

Eagle County Clerk and Recorder:

Index in grantee's index under "Aspen Mesa" and "Aspen Mesa Home Owners Association" and in the grantor's index under "Aspen Mesa Home Owners Association" and the names of each person executing these Amended and Restated Deed Restrictions.

**AMENDED AND RESTATED DEED RESTRICTIONS  
FOR  
ASPEN MESA HOMEOWNERS ASSOCIATION**

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**AMENDED AND RESTATED DEED RESTRICTIONS  
FOR  
ASPEN MESA ESTATES**

These Amended and Restated Deed Restrictions for Aspen Mesa Estates (“Deed Restrictions”) are made effective upon recording.

**RECITALS**

A. Deed Restrictions for Aspen Mesa were recorded July 18, 1968, at Reception No. 108512, and Deed Restrictions for Aspen Mesa Unit II were recorded March 3, 1970, at Reception No. 112730 with the Eagle County Clerk and Recorder (the “Original Deed Restrictions”), creating the community known as “Aspen Mesa”.

B. The Original Deed Restrictions established a common scheme and plan for the properties subject to it and to those properties conveyed to Owners consistent with the common scheme and plan.

C. The Original Deed Restrictions were amended by those amendments and supplements recorded with the Eagle County Clerk and Recorder, as follows:

| Recording Date          | Reception No. |
|-------------------------|---------------|
| <b>July 23, 1971</b>    | <b>116812</b> |
| <b>May 17, 1976</b>     | <b>142638</b> |
| <b>January 17, 1978</b> | <b>161648</b> |

and any others of record.

D. The Original Deed Restrictions, as amended and supplemented, were reorganized and amended by the Reorganization and Amendment of Deed Restrictions for Aspen Mesa Estates recorded October 19, 1983, at Reception No. 267365 with the Eagle County Clerk and Recorder (“Reorganized Deed Restrictions”). The Reorganized Deed Restrictions have been amended by amendments and supplements recorded with the Eagle County Clerk and Recorder, as follows:

| Recording Date:       | Reception No. |
|-----------------------|---------------|
| <b>April 16, 1985</b> | <b>307507</b> |
| <b>May 14, 1986</b>   | <b>338109</b> |
| <b>August 9, 1991</b> | <b>455701</b> |

and any others of record.

E. Paragraph 25 of the Reorganized Deed Restrictions, as amended, provides that the Reorganized Deed Restrictions, “may be amended or terminated by a majority of the members voting in a meeting of the members of the Aspen Mesa Home Owners Association at which a quorum exists or voting by mail in an election conducted by the Board of Directors in accordance with the Bylaws of the Association.”

F. These Amended and Restated Deed Restrictions do not change the allocated interests of the Lots and do not terminate the Community.

G. The purposes of the amendments in these Amended and Restated Deed Restrictions include, but are not limited to, the following: to delete declarant rights and responsibilities that are no

longer applicable; to update the Original Deed Restrictions to comply with current state law; and to update provisions so as to allow the Association to efficiently operate the Community and deal with Community concerns.

H. Owners holding at least a majority of votes at a duly called meeting where a quorum is present or by mail, desire to amend the Reorganized Deed Restrictions and have approved these Amended and Restated Deed Restrictions. Those approving these Amended and Restated Deed Restrictions have determined it to be reasonable and not burdensome.

The Reorganized Deed Restrictions, as amended, are replaced by these Amended and Restated Deed Restrictions ("Deed Restrictions").

## **ARTICLE 1. NAME AND LOCATION**

**Section 1.1** **Name.** The type of common interest community is a planned community. The planned community's name is Aspen Mesa Estates. The Association's name is Aspen Mesa Home Owners Association.

**Section 1.2** **Location.** The Community subject to these Deed Restrictions is located in Eagle County, Colorado, as more particularly provided in Exhibit "A" to these Deed Restrictions. The Plat relating to the Community is in the records of the Clerk and Recorder of Eagle County, Colorado. The Plat is incorporated herein by reference as fully as if the same was set forth in its entirety herein.

## **ARTICLE 2. DEFINITIONS**

**Section 2.1** **General.** Terms used in these Governing Documents, as defined below, have their normal, generally accepted meanings or the meanings given in the Colorado Common Interest Ownership Act or the Colorado Revised Nonprofit Corporation Act, unless the context requires otherwise.

(a) **Act** means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as may be amended from time to time, to the extent it applies to communities created prior to July 1, 1992.

(b) **Association** means Aspen Mesa Home Owners Association, a Colorado nonprofit corporation, and its successors. The Board of Directors will exercise all Association powers and conduct and manage all Association affairs unless a particular power is expressly reserved to the Owners.

(c) **Board or Board of Directors** means the body responsible for management and operation of the Association. The term has the same meaning as executive board as defined in the Act.

(d) **Bylaws** mean the Bylaws of the Association.

(e) **Common Property** means all real property and other property owned by the Association, together with all improvements located thereon, but excluding the Lots.

(f) **Common Expenses** mean the expenses and liabilities incurred or anticipated to be incurred by the Association, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Property, and for fulfilling any of the Association's powers and duties.

(g) **Community-Wide Standard** means the standard of conduct, maintenance, or other activity generally prevailing within the Aspen Mesa Community. This standard may be more specifically determined by the Board of Directors.

(h) Community means all that property described in Exhibit "A." If there is any discrepancy between the description of the property in the Reorganized Deed Restrictions, as amended, and Exhibit "A," the description in the Reorganized Deed Restrictions will control.

(i) Deed Restrictions means these Amended and Restated Deed Restrictions, as may be amended and supplemented from time to time.

(j) Electronic Record means information created, transmitted, received, or stored by electronic means and retrievable in human perceivable form, such as email, web pages, electronic documents, and facsimile transmissions.

(k) Governing Documents mean these Deed Restrictions and exhibits, the Association's Articles of Incorporation, Bylaws, Plats, Rules and Regulations, Architectural Guidelines, and Policies and Procedures, all as may be supplemented or amended from time to time.

(l) Improvement means every structure and all appurtenances thereto of every type and kind, including, but not limited to, buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, doghouses, mailboxes, aerials, antennas, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, pumps, wells, tanks, solar collectors, reservoirs, pipes, lines, meters, towers, and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone, regular or cable television, or other utilities.

(m) Lot means and refers to any of the separately numbered lots or plots shown upon any recorded subdivision Plat of the Community, together with all appurtenances and improvements, with the exception of the Common Property and any public streets or rights-of-way.

(n) Majority means those eligible votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

(o) Member means any Owner. The terms "Member" and "Owner" may be used interchangeably.

(p) Mortgage means any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

(q) Mortgage Holder means the holder of any Mortgage.

(r) Owner or Lot Owner means the record titleholder of a Lot within the Community, but does not include a Mortgage Holder.

(s) Person means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

(t) Plat means the subdivision plat(s) for the Community as recorded, which plat(s) is a part of these Deed Restrictions.

(u) Policies and Procedures mean any instrument, as a part of any of the Governing Documents and/or separately adopted by the Association, as required under the Act as responsible governance policies, and other policies as may be adopted by the Association. The definition of Policies and Procedures may include Rules and Regulations.

(v) Resident means any Person staying overnight in a Residence for a total of more than 30 days, either consecutive or nonconsecutive, in any calendar year, and includes tenants.

(w) Residence means the dwelling unit located on the Lot.

(x) Rules and Regulations means any instrument adopted by the Association, as allowed under these Deed Restrictions and the Act, for the regulation and management of the Community, Residents, Common Property, and/or Lots, including any amendments or revisions.

### **ARTICLE 3. ASSOCIATION MEMBERSHIP, ALLOCATION OF VOTES, AND ALLOCATION OF LIABILITY FOR COMMON EXPENSES**

**Section 3.1 Mission Statement.** The Association and the Governing Documents exist to help maintain the property values and assets of the Aspen Mesa Community. Other goals are to help promote harmonious community living, preserve the common scheme and design, and create a sense of fairness and equity among Members. These Deed Restrictions have been designed to promote voluntary compliance. By fostering positive interaction with one another and working collaboratively on common issues and concerns, the Community will strive to maintain property values and assets.

**Section 3.2 Membership.** Every Person who is a record Owner of a fee interest in any Lot subject to these Deed Restrictions is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot is the sole qualification for membership. No Owner, whether 1 or more Persons, will have more than 1 membership per Lot owned. Membership does not include Persons who hold an interest as security for the performance of an obligation, and granting a security interest will not terminate the Owner's membership.

(a) Voting. The Owner(s) is entitled to 1 vote for the Lot. When more than 1 Person holds an ownership interest in any Lot, the vote for the Lot will be exercised as those Owners determine among themselves; otherwise, the Lot's vote will be suspended if more than 1 Person seeks to exercise it.

(b) Common Expenses. Except as provided elsewhere in the Governing Documents, the amount of all Common Expenses will be assessed equally among all Lots.

### **ARTICLE 4. EASEMENTS AND COMMON PROPERTY**

**Section 4.1 Greenbelt and Equestrian Easements.** All areas designated "green areas" or "equestrian easement" on the recorded Plat(s) of Aspen Mesa or any amended plat thereof shall be reserved for approved use by individual Owners. Owners seeking approval shall follow procedures set forth herein for review by the Architectural Control Committee.

**Section 4.2 Easement for Entry.** The Association has an easement to enter onto Lots, but not the Residences on the Lots, to exercise rights and perform obligations as set forth in these Deed Restrictions, provided that exercise of this easement does not unreasonably interfere with or impair the use of any improvements constructed on a Lot, and will be exercised only after reasonable notice to the Owner, except in cases of emergency, in which case notice is not required.

**Section 4.3 Utilities.** A blanket easement for utilities may exist upon, across, over, and under the Lots as shown upon the recorded plat of the Community, and other easements as may be established pursuant to the provisions of these Deed Restrictions or as may be granted by the Board of Directors of the Association.

**Section 4.4 Easements Deemed Created.** All conveyances of portions of the Community (including Lots) will be construed to grant and reserve the easements contained in this article, even though no specific reference to the easements or to this article appears in the conveyance.

**Section 4.5 Common Property.** The Common Property consists of all portions of the Community not located within the boundaries of a Lot that are owned or leased by the Association. The Common Property will remain undivided, and no Owner or any other person is authorized to bring any action for partition or division of the whole or any part. Each Owner and the Association may use the

Common Property for the purposes for which it is intended, but no use will interfere with the lawful rights of other Owners.

## **ARTICLE 5. ASSESSMENTS**

**Section 5.1 Purpose of Assessment.** The Association has the power to levy assessments. Assessments for Common Expenses are used to fulfill the Association's obligations pursuant to these Deed Restrictions and to promote the common benefit and enjoyment of the Owners and Residents in the Community as may be more specifically defined and authorized from time to time by the Association.

**Section 5.2 Personal Obligation For Assessments.** Each Owner covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) individual assessments which are established pursuant to the terms of these Deed Restrictions. These amounts are also the personal obligation of the Person who owned the Lot when the assessment fell due. The personal obligation to pay any past due sums due the Association does not pass to a successor-in-title unless expressly assumed.

**Section 5.3 Lien.** All assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney's fees, costs, and expenses), up to the maximum amount permitted by law, is a charge and a continuing lien upon the Lot against which each assessment is made. The Association has authority to record a notice of lien in the county's real property records evidencing the Association's lien. The Association's lien under this article is not subject to the provision of any homestead exemption as allowed under law. The lien has the priority set forth in the Act.

**Section 5.4 Payment of Assessments.** Assessments will be paid in the manner and on the dates fixed by the Association. No Owner is exempt from liability for or may withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations, or inconvenience or discomfort arising from the Association's performance of its duties.

**Section 5.5 Individual Assessments.** The Association has the right to add to any Owner's assessment any amounts expended by the Association for the benefit of any individual Lot or resident thereof, including improvement, repair, replacement, and maintenance specific to the Lot as authorized under the terms of these Deed Restrictions; repair, replacement, and maintenance of any areas of Association maintenance responsibility caused by the negligent or willful acts of any Owner, Owner's guest, tenant, employee, licensee, or invitee; and all fines and costs assessed against an Owner and the Owner's Lot pursuant to the Governing Documents.

**Section 5.6 Delinquent Assessments.** All assessments and related charges not paid on or before the due date are delinquent, and the Owner is in default.

(a) If any assessment, fine, or charge is not paid in full within the time provided by the Association's collection policy:

(i) a late charge in an amount specified in the Association's collection policy may be imposed without further notice or warning;

(ii) interest at the rate specified in the Association's collection policy may be imposed without further notice or warning; and

(iii) upon 30 days' written notice, the Association may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner loses the privilege of paying assessments and charges in installments for that fiscal year, unless the Association, in its sole discretion, reinstates the privilege.

(b) If any assessments, fines, or other charges remain unpaid more than 10 days after the due date, the Owner's right to vote will be automatically suspended until all amounts owed are paid in full, and the Association may institute suit to collect all amounts due pursuant to the provisions of these Deed Restrictions, the Bylaws, and Colorado law, including reasonable attorney's fees. Enforcement under this section is not dependent upon or related to other restrictions and/or other actions.

(c) If partial payment of assessments or other charges is made, the amount received will be applied as specified in the Association's collection policy.

(d) The Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay the delinquent assessments or related charges and may foreclose its lien against the Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for delinquent assessments or related charges may be commenced and pursued without foreclosing, or in any way waiving, the Association's lien.

(e) The Association shall have the right to withhold or discontinue any services provided by the Association, including, but not limited to, 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 (2/3) vote of the Members or Board of Directors of the Association at a meeting called specifically to discuss such discontinuance, or at another regularly scheduled Association meeting which coincides with the required notice herein, at which a quorum is present. Furthermore, no discontinuance shall be implemented until at least 10 days following mailing of a written Notice of Intent to Discontinue Water Service, sent certified mail, return receipt requested, to the Owner and occupant, if any, of the affected Lot at their last known address(es) on record with the Association. This 10-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.

(f) The Association's lien foreclosure or attempted foreclosure does not preclude the Association from foreclosing its lien again for any subsequent delinquent assessment or related charges. The Association may bid on or purchase any Lot at foreclosure or other legal sale, and acquire and hold, lease, mortgage, convey, or otherwise deal with the Lot. If a lien foreclosure action is filed, and an Owner abandons or vacates his Lot, the Association may apply for the appointment of a receiver for the Lot without prior notice to the Owner. The Association's rights are expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent provided under the Act.

**Section 5.7 Budget and Assessment.** Prior to the beginning of each fiscal year, the Association will prepare a budget covering the estimated costs of operating the Community during the coming year, including an annual reserve contribution for replacement of improvements that are the Association's responsibility, and establish the annual assessment or installments for the coming year. The Association will deliver a summary of the budget to each Owner within 90 days after adopting the budget and set a date for an Association meeting to consider the budget, which meeting will occur within a reasonable time after delivery of the budget summary. The budget and the assessment will become effective unless disapproved at a duly called Association meeting by a majority of the total Association vote; provided, however, if a quorum is not obtained at the meeting called to ratify the budget, the budget will become effective even though a vote to disapprove the budget could not be called at this meeting. If the membership disapproves the proposed budget or the Association fails for any reason to determine the budget for the succeeding year, then until a new budget is determined, the budget in effect for the current year will continue.

The Association may propose a new budget at any time during the year. The approval procedure set forth in this section for budgets will also apply to a new budget proposed by the Association.

(a) Budget Meetings.

(i) Effective 90 days following approval of these Deed Restrictions, the Board of Directors will prepare and approve a budget at least annually.

(ii) Within 90 days after the Board of Directors adopts the proposed budget, or such longer time as allowed by law, the Board will mail or deliver, including posting on the Association's website (if any), a summary of the budget to all owners, and set a date for a Member meeting (which may also be the annual meeting) to consider the budget.

(iii) Notwithstanding anything to the contrary, the Association's budget and assessments are determined by the Board of Directors as provided in these Deed Restrictions. The budget does not require approval or ratification by the Owners, nor may Owners vote to veto the proposed budget.

(iv) Following the budget meeting, written notice of any change in the annual assessment will be sent to each Owner.

The budget will not operate as a limitation on expenditures by the Association but is an estimate of Common Expenses on which the Association bases the annual assessments.

**Section 5.8** **Special Assessments**. In addition to the annual assessment provided above, the Association may, at any time, and in addition to any other rights it may have, propose a special assessment against all Owners in accordance with the meeting and notice procedures set forth above. Any special assessment (except as provided in these Deed Restrictions regarding repair or reconstruction of casualty damage to or destruction of all or part of the Community) will become effective unless disapproved at a duly called Association meeting by a vote of a two-thirds majority of the total Association membership; provided, however, if a quorum is not obtained at the meeting, the special assessment will become effective even though a vote to disapprove the special assessment could not be called at this meeting. The special assessment may be payable in installments, as determined by the Association, and/or may provide a discount for a lump sum payment.

**Section 5.9** **Statement of Account**. The Association will furnish to an Owner or the Owner's designee, or to a holder of a security interest or its designee, a statement setting forth the amount of unpaid assessments then levied against the Owner's Lot. The Association will deliver the statement personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party within 14 calendar days after the Association's registered agent receives the request by personal delivery or by certified mail, first-class postage prepaid, return receipt requested. The information contained in the statement, when signed by the Association's treasurer or managing agent, if any, will bind the Association, the Board, and every Owner as to the person or persons to whom the statement is issued and who rely on it in good faith. The Association may establish a reasonable fee relating to the statement, which may incorporate any fees imposed by a managing agent.

**Section 5.10** **Surplus Funds and Common Profits**. Common profits from whatever source will be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses will be added to the Association's capital reserve account.

**Section 5.11** **Borrowing**. The Association has the power to borrow money and assign future income, including the right to assign its right to receive Common Expense assessments.

## **ARTICLE 6. MAINTENANCE RESPONSIBILITY**

**Section 6.1** **By the Owner**. Each Owner is obligated to maintain and keep in good repair all portions of the Owner's Lot consistent with the Community-Wide Standard. This maintenance responsibility includes, but is not limited to, the following:

(a) **Improvements**. Each Owner is responsible for maintenance, repair, and replacement of the property and Improvements located within their Lot boundaries, including, but not limited to, exterior lighting, decks, patios, driveways, sidewalks (including snow removal), doors, garage doors, windows, and painting or staining the exterior surfaces of the Residence and any other approved Improvement on the Lot. Owners shall be responsible for completing all annual back flow inspections

required by the State of Colorado to maintain the Association's Gold Standard certification. Failure to complete such inspection by August 1 of each year shall be a violation of these Deed Restrictions and may result in a fine being issued, after notice and opportunity for a hearing.

(b) Landscaping. Each Owner is required to maintain the landscaping on their Lot in a safe, neat, attractive, and well-kept condition, which includes fire mitigation, as the same may be necessary in the sole discretion of the Board of Directors. Landscaping will not be maintained in any manner that impairs the ability of drivers to have unobstructed views from the street. Each Owner must perform their obligations in a manner that does not unreasonably disturb other Owners and Residents.

**Section 6.2** By the Association. The Association will maintain and keep in good repair, as a Common Expense, the Common Property of the Community. The foregoing maintenance will be performed consistent with the Community-Wide Standard.

If the Association determines that the need for maintenance, repair, or replacement of the Common Property is caused through the willful or negligent act of any Owner or Resident, or their family, guests, lessees, or invitees, the Association may assess the cost of that maintenance, repair, or replacement against the Owner's Lot as an Individual Assessment, which cost will become the Owner's personal obligation, a lien against the Lot, and collected as provided in these Deed Restrictions and the Association's collection policy.

(a) 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, and to do all things necessary, including the levying of tap fees, assessments, and other charges on Owners, to support such activities in connection with such supply of water. Each Owner shall be required to obtain all domestic water from the Association. No water from any other source shall be allowed. Association water supplies shall be restricted for ordinary household uses within 1 single-family residence on each Lot, fire protection, domestic animals, up to 2 horses per Lot as further restricted herein, and the irrigation or watering of not more than 2,500 square feet of lawn and gardens. Association water shall not be used for irrigation of pastures, open spaces, or lawns in excess of said square footage per Lot. The provisions hereof shall apply to all Lots within the Aspen Mesa Community. A violation of this provision shall be grounds for a termination or suspension of water services to any Lot, in addition to any other remedy for breach of these Deed Restrictions.

(b) Assumption of Maintenance Responsibility. 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, and all aspects of a water supply system.

**Section 6.3** Failure to Maintain. If the Association determines that any Owner has failed or refused to properly discharge his maintenance, repair, or replacement obligations as provided in the Governing Documents, the Association will give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary work at the Owner's sole cost and expense. The notice will describe with reasonable particularity the work the Association deems necessary and the timeframe within which the same must be completed, as determined by the Board of Directors.

Unless the Association determines that an emergency exists, the Owner shall complete any necessary maintenance, repair, or remediation within the time frame established by the Board of Directors. If the maintenance or repair of the Residence or other Improvements on the Lot cannot reasonably be completed within such time period, the Owner must commence replacement or repair within the specified time frame. If the Association determines that: (a) an emergency exists, or (b) the Owner has not complied with the Association's demand, the Association may perform the work, then assess the cost of that maintenance, repair, or replacement against the Owner's Lot as an Individual

Assessment, which cost will become the Owner's personal obligation, a lien against the Lot, and collected as provided in these Deed Restrictions and the Association's collection policy.

**Section 6.4**        **Maintenance Standards and Interpretation.** The maintenance standards and enforcement and the interpretation of maintenance obligations under the Governing Documents may vary from 1 term of the Board to another term of the Board. These variances do not constitute a waiver of any right to adopt and enforce maintenance standards. No decision or interpretation by a prior Board constitutes a binding precedent with respect to subsequent Board decisions or interpretations.

## **ARTICLE 7.                    ARCHITECTURAL CONTROLS**

**Section 7.1**        **Architectural Review Committee.** The Architectural Review Committee ("ARC") consists of 3 or more persons appointed by the Board of Directors. The Board of Directors may determine terms of office, fill vacancies, and may remove committee members, with or without cause. If the Board of Directors does not appoint committee members, the Board will serve as the ARC. The ARC may propose design guidelines from time to time, subject to Board approval.

**Section 7.2**        **Approval Required.** No Owner will commence, place, erect, construct, alter, or demolish any Improvement to Property (as defined below) upon any portion of the Aspen Mesa Community without prior written approval of the ARC.

**Section 7.3**        **Improvement to Property.** "Improvement to Property" requiring approval of the ARC means and includes, without limitation: (a) construction, installation, erection, or expansion of any building, structure, or other Improvements, including utility facilities; (b) demolition or destruction, by voluntary action, of any building, structure, or other Improvements; (c) grading, excavation, filling, or similar disturbances to the land including, without limitation, change of grade, ground level, or drainage pattern; (d) any change or alteration of any previously approved Improvement to Property by an Owner or the Owner's predecessor-in-title, including any change of exterior appearance, color, or texture; and (e) any planting of trees for review of placement and expected mature height of the same. Accessory Dwelling Units ("ADUs") are prohibited in the Community.

**Section 7.4**        **Application Procedure.** The ARC may require that applications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed Improvement to Property, location and size of driveways, walls, windbreaks, and grading plan, or other information as may be required by the ARC and/or set forth in the Design Guidelines. Applications must be submitted to the ARC. Applications will be reviewed at ARC meetings. Owners submitting applications are responsible for providing documentation to the ARC regarding harmony of external design, effective location and use of existing Improvements and proposed Improvements to Property, preservation of aesthetic beauty, and conformity with specifications and purposes generally set forth in these Deed Restrictions and the Design Guidelines. The ARC may require submission of additional plans, specifications, or other information prior to approving or disapproving the application. Notwithstanding Section 7.9 below, until the ARC has received all required materials in connection with the application, it may postpone review of any materials submitted for approval.

**Section 7.5**        **Authority of Association to Engage Consultants.** The Board has the authority to select and engage professional consultants to assist in reviewing applications and/or to inspect any of the work performed. The cost of any consultants are to be paid by the submitting Owner, whether or not the application is approved. Prior to incurring consultant costs, the Association will notify the Owner of its belief that review and/or inspections by consultants are necessary. The Owner will then have the right to withdraw the submission. The Association may require payment of costs prior to review.

**Section 7.6**        **Architectural Review Criteria.** The ARC will exercise its reasonable judgment with the objective that proposed Improvements to Property conform to and harmonize with the existing surroundings, Residences, landscaping, and structures. The ARC's approval on matters coming before it will not be unreasonably withheld, and actions taken will not be arbitrary or capricious. Criteria for approval include, but are not limited to: (a) conformity and harmony of exterior appearances with neighboring structures, including design compatibility and scale; (b) color and materials to be used; (c)

location on the Lot; (d) relation to the natural environment; (e) street visibility; (f) preservation of aesthetic beauty and conformity with the specifications and purposes generally set out in these Deed Restrictions and in the Design Guidelines, if any; and (g) any other matter the ARC deems to be relevant or appropriate.

**Section 7.7** **Variances**. The ARC may recommend reasonable variances or adjustments from any conditions and restrictions imposed by the Governing Documents to overcome practical difficulties and unnecessary hardships resulting from the application of the conditions and restrictions contained in the Governing Documents. Any variance or adjustment recommended is subject to the Board of Directors' written approval.

**Section 7.8** **Reply and Communication**. The ARC will respond to an Owner's application within 30 days of receipt of the completed application and all information the ARC reasonably requires, provided that the response time will include an additional 15 days if a variance is requested or required. If the ARC fails to respond to the application within this time frame, the application will be deemed disapproved.

**Section 7.9** **Commencement of Approved Work**. All Improvements to Property approved by the ARC must be commenced within 6 months from the date of approval. If not commenced within this time, then approval expires, unless the Owner requests, and the ARC grants, a written extension to start the work. At a mutually agreed time, the ARC or its representative is authorized to enter the Lot to inspect the ongoing and completed work. All work must be performed in accordance with the plans as approved by the ARC, including any conditions the ARC imposed.

**Section 7.10** **Completion of Approved Work**.

(a) All work approved by the ARC, except as outlined below, will be completed within the time specified by the ARC. All approved Improvements to Property must be completed in their entirety, unless the ARC otherwise agrees in writing. To the extent completion within the time prescribed by the ARC is impractical or impossible, the Owner shall notify the ARC of the same, together with all available documentation supporting the delay on the project. The ARC shall grant reasonable extensions of completion deadlines when warranted, in the ARC's discretion. Extensions of completion deadlines shall not be unreasonably withheld.

(b) Upon completion, the Owner will give written notice of completion to the ARC. All applicable statutes of limitation will be tolled until the Association receives the written notice of completion.

**Section 7.11** **Notice of Non-compliance**. The Committee will issue a notice of non-compliance to the Owner if work is done without prior approval, is not performed in accordance with the approved application or is not completed within the required time frame. Within 45 days and at the Owner's sole cost and expense, the Owner must correct items listed in the notice of non-compliance or restore the Lot to the condition that existed prior to commencement of the work. The Association shall not be required to provide the foregoing notice of non-compliance if it becomes necessary for the Association to take immediate legal action to preserve and protect its rights under the Governing Documents.

**Section 7.12** **Right to Appeal**. If the Board is not acting as the Committee, the applicant may appeal the Committee's decision to the Board of Directors by written appeal submitted to the Board within 30 days of the date that the ARC decision or notice is provided to the Owner. The Board of Directors will review the decision of the ARC and all materials submitted to the ARC pursuant to the criteria set forth in this article and the Design Guidelines. The ARC's decision may be overruled and reversed by a majority of the directors in a written decision setting forth the reasons for the reversal when the Board concludes that the ARC's decision was not consistent with the criteria set forth in this article and the Design Guidelines, if any. If the Board denies the Owner's appeal, the Owner will have 45 days from the date of notice of the Board's decision to correct the non-compliance. If the Board does not issue its decision on any appeal within 60 days of the submission date, then appeal is deemed denied.

**Section 7.13**      **Limitation of Liability.** Neither the Association nor its directors, officers, committee members, or agents will bear any responsibility for the design, quality, structural integrity, or soundness of approved construction or modifications, nor for compliance with building codes, zoning regulations, and other governmental requirements. The Association, its directors, officers, committee members, and agents are not liable for any injury, damages, or loss arising out of the manner, design, or quality of approved construction on or to modifications to any Lot. No lawsuit, action, or claim may be brought against any of the foregoing for any injury, damage, or loss.

**Section 7.14**      **No Waiver of Future Approvals.** The Association's approval of any proposals and applications for any work done or proposed, or in connection with any other matter requiring the Association's approval, is not a waiver of any right to withhold approval as to any similar proposals and applications.

## **ARTICLE 8.                      COVENANTS**

**Section 8.1**      **Owner Responsibility for Compliance.** Each Owner is responsible for ensuring that the Owner's family, guests, and Residents comply with all provisions of the Governing Documents. Each Owner and Resident will endeavor to observe and promote the purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, or Residents as a result of the person's violation of the Governing Documents, the Association may take action under these Deed Restrictions against the Owner.

### **Section 8.2                      Use of Lots.**

(a)      **Residential/Business Use.** Except as provided below, each Lot will be used for single-family residential purposes only. Accessory Dwelling Units are not permitted in the Community. Unless otherwise expressly authorized by the Act and subject to its terms, no trade or business of any kind may be conducted in or from a Lot or any part of the Community, except that the Owner residing in the Residence, or the Resident, may conduct ancillary business activities within the Lot so long as the business activity:

(i)      is not apparent or detectable by sight, sound, or smell from outside of the Lot;

(ii)      does not involve visitation of the Lot by employees, clients, customers, suppliers, or other business invitees in greater volume than would normally be expected for guest visitation to a Residence without business activity;

(iii)      is legal and conforms to all zoning requirements;

(iv)      does not increase traffic in the Community in excess of what would normally be expected for Residences in the Community without business activity (other than by a reasonable number of deliveries by couriers, express-mail carriers, parcel delivery services, and other similar delivery services);

(v)      does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage; and

(vi)      is consistent with the Community's residential character, and does not constitute a nuisance or hazardous or offensive use, or threaten the security or safety of other Residents, as determined by the Association.

The terms "business" and "trade," as used in this section, have their ordinary, generally accepted meanings and include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i)

the activity is engaged in full or part-time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity.

(b) Occupancy. If an Owner is a corporation, partnership, trust, or other legal entity, the entity will designate in writing to the Association the name(s) of the natural person(s) who will occupy the Lot. The designated person(s) to occupy the Lot may not be changed more frequently than once every 12 months.

**Section 8.3** Leasing. The Community is intended to be an owner-occupied community. However, any Owner has the right to lease their Lot, subject to restrictions of these Deed Restrictions, any other restrictions of record, and the following:

(a) "Leasing" for the purposes of these Deed Restrictions is defined as regular, exclusive occupancy of a Lot by any Person other than the Owner, with or without consideration. For the purposes of these Deed Restrictions, occupancy by not more than 1 roommate of an Owner who occupies the Lot as his primary residence does not constitute leasing under these Deed Restrictions.

(b) Leases will be for, or of, the entire Lot. No subleasing or assignment of leases is permitted.

(c) All leases will be in writing and will provide that the lease is subject to the Governing Documents. Owners are required to provide Residents with copies of the current Deed Restrictions and Rules and Regulations. Owners who enter a lease are required to provide a copy of the lease and all contact information for the lessee(s) to the Board of Directors within 14 days following execution of the lease.

(d) All leases will state that the failure of the Resident or guests to comply with the Governing Documents is a default of the lease and these Deed Restrictions.

(e) All leases are subject to the Association's right to remove and/or evict the lessee(s) for failure to comply with the Governing Documents. If the Association requests that the Owner evict the lessee(s), and the Owner fails to commence action within 30 days of the date of the Association's written request and notice, the Association may commence eviction proceedings. If Owner fails to comply with the request to evict, the Owner delegates and assigns to the Association, as attorney-in-fact, the power and authority to evict the lessee(s) on behalf of and for the benefit of the Owner. If the Association evicts the lessee(s), all costs, including, but not limited to, attorney's fees incurred and court costs associated with the eviction, will be an Individual Assessment and lien against the Lot.

(f) All Owners who reside at a place other than the Lot will provide to the Association an email address, physical address, and phone number(s) where the Owner can be reached in the case of emergency or other Association business. The Owner is solely responsible to keep this information current.

(g) If a Lot is leased or occupied in violation of this section or if the Owner or Resident violates the Governing Documents, the Association is authorized, in addition to all other available remedies, to levy fines against the Resident and/or Owner, and to suspend all voting privileges.

(h) Each violation of the leasing restrictions herein shall be considered a separate violation of the Governing Documents. Due to the periodic nature of leasing violations, 2 or more violations of the leasing restrictions herein within a 12-month period shall constitute an on-going violation and will entitle the Association to take remedial action intended for on-going or continuous violations.

**Section 8.4** Lot Combination. Lots may not be combined with other Lots.

**Section 8.5** Lot Subdivision. No Lot may be further divided or subdivided, nor may any easement or other interest in less than the whole be conveyed by the Owner of the Lot; provided,

however, Association approval is not required for the transfer or sale of any Lot or for the granting of any security interest in the Lot.

**Section 8.6**        **Temporary and other Structures.** No temporary house trailer, garage, or outbuilding will be placed or erected upon a Lot except with the Association's prior written approval. Temporary structures are permissible for such reasonable periods as may be necessary for the construction of approved Improvements. No temporary structure otherwise permissible under this Section 8.7 shall be used as a residence, even temporarily.

**Section 8.7**        **Drainage.** There will be no interference with the established drainage patterns over any property within the Community, unless adequate provision is made for proper drainage and approved by the ARC. In the event of any such interference where there has been no adequate provision made for proper drainage, the Owner interfering with the established drainage patterns will be liable for any damage resulting from such interference.

Nothing herein may be construed to affect the rights of an aggrieved Owner to proceed individually against a violator of this section for relief from interference with their property rights, and the Board may, in its discretion, require the aggrieved Owner to seek redress personally for interference with the Owner's property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage, or otherwise will exist by an aggrieved Owner against the Association for failure to enforce the provisions hereof if the aggrieved Owner has not pursued all available remedies against the violator for redress provided under Colorado law.

**Section 8.8**        **Prohibition of Damage, Nuisance, and Noise.** Without the prior written consent of the Board of Directors, nothing will be done or kept on a Lot or in the Community that would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

Noxious, destructive, offensive, or unsanitary activities may not be carried on within the Community. No Owner or Resident may use or allow the use of the Lot or any portion of the Community at any time, in any way, which may endanger persons or property, unreasonably annoy, disturb, or cause embarrassment or discomfort to other Owners or Residents, or constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Residents a right of redress for actions, activities, or conduct which unreasonably disturbs or impairs peaceful and safe enjoyment.

Nothing in this section will be construed to affect the rights of an aggrieved Owner or Resident to proceed individually against a violator for relief from interference with his property or personal rights. The Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their rights before the Association intervenes and commences enforcement action. No aggrieved Owner or Resident will have a claim against the Association for failure to enforce the provisions of this section if the aggrieved Owner or Resident has not personally pursued all available remedies against the violator for redress provided under Colorado law.

**Section 8.9**        **Animals.**

(a)        Other than household pets, no animals, livestock, or poultry shall be kept on any Lot, except as otherwise stated in this Section. Horses may be kept and maintained on Lots designated on the Plat for such purpose, if a special written variance from the Architectural Control Committee and the written consent of all adjacent Lot Owners are first obtained. Approval of any request for a variance shall be governed by such written criteria or regulations as the Architectural Control Committee may adopt. Any Lot Owner keeping horses on their Lot shall be required to comply with the written criteria and regulations of the Architectural Control Committee governing use of any stable and fencing, the construction plans for any stable and fencing, methods of confining such horses on the Lot, and maintenance of all areas containing such horses in a safe and sanitary condition.

(b)        All animal owners are responsible for the control of their animals. The Board of Directors shall have the authority to require any Owner to restrain or otherwise prevent any animal from

interfering with the pleasurable use and occupancy of any other Lot Owner. Prior to the involvement of the Association, the aggrieved Owner is encouraged to communicate their concerns directly to the allegedly offending Owner. The Association may adopt additional Rules and Regulations to supplement this section.

(c) Following notice and an opportunity for a hearing, the Association may require any pet that, in its opinion, endangers the health of any Owner or Resident or creates a nuisance or unreasonable disturbance, be permanently removed from the Community upon 10 days' written notice.

(d) Any Owner or Resident who keeps or maintains any pet within the Community is deemed to agree to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim, or liability of any kind or character whatsoever arising by reason of keeping or maintaining the pet within the Community.

**Section 8.10**      **Unsightly Articles.** No unsightly article will be permitted to remain on any Lot or other portion of the property if it is visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, mobile homes, recreation vehicles, graders, trucks (other than pickups), boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal equipment, and garden and maintenance equipment will be kept at all times (except when in actual use) in an enclosed structure or otherwise stored in the most discrete manner possible. Owners agree that they will comply with a request for the Board of Directors to relocate any items or vehicles when requested. Failure to comply shall be a violation of these Deed Restrictions. Service areas, storage areas, compost piles, and facilities for hanging, drying, or airing clothing or household fabrics will be appropriately screened from view. Liquid propane, gas, oil, and other exterior tanks will be kept within an enclosed structure.

**Section 8.11**      **Trash and Sewage Removal Restriction.**

(a) No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse, or trash will be kept stored or allowed to accumulate on any portion of a Lot except within an enclosed structure or in a garage; provided, however, that normal household waste can be set out in trash cans for garbage pick-up and must be removed and returned to their enclosed structure by evening of the day of garbage pick-up. All equipment for the storage or disposal of such materials will be kept in a clean and sanitary condition.

(b) Each Lot Owner shall be required to comply with all current governmental regulations and building codes concerning sewage disposal.

**Section 8.12**      **Vehicles and Parking.**

(a) **Prohibited Vehicles.** No unlicensed or inoperable vehicles of any kind may be openly stored on any Lot. An "abandoned or inoperable vehicle" is defined as any passenger car, truck, motorcycle, boat, trailer, camper-house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which, for a period of 2 days or longer, does not have an operable propulsion system installed therein, has 1 or more flat tires, or has another condition preventing the regular and normal operation and movement of the vehicle. A vehicle will be considered "stored" if it remains in the same location for 14 consecutive days or longer.

(b) **Parking.** There shall be no on-street parking. Each Lot Owner shall make appropriate arrangements for off-street parking for themselves and their guests. Any Dwelling constructed upon a Lot shall have a garage or carport of sufficient size to enclose 1 full-sized automobile. Any vehicle, boat, truck, tractor, snow removal or garden equipment, or similar item shall be kept within the garage, an enclosed structure, or otherwise appropriately screened from view when not actively in use.

(c) **Enforcement.** If any vehicle is parked on any portion of the Community in violation of this section or in violation of the Rules and Regulations, the Eagle County Sheriff will be notified.

**Section 8.13 Signs.** Except as may be provided herein or as may be required by state law or legal proceedings, no signs, advertising posters, political placards, or billboards of any kind will be erected, placed, or permitted to remain on a Lot without the prior written consent of the Board or its designee, except as follows: (a) 1 professional security sign not to exceed 1 square foot in size may be displayed on Lot and a reasonable number of professional security decals not larger than 8 inches by 8 inches may be displayed within windows in a Residence; (b) 1 professionally lettered "For Rent" or "For Sale" sign not to exceed 3 feet by 4 feet in size may be displayed on a Lot being offered for sale or for lease; (c) political signs as permitted by Colorado law; and (d) patriotic display of American flags not exceeding 4 feet by 6 feet in size attached to a flagstaff on a Residence. The Board has the right to erect reasonable and appropriate signs on behalf of the Association.

**Section 8.14 Antennas and Satellite Dishes.** Satellite dishes, antennas, or other devices for the transmission or reception of television signals, radio signals, or any form of electromagnetic wave or radiation will not be erected, used, or maintained by Owners or Residents on any portion of the Common Property except as allowed by federal law or with written approval of the Architectural Control Committee. However, the Association has the right to erect, construct, and maintain these devices on the Common Property.

**Section 8.15 Hazardous Activities.** No activities will be conducted on a Lot and no Improvements will be constructed on a Lot that are, or might be, unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms will be discharged upon the property, and no fires will be lighted or permitted on any portion of the property, including barbeque grills, except in compliance with Eagle County regulations regarding the same.

**Section 8.16 Rules and Regulations.** The Board of Directors may adopt, amend, and repeal rules and regulations concerning and governing the Residences, Lots, and Common Property to further the provisions of these Deed Restrictions and the general plan of development.

**Section 8.17 Use of the Words Aspen Mesa, Aspen Mesa Community, Aspen Mesa Estates, and Aspen Mesa Home Owners Association.** Without the Association's prior written consent, Owners or Residents will not use the words Aspen Mesa, Aspen Mesa Community, Aspen Mesa Estates, or Aspen Mesa Home Owners Association, or the logo of the Community or Association, if any, or any derivative thereof, if use is likely to cause confusion, mistake, or deception, in the Association's sole discretion.

## **ARTICLE 9. INSURANCE**

**Section 9.1 Insurance on the Lots.** Each Owner will obtain property and liability insurance covering loss, damage, or destruction by fire or other casualty to the Improvements installed or made to their Lot, the other property of that Owner, and any injuries occurring to the persons while on a Lot. The Association will not be liable for the failure of any Owner to maintain insurance.

**Section 9.2 Insurance to be Carried by the Association.** The Association will obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in these Deed Restrictions and as set forth in the Act. Insurance coverage includes the following and will be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

(a) **Property Insurance on Common Property.** The Association will obtain property insurance covering loss, damage, or destruction by fire or other casualty to any Improvements installed or made to any portion of the Common Property and any other property that is the Association's maintenance responsibility in amounts as the Board determines. Property insurance may contain customary deductibles.

(b) Association Comprehensive/General Liability Insurance. The Association will obtain comprehensive/general liability insurance for the Common Property and any other property the Association maintains, in amounts the Board determines from time to time. Coverage will include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

(c) Association Fidelity Insurance. The Association will obtain fidelity coverage to protect against dishonest acts on the parts of its officers, directors, trustees, and employees, and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees, employees, and others who are responsible for handling the funds of the Association.

(d) Directors' and Officers' Personal Liability Insurance. The Association will obtain directors' and officers' personal liability insurance to protect the officers, directors, Committee members, and any other individuals acting at the Board's direction from personal liability in relation to their duties and responsibilities in acting on the Association's behalf.

(e) Other Insurance. The Association may obtain other insurance against other risks of similar or dissimilar nature, as it deems appropriate, with respect to its responsibilities and duties.

**Section 9.3** Miscellaneous Terms Governing Insurance Carried by the Association.

The Association will maintain, to the extent reasonably available, insurance policies with the following terms or provisions.

(a) All insurance policies will provide that each Owner is an insured person under the policy with respect to liability arising out of the Owner's membership in the Association.

(b) All insurance policies will contain waivers of subrogation against any Owner or member of the Owner's household.

(c) All insurance policies will contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and will provide that policies may not be canceled or modified without at least 30 days' prior written notice to all of the Owners, holders of first lien security interests, and the Association, except in instances of nonpayment of premiums, which will require at least 10 days' prior written notice.

(d) If requested, duplicate originals of all policies and renewals, together with proof of payments of premiums, will be delivered to all holders of first lien security interests at least 10 days' prior to the expiration of the policies.

(e) All liability insurance will cover the Association, the directors and officers, the manager or managing agent, if any, holders of first lien security interests, their successors and assigns, and Owners, with respect to Owners' liability arising out of Association membership.

(f) All Association insurance policies will be primary if there is other insurance in an Owner's name covering the same risk.

**Section 9.4** Insurance Premium. Insurance premiums will be a Common Expense included as a part of the Association's annual assessments.

**Section 9.5** Managing Agent's Insurance. The managing agent, if any, will maintain insurance for its benefit, and will maintain and submit evidence of coverage to the Association. Insurance will include professional liability or errors and omissions insurance, workers' compensation, unemployment, and fidelity coverage (unless the Association otherwise provides fidelity coverage).

**Section 9.6**        **Insurance Review.** The Board may periodically review the insurance carried by the Association to determine the amount of insurance required and the service capabilities of the current carrier.

**Section 9.7**        **Claims and Adjustments by the Association.** Any loss covered by an Association insurance policy will be adjusted by the Association. The insurance proceeds for a loss will be payable to the Association and not to any holder of a first lien security interest. The Association will hold any insurance proceeds for the repair or restoration of the damaged property. The Association is not entitled to use insurance proceeds for other purposes unless there is a surplus after the damaged property has been completely repaired or restored.

**Section 9.8**        **Duty to Repair.** The Association must repair or replace promptly any portion of the Community for which insurance is required under this article that is damaged or destroyed, unless Owners entitled to cast 67% of the total Association vote agree not to rebuild.

**Section 9.9**        **Condemnation and Property Insurance Allocations and Distributions.** In the event condemnation proceeds or property insurance proceeds are distributed to the Owners, the distribution will be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

**Section 9.10**       **Responsibility for Payment of Deductible Amount.** Whether the Board, in its discretion, submits a claim under the Association's insurance policies or not, the Association will pay or absorb the deductible amount for any work, repairs, or reconstruction for damage to property that is the Association's maintenance responsibility unless the damage is caused by the negligent or willful act or omission of an Owner, the Owner's family, guests, or invitees, in which case the Association will seek reimbursement of the deductible amount as an individual assessment in compliance with and under the terms of these Deed Restrictions.

**Section 9.11**       **Insurance Assessments.** If the insurance proceeds are not sufficient to defray the costs of reconstruction and repair for any reason, including the allocation of deductibles, the deductible or additional cost will be a Common Expense.

**Section 9.12**       **Damage to or Destruction of Residences on Lots.** In the event of damage to or destruction of structures on a Lot, the Owner will promptly repair or reconstruct the damaged structure in a manner consistent with the original construction or plans approved in accordance with these Deed Restrictions unless the Owner elects not to rebuild in cases of substantial damage or destruction. If the structure is substantially destroyed and the Owner determines not to rebuild or reconstruct, the Owner will promptly clear the Lot of all debris and continue to maintain the Lot in a neat and attractive condition consistent with these Deed Restrictions.

## **ARTICLE 10.            AUTHORITY AND ENFORCEMENT**

### **Section 10.1        Compliance With and Enforcement of Governing Documents.**

(a)        **Compliance Required.** Every Owner and Resident will comply with the applicable provisions of the Governing Documents. Any aggrieved Owner or Resident has the right to take action to enforce the terms of the Governing Documents against another Owner or Resident.

(b)        **Association Remedies.** The Association may enforce all applicable provisions of the Governing Documents and may impose sanctions for their violation. Sanctions may include, without limitation:

(i)        imposing reasonable monetary fines, after notice and opportunity for a hearing, which will be a lien upon the violator's Lot;

(ii)       suspending voting rights;

(iii) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days' delinquent in paying any assessment or other charge owed to the Association;

(iv) exercising self-help or action to abate any violation of the Governing Documents in a non-emergency situation, subject to any requirements set forth in these Deed Restrictions, including those related to maintenance, repair, or replacement, provided that the Association does not have the authority to enter the Residence;

(v) requiring an Owner, at the Owner's expense, to cease any construction of any modification that has not been approved, or to remove any structure or improvement in the Lot or the Common Property in violation of the Governing Documents and to restore the Lot or Common Property to its previous condition, and upon the Owner's failure to do so, the Association has the right to enter the Lot or Common Property, remove the violation, and restore the Lot or Common Property to substantially the same condition as previously existed, and any action is not deemed a trespass;

(vi) recording in the real property records a notice of violation identifying any uncured violation of the Governing Documents; and

(vii) other remedies provided in these Deed Restrictions or by applicable law.

(c) Emergencies and Legal Action. In addition, the Association may take the following enforcement procedures to seek compliance with the Governing Documents:

(i) exercising self-help in any emergency situation; and/or

(ii) instituting any civil action to enjoin any violation or to recover monetary damages, or both.

(d) Remedies Are Cumulative. All remedies set forth in the Governing Documents are cumulative of any remedies available at law or in equity.

(e) Costs Incurred By Association. If the Association exercises any of its rights pursuant to this section, all costs will be assessed against the violating Owner or Resident and will be a lien against the Lot. Additionally, subject to the Act, the Association will also be entitled to reasonable attorney's fees actually incurred, which will be collected as an assessment.

**Section 10.2 Failure to Enforce**. The Board will have discretion to determine whether enforcement action in any particular case will be pursued; provided that the Board will exercise judgment, be reasonable, and not be arbitrary and capricious. Notwithstanding the above, no right of action will exist against the Association for failure of enforcement where: (a) the Board determines that the Association's position is not strong enough to justify taking enforcement action; (b) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (c) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action at law or in equity and has failed to do so. **A decision of the Association not to pursue enforcement action will not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other provision of the Governing Documents.**

## **ARTICLE 11. AMENDMENT OR TERMINATION**

Except where a higher vote is required for action under any other provision of these Deed Restrictions or by the Act, in which case such higher vote will be necessary to amend such provision, these Deed Restrictions may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Lot Owners holding at least a majority of the vote at a duly called meeting of Owners, or a majority vote by mail as permitted by the Association's Bylaws, where a quorum is present.

Notice of any meeting at which a proposed amendment will be considered will state the fact of consideration and the subject matter of the proposed amendment. The Association may seek approval of an amendment by mail ballot in accordance with the procedures outlined in the Bylaws. No amendment will be effective until certified by the President and Secretary of the Association, or such other officers designated by the Board, and recorded in the Eagle County, Colorado real property records.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend these Deed Restrictions to correct any scrivener's errors, comply with any applicable state, city, or federal law, and/or to bring the Community into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD"), and the Veterans Administration ("VA") pursuant to federal law.

Any action to challenge the validity of an amendment adopted under this article must be brought within 1 year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

## **ARTICLE 12. GENERAL PROVISIONS**

**Section 12.1 Security.** The Association may, but will not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for themselves and their family members, tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security, and the Association will not have a duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by other Owners or Residents. It will be each Owner's and Resident's responsibility to protect their own person and property, and all responsibility to provide such security will lie solely with each Owner. The Association will not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

**Section 12.2 Implied Rights.** The Association may exercise any right or privilege given to it expressly by these Deed Restrictions, the Bylaws, the Articles of Incorporation, any use restriction, or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate any of its rights or privileges.

**Section 12.3 Electronic Records, Notices, and Signatures.** Notwithstanding any other portion of these Deed Restrictions, records, signatures, and notices will not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made, or presented electronically. The relevant provisions of the Bylaws will govern the giving of all notices required by these Deed Restrictions.

**Section 12.4 Duration.** The covenants and restrictions of these Deed Restrictions will run with and bind the property perpetually, unless otherwise terminated.

**Section 12.5 Severability.** Invalidation of any 1 of these covenants or restrictions by judgment or court order or otherwise will in no way affect the application of such provision to other circumstances or affect any other provision(s), which will remain in full force and effect.

**Section 12.6 Public in General.** The rights and burdens created in these Deed Restrictions do not, are not intended to, and will not be construed to create any rights and burdens in or for the benefit of the general public.

**Section 12.7 Captions.** All captions and titles used in these Deed Restrictions are intended solely for convenience of reference and do not enlarge, limit, or otherwise affect that which is set forth in any paragraph, section, or article.



**EXHIBIT "A"**

Legal Description of Community

[To be attached]