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SECOND AMENDMENT TO
PROTECTIVE COVENANTS OF BRUSH CREEK VILLAGE SUBDIVISION

(all filings)

Pursuant to majority vote of the members of the Brush Creek Landowners Association, Inc. taken at a duly constituted meeting thereof held on January 24, 1979, the following are hereby declared and deemed to be covenants that run with the land, including all individual lots within the Brush Creek Village Subdivision, and a burden and a benefit thereto and to the record owners thereof, their heirs, successors, assigns and grantees:

ASSESSMENTS

1. Purpose. The Board of Directors of the Brush Creek Village Landowners Association, Inc. shall fix, levy and collect annual assessments against all Lots based upon advance estimates of requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Association and the furnishing of common utility services to each lot, which estimates may make provision for inter alia: snow plowing; garbage collection; road creation and maintenance; installation of underground utilities; maintenance and operation of any and all common area, open space portions located within the geographical confines of the Subdivision; street lighting; sewer service charges; repairs and maintenance; legal and accounting fees; wages for Association employees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners.

2. Accounting Procedure. At least once each year, the board shall estimate the annual budget of common expenses to be assessed against the Association membership. Except with respect to the owners of Lots Nos. 1, 2, 3, 4, 5 and 6, Filing No. 1, Block 1, and Lots Nos. 2, 3, 4, 5 and 6, Filing No. 1, Block 2, Brush Creek Village Subdivision, whose percentage assessment shall be based on the total annual budget, less only road maintenance (including snow-plowing) and improvement costs, said annual budget shall be assessed to the Lot Owners according to each Lot Owner's percentage of the total existent Lots in the Subdivision. At the time of the annual meeting, the Board shall supply to all Lot Owners an itemized accounting of the common expenses for the previous calendar year actually incurred and paid, together with a tabulation of the amounts collected in accordance with the estimates provided and showing the net amount over or short of the actual expenditures plus reserves. The Board shall be entitled to build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against the reserve, and then, in the event of an insufficiency, the Board may at any time levy a special assessment to be charged in like manner against Lot Owners. Owners shall be obligated to pay such an assessment.

3. Notice of Assessments and Time for Payment.

All assessments, annual or special, shall be due and payable in full thirty (30) days from the date notice thereof shall have been given to each respective Lot Owner. Notice of an annual or special assessment shall, regardless of receipt, be deemed given when placed in the United States mail regular postage prepaid and addressed to each respective Lot Owner at his or her last known address at the time shown on the books of the Association.

4. Lien for Assessments. All sums assessed against any Lot within the subdivision, together with interest at the rate of eighteen percent (18%) per annum from the date it becomes due, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except only for: (a) valid tax and special assessment liens on the Lot in favor of any governmental assessing authority; and (b) a lien for all sums unpaid on a first Mortgage duly recorded in the Pitkin County, Colorado, Real Estate Records, including all unpaid obligatory advances to be made pursuant to such Mortgage and all amounts advanced pursuant to such Mortgage and secured by the lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens on any Lot shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

To evidence a lien for sums assessed pursuant hereto, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by the Association and may be recorded in the office of the County Clerk and Recorder of Pitkin County, Colorado. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Colorado. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Association and recorded in the Pitkin County, Colorado, Real Estate Records, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

Any encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

5. Personal Obligation of Owner and Purchaser for Assessments. The amount of any annual or special assessment against any Lot shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of his or her Lot.

A purchaser of a lot shall be jointly and severally liable with the seller for all unpaid assessments against any Lot up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

6. Certificate of Compliance. Upon the payment of a \$25.00 fee and upon the written request of any member or any other person having any right, title or interest in any lot, the Association shall furnish a written statement setting forth the amount of any assessments of other charges, if any, due or accrued and then unpaid with respect to any member, or lot which statement shall, with respect to the party to whom it is issued, be conclusive against the Association.

ROADS

The Association, through its designated agent, shall have the right to cause the towing or removal of any obstruction, regardless of ownership thereof, including any motor vehicle, to the free and unfettered passage over and upon all roadways within the subdivision, in which event it shall, except as hereinafter provided, be the common obligation of all Lot Owners within the subdivision to indemnify and hold forever harmless the Association and its designated agent from and against any and all claims demands liabilities or obligations of whatsoever nature occasioned thereby; provided however that it shall be the sole obligation to indemnify and hold harmless, as above set forth, of any Lot Owner determined to have been responsible in the first instance for any such obstruction, including any obstruction caused or created by his or her guests, invitees or licensees.

MISCELLANEOUS

1. Repeal and Readoption of Covenants Regarding Architectural Control Committee. Article II "Architectural Control Committee" of those certain protective covenants pertaining to the subdivision and appearing in Book 218 at Pages 206-209 and the amendment thereto appearing in Book 267 at Pages 975-976 of the records of Pitkin County, Colorado are hereby repealed in their entirety and readopted with amendments as follows:

ARTICLE II

ARCHITECTURAL CONTROL COMMITTEE

1. The Architectural Control Committee shall consist of three members to be selected by and to serve at the pleasure of the Board of Directors of the Brush Creek Landowner's Association, Inc. Any vacancy in the committee shall promptly be filled by the Board. The members of the committee shall not be entitled to any compensation for services performed during their tenure on the committee.

2. Any change in the state of any lot or any improvements thereupon existing at the time of recording hereof shall first be approved by no less than two of the three members of the architectural control committee, which approval shall be given in writing and shall not unreasonably be withheld. The Committee's determination in this respect shall be limited to an inquiry as to compliance of the proposed change with the General Restrictions on all tracts set forth in those certain Protective Covenants recorded in Book 218 at Pages 206-209 of the records of Pitkin County, Colorado, and to the basic compatibility of the proposed change with existing improvements in the subdivision. All requests for approval shall be submitted in writing to the registered office of the Association accompanied by such drawings and exhibits as the committee may in the good faith exercise of its discretion request. Any request when so made shall be deemed approved if not specifically denied or otherwise acted upon within fifteen (15) days of its submission.

2. Repeal and Readoption of Paragraph 2, General Provisions. Paragraph 2, General Provisions of the Protective Covenants pertaining to the subdivision and appearing in Book 218 at Pages 206-209 of the records of Pitkin County, Colorado, is hereby repealed in its entirety and readopted with amendments as follows:

2. The Association shall have the right to commence legal proceedings to secure the performance of and faithful adherence to these covenants, including without limitation an action to enjoin, either mandatorily or prohibitively, any violation or attempted violation hereof, regardless of the degree of consummation of any such violation or attempted violation. In the event of any such legal proceedings the Association shall be entitled to receive its reasonable attorneys' fees as a part of any judgment therein made in its favor. Additionally, the Association shall have the right to record in the records of Pitkin County, Colorado an appropriate instrument evidencing any such violation or attempted violation of these covenants.

3. Construction With Other Provisions. In the event of any conflict between the provisions of the Protective Covenants of the Brush Creek Village Subdivision, including this Second Amendment thereto, and any other instrument affecting or purporting to affect Lots or Lot Owners of the Brush Creek Village Subdivision, the provisions of the Protective Covenants, and any and all amendments thereto, as from time to time they may be adopted, shall control.

(Certificate of Adoption Attached)

