and that the Owner will be required to document the

cost of and obtain approval of Improvements to be included in the Maximum Resale Price. The Owner's purchase price for the purpose of determining such Maximum Resale Price is \$ \_\_\_\_\_.

2. The address of Owner for the purpose of Section 11.1 of the Declaration and Agreement is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. This Memorandum shall be recorded in the Office of the Clerk and Recorder of Garfield County, Colorado.

**OWNER:**

\_\_\_\_\_

Dated: \_\_\_\_\_

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF \_\_\_\_\_ )

The above and foregoing document was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**OWNER:**

\_\_\_\_\_

Dated: \_\_\_\_\_

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF \_\_\_\_\_ )

The above and foregoing document was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Agreed and Approved with regard to Owner's purchase price as stated in Paragraph 1, above.

**TOWN OF CARBONDALE**

By: \_\_\_\_\_  
\_\_\_\_\_, Town Manager

Attest:

\_\_\_\_\_  
\_\_\_\_\_, Town Clerk