

**AMENDED AND RESTATED DECLARATION**

**OF**

**COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**

**FOR**

**ASPEN RIDGE AT BUCKHORN VALLEY**

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS for Aspen Ridge at Buckhorn Valley is made to be effective as of the date of recording by Gypsum Aspen Ridge, LLC, a Colorado limited liability company ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real property in Eagle County, Colorado, more particularly described on Exhibit A attached and made part of this Declaration by this reference (the "Property").

B. The Property is a Planned Community pursuant to the Colorado Common Interest Ownership Act (the "Act") as set forth in Colorado Revised Statutes §38-33.3-101, *et seq.* on the Property, the name of which is Aspen Ridge at Buckhorn Valley.

C. The "Declaration of Covenants, Conditions and Restrictions for the Single Family Residences at Aspen Ridge at Buckhorn Valley" was recorded on July 15, 2005 at Reception No. 922799 in the Office of the Clerk and Recorder for Eagle County, State of Colorado (the "Original Declaration").

D. The Declarant desires to amend and restate all provisions of the Original Declaration while the community is still under the Declarant's control by virtue of this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Aspen Ridge at Buckhorn Valley, and intends, upon the recording of this Declaration, the Original Declaration be superseded and replaced by this Declaration.

**ARTICLE 1  
DECLARATION AND SUBMISSION**

Section 1.1 Declaration.

Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following covenants, restrictions and easements which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any right, title, or interest in all or any part of the Property. Additionally, Declarant hereby submits the real estate to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et seq.*

Section 1.2 Master Declaration.

The Property is subject to the Master Declaration of Covenants, Conditions and Restrictions for Buckhorn Valley, Town of Gypsum, Colorado which was recorded in the Office of the Clerk and Recorder for Eagle County, Colorado on December 14, 2000 at Reception No. 746273, and as may be further amended and supplemented (the "Master Declaration"). The Buckhorn Valley Master Owners Association formed by the Master Declaration shall be referred to as the "Master Association."

**ARTICLE 2**  
**DEFINITIONS**

Section 2.1 Definitions. Each capitalized term in this Declaration or in the Map shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

(a) "Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et seq.*, as it may be amended.

(b) "Allocated Interests" shall mean the interest allocated to each Lot for the Common Expense liability and the votes of the Association as set forth in Exhibit B.

(c) "Assessment" or "Common Expense Assessment" shall or may include all common expense assessments, insurance assessments, utility assessments, and any other expense levied to the Lots pursuant to the Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(d) "Association" shall mean and refer to the Aspen Ridge At Buckhorn Valley Homeowners Association, Inc., its successors and assigns.

(e) "Board" or "Board of Directors" or "Executive Board" shall mean the body designated in the Governing Documents to act on behalf of the Association.

(f) "Bylaws" shall mean the Bylaws adopted by the Association, as amended from time to time.

(g) "Common Elements" shall mean any real estate within this Community other than the Units, which shall be owned by the Owners as tenants in common.

(h) "Common Expenses" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

(i) "Community" shall mean Aspen Ridge at Buckhorn Valley Condominium Community, as further defined by the recorded Amended Final Plat and the Declaration.

(j) "Declarant" shall mean Gypsum Aspen Ridge, LLC, a Colorado limited liability company, its successors and assigns.

(k) "Development Rights" shall mean those rights set forth in this Declaration and those rights set forth in the Act.

(l) "Governing Documents" shall mean the Articles of Incorporation, the Bylaws, the Declaration, the Rules and Regulations, and the Map, as they may be amended.

(m) "Lot" shall mean a physical portion of the Community, designated for separate ownership, the boundaries of which are defined on the Map and in the Declaration. The terms "Lot" and "Unit" may be used interchangeably.

(n) "Map" or "Plat" shall mean the Amended Final Plat recorded on September 18, 2006 at Reception No. 200625426, County of Eagle State of Colorado which Map is incorporated herein and made a part of this Declaration by reference.

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

(p) "Owner" shall mean the owner of record title, whether one or more persons or entities, to any Unit which is a part of the Property, but excluding those having an interest in a Unit solely as security for the performance of an obligation.

(q) "Property" shall mean and refer to all of the real property described in Exhibit A.

(r) "Rules and Regulations" shall mean any written instruments, however identified, which are adopted by the Association or the Board for the regulation and management of the Community, and/or clarification of the Governing Documents, including any amendment to those instruments. The current Rules and Regulations are set forth as Exhibit C hereto.

(s) "Unit" shall mean a physical portion of the Community, designated for separate ownership, the boundaries of which are defined on the Map and in the Declaration. The terms "Lot" and "Unit" may be used interchangeably.

Section 2.2 Each capitalized term not otherwise defined in this Declaration or in the Plat shall have the same meanings specified or used in the Act.

### **ARTICLE 3 NAME, DIVISION INTO UNITS**

#### Section 3.1 Name.

The name of the project is Aspen Ridge at Buckhorn Valley. The project is a Planned Community pursuant to the Act.

Section 3.2 Association.

The name of the association is Aspen Ridge at Buckhorn Valley Homeowners Association, Inc. Declarant has caused to be incorporated under the laws of the State of Colorado the Association as a non-profit corporation with the purpose of exercising the functions as set forth herein and set forth in the Articles of Incorporation.

Section 3.3 Number of Lots.

The number of Lots subjected to this Declaration is 110, which is the maximum number of Lots that may be created on the Property, some of which may be subdivided into duplex lots pursuant to the Plat and Declarant's special rights reserved herein.

Section 3.4 Identification of Lots.

The identification number of each Lot is as shown on the Plat.

Section 3.5 Description of Lot.

3.5.1 Each Lot may be leased, devised or encumbered only as a single family residence or duplex lot as provided on the Plat.

3.5.2 Title to a Lot may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Lot in which he owns an interest. The parties, if more than one, having the ownership of a Lot shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Lot in which they own an interest.

3.5.3 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Lot shall describe it by the following legal description: "Lot \_\_\_\_, Aspen Ridge at Buckhorn Valley P.U.D., according to the Amended Final Plat recorded on September 18, 2006 at Reception No. 200625426 in the Office of the Clerk and Recorder of Eagle County, Colorado" (with applicable information filled in).

3.5.4 Each Lot shall be considered a separate parcel of real property and shall be separately assessed and taxed. Accordingly, the Common Elements shall not be assessed separately but shall be assessed with the Lots as provided pursuant to Colorado Revised Statutes §39-1-103(10) and §38-33.3-105(2).

3.5.5 No Owner of a Lot shall bring any action for partition or division of the Common Elements.

3.5.6 Each Unit shall be used and occupied solely for single family residential or duplex purposes as permitted by the Plat. All of the above stated uses and occupancies shall be only as permitted by and subject to the appropriate and applicable governmental zoning and use ordinances, rules and regulations from time to time in effect. Notwithstanding the foregoing,

Declarant, for itself and its successors and assigns, hereby retains a right to maintain any one or more Units as sales offices, management offices or model residences at any time or from time to time so long as Declarant, or its successors or assigns, continues to own an interest in a Unit or, if earlier, ten (10) years from the recording of this Declaration. The use by Declarant of any Unit as a model residence, office or other use shall not affect the Unit's designation on the Plat as a separate Unit.

3.5.7 An Owner shall have the right to lease his Unit upon such terms and conditions in compliance with the Rules and Regulations; provided however, that (i) any such lease shall be in writing and shall provide that the lease is subject to the terms of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association and that any failure by the lessee to comply with any of the aforesaid documents shall be a default under the lease, (ii) a Unit may be leased only for the uses provided hereinabove, and (iii) any failure of a lessee to comply with the terms of this Declaration, Articles of Incorporation, Bylaws or Rules and Regulations of the Association shall be a default under the lease enforceable by the Association. Owners shall be jointly and severally liable with their lessees for any default.

#### **ARTICLE 4**

#### **MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS**

##### Section 4.1 The Association.

Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

##### Section 4.2 Transfer of Membership.

An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to the purchaser or Mortgagee of his Lot.

##### Section 4.3 Membership.

The Association shall have one (1) class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one vote for each Unit owned. The vote for each such Unit shall be exercised by the Owner or an authorized person (who may be a tenant of the Owner) appointed by proxy in accordance with these Bylaws and the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7-121-101 *et seq.* Should the Owner not be a natural person (i.e., an estate or trust, corporation, partnership, limited liability company, or other entity), a natural person shall be appointed as the authorized representative of the Owner and the Owner may only vote through the authorized representative. When more than one person holds an interest in any Unit, all such persons shall be Members of the Association; however, one owner shall be designated with the voting authority by proxy. In the absence of a proxy, the vote allocated to the Unit shall be suspended in the event more than one person or entity seeks to

exercise the right to vote on any one matter. The assignment of voting right by proxy or authorization of a person to vote as provided herein, shall be furnished to the Secretary of the Association prior to any meeting in which the voting right is exercised. In no event shall more than one vote be cast with respect to any one Unit. In no event shall more than one vote be cast with respect to any one Unit.

Section 4.4 Declarant Control.

Notwithstanding anything to the contrary provided for herein or in the Bylaws, Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the Bylaws of the Association. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded in the Office of the Clerk and Recorder for Eagle County, Colorado but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

Section 4.5 Compliance with Association Documents.

Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Unit for the benefit of all other Units and for the benefit of Declarant's adjacent properties.

Section 4.6 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time-to-time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof. The Rules and Regulations shall contain a policy for addressing disputes arising between the Association and Owners. The Rules and Regulations are set forth in Exhibit C hereto.

Section 4.7 Availability of Documents and Financial Records.

The Association shall make reasonably available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances, to Owners, Mortgagees, and to such authorized agents of any Owner, current copies of the Association Documents, financial records and financial statements of the Association. "Reasonably available" means upon notice of five (5) business days, or at the next regularly scheduled meeting if such meeting occurs within thirty days after the request. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act.

Section 4.8 Information to be made available after assuming control from Declarant

4.8.1 *Public Disclosure.* Pursuant to the Act, C.R.S. §38-33.3-209.4, within ninety days after assuming control from the Declarant the Association shall make a disclosure ("Public Disclosure") to all Unit Owners upon reasonable notice, a written notice stating the name of the Association; the name of the Association's designated agent or management company, if any; and a valid physical address and telephone number for both the Association and the designated agent or management company, if any. The notice shall also include the name of the common interest community, the initial date of recording of the Declaration, and the reception number or book and page for the main document that constitutes the Declaration. If the association's address, designated agent, or management company changes, the Association shall provide all Owners with an amended notice within ninety (90) days after the change.

4.8.2 *Annual Disclosure.* Within ninety (90) days after assuming control from the Declarant pursuant to the Act, and within ninety (90) days after the end of each fiscal year thereafter, the Association shall make the following information available to Unit Owners upon reasonable notice and at no cost to the Owners:

- (a) The date on which its fiscal year commences;
- (b) Its operating budget for the current fiscal year;
- (c) A list, by unit type, of the association's current assessments, including both regular and special assessments;
- (d) Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- (e) The results of any financial audit or review for the fiscal year immediately preceding the current annual disclosure;
- (f) A list of all association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability, and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.
- (g) All the association's bylaws, articles, and rules and regulations;
- (h) The minutes of the executive board and member meetings for the fiscal year immediately preceding the current annual disclosure; and
- (i) The association's responsible governance policies adopted under the Act.

Section 4.9 Method of Disclosure.

The Annual Disclosure and any other disclosures shall be accomplished by one of the following means: Posting on an internet web page with accompanying notice of the web address



via first-class mail or e-mail; the maintenance of a literature table or binder at the association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a common expense liability.

Section 4.10 Manager.

The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board and/or as stated in the contract for services. The Executive Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board. Notwithstanding any provisions contained in this Declaration to the contrary, it is the intent of this Declaration that the Executive Board shall be able to independently terminate the applicable Management Agreement pursuant to Section 38-33.3-305 of the Act without a vote of Owners representing an aggregate voting interest of 51% or more.

Section 4.11 Implied Rights and Obligations.

The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation. Without limiting the generality of the foregoing, the Association is empowered to pledge its future receivables as collateral securing any loan(s) or other obligations of the Association.

Section 4.12 Limitation Upon Liability.

NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE PROPERTY, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 10, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THOSE PORTIONS OF THE PROPERTY TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION, OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

DECLARANT, THE ASSOCIATION, THE DESIGN REVIEW COMMITTEE, AND THE EXECUTIVE BOARD, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HERBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE

DESIGN REVIEW COMMITTEE, AND THE EXECUTIVE BOARD, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES, BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

NO REPRESENTATIONS, GUARANTIES, OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, SHALL BE DEEMED TO HAVE BEEN GIVEN OR MADE BY DECLARANT, THE ASSOCIATION, THE EXECUTIVE BOARD, OR BY ANY OF THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE COMMUNITY, OR ANY IMPROVEMENT, ITS PHYSICAL CONDITION, STRUCTURAL INTEGRITY, FREEDOM FROM DEFECTS, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR VIEW, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, UNLESS AND EXCEPT AS SHALL BE SPECIFICALLY SET FORTH IN WRITING.

## **ARTICLE 5 COMMON ELEMENTS**

Section 5.1 Designation of Common Elements. Declarant, in recording the Declaration, has designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration and other applicable documents. The Common Elements owned by the Association are not dedicated hereby for use by the general public.

Section 5.2 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to any Common Elements, including Improvements thereon, as well as personal property, equipment, and easements, transferred to the Association by the Declarant, together with the responsibility to perform all duties and functions of the Association which are set forth in this Declaration or otherwise assumed by the Association; as long as such transfers do not require the Association to perform in a manner which is inconsistent with the duties and functions of the Association as set forth in this Declaration. As of the date of recording of this Declaration, interests which are planned to be transferred by the Declarant to the Association are planned to consist only of fee simple title to Parks 1, 2 and 3 as indicated on the Map and any other Common Elements which may be located on the Property.

Section 5.3 Obligation of Association. Maintenance, repair and replacement of all Common Elements, improvements located thereon and of any drainage structure or facilities, or other public improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association (unless such Improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair and replacement or unless such maintenance, repair and replacement has been authorized by law to be performed by a special district or other municipal

or quasi-municipal entity). This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, walls, gates, signage, irrigation systems, sidewalks, driveways and improvements, if any (which shall include without limitation snow removal services unless performed by another private or public organization formed for such purposes), located in the Common Elements. The Association shall also: maintain, repair and replace landscaping in the alleys that are in, or adjacent to, the Community or any portion thereof; and provide snow removal from such alleys as and when determined by the Executive Board in its discretion, from time to time; and maintain, repair and replace front yard landscaping, as and when determined by the Executive Board from time to time; and maintain, repair and replace fences installed by the Declarant in, or adjacent to, the Community. Further, the Association may provide such other maintenance, repair and replacement as the Executive Board deems appropriate from time to time including without limitation, publicly-dedicated property and improvements located thereon.

Section 5.4 Owner's Acts or Omissions. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of the Common Elements, a Lot, and any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of any member of such Owner's family or by a tenant, guest or invitee of such Owner, the cost of such repair, maintenance, replacement or expense to avoid such damage, shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or replacement shall be added to the Assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article 11 of this Declaration (Assessment). A determination of the act or omission of any Owner, or any member of an Owner's family or a tenant, guest or invitee of any Owner, and the amount of the Owner's liability therefore, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

Section 5.5 Landscaping Warranties; Turnover of Landscaping on Common Elements.

5.5.1. As part of completion of the Community, the Declarant is having initial landscaping installed on the Common Elements and the front yards of Lots. Such landscaping will be installed by a landscaping installer who will, incidental to such installation, issue separate written warranties to the Declarant on the landscaping installed by such installer ("Landscape Warranty"). The Declarant is not providing a separate warranty on landscaping. However, the Declarant hereby assigns to the Association each such Landscape Warranty and will execute any documents in the future that may be required in order to effectuate each such assignment. Except as provided in subsection 5.5.2 below, any claim under any Landscape Warranty will be handled by the Association to the landscape installer, rather than by the Declarant, and any questions or concerns regarding the landscaping materials, installation, or any other matters related to landscaping will be raised by an Owner or other Person with the Association, and the Association will take up such issue(s) with the landscape installer who issued the applicable Landscape Warranty.

5.5.2. Upon or immediately following installation of landscaping on any Common

Elements and the front yards of Lots, a walk-through shall be conducted of such landscaping by the Declarant, the Executive Board (or by a committee, such as a landscape committee, designated by the Board), the managing agent of the Association, the Owner of the Lot on which landscaping was installed, if applicable, and perhaps the landscape installer. The purpose of the walk-through will be to determine the acceptability of such landscaping to the Association and the Owner (if applicable), to note any deficiencies or concerns that must be remedied by the landscape installer under the applicable Landscape Warranty, and to confirm the ending date of the one (1) year Landscape Warranty provided by the landscape installer on such landscaping. A punch list of matters or concerns to be remedied by the landscape installer will be prepared at such walk-through for delivery to the landscape installer. Except as provided in such punch list, the inspected landscaping will be deemed to have been accepted by the Association subject to the Landscape Warranty on such landscaping.

Section 5.6 Maintenance of and Non-Interference with Grade and Drainage; Irrigation Recommendations Around Foundations and Slabs.

5.6.1 *Notice.* Purchasers of a Lot in this Community shall be on notice that:

(a) The soils within the State of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the residence if the residence and the Lot on which it is constructed are not properly maintained;

(b) Even with proper maintenance in such expansive and low density soils, nonstructural slab-on-grade concrete, such as basement slabs, garage slabs, driveways, walkways, and patios can be expected to move and/or crack.

(c) Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils; and

(d) The addition of moisture to low-density soils causes a realignment of soil grains, thereby resulting in consolidation and/or collapse of the soils.

5.6.2 *Covenants.* The Lots and the residences constructed on the Lots are and shall be held, transferred, sold, conveyed, leased and occupied subject to the following covenants, conditions, restrictions, charges and rights, all of which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, personal representatives, successors or assigns and shall inure to the personal benefit of Declarant:

(a) Each owner of a Lot shall use his best efforts to assure that the moisture content of those soils supporting the foundation and the concrete slabs forming a part of the residence constructed thereon remain stable and shall not introduce excessive water into the soils surrounding the Residence.

(b) Each owner of a Lot shall maintain the grading, swales and drainage patterns of the Lot established by Declarant and indicated on the Improvement Location Certificate to be delivered by Declarant to the first purchaser of the Lot simultaneously with delivery of the deed conveying title to the Lot. Notwithstanding the foregoing, in the event that due to adverse weather conditions or other matters beyond the control of Declarant, Declarant has not completed the final grading of the Lot at the time title to the Lot is conveyed. Declarant shall complete said grading as soon as practicable and, within thirty (30) days following completion thereof, shall deliver said Improvement Location Certificate to the first purchaser of the Lot. In addition to delivery of the Improvement Location Certificate, Declarant shall have the right, at its sale option, to record a copy of the Certificate in the records of the Clerk and Recorder of the county in which the Lot is located. Recordation of the Certificate shall not constitute nor be deemed to constitute a cloud on the title to the Lot. Declarant hereby agrees to establish the grading and drainage patterns in a manner which will assure that any water falling on the Lot, whether from natural precipitation or from lawn irrigation, will flow positively away from the foundation and slabs of the residence. Owners hereby covenant and agree to maintain the grading, swales and drainable patterns established by Declarant. In the event that Owners change or fail to maintain said grades, swales or drainage patterns, Declarant shall be relieved of any responsibility for damages caused by improper drainage and Owners shall indemnify and hold Declarant harmless from any and all costs, expenses, damages and liabilities, including, but not limited to, attorneys fees, incurred by Declarant arising from or in any way related to Owner's change of or failure to maintain said grades and drainage patterns.

(c) The Owner of a Lot shall not impede or hinder in any way the water falling on the Lot from reaching the drainage courses established by Declarant for the Lot and the Property.

5.6.3 *Additional Covenants.* To accomplish the foregoing, each owner of a Lot covenants and agrees among other things:

(a) Not to install improvements, including, but not limited to, landscaping items related to landscaping, walls, walks, driveways, parking pads, patios, fences, additions to the residence, outbuildings, or any other item or improvement which will change the grading and drainage patterns of the Lot. The installation of such improvements is acceptable so long as the manner of installation is consistent with, and does not change the grading and drainage patterns of the Lot.

(b) To fill with additional soil any-backfilled areas adjacent to the foundation of the residence and in or about the utility trenches on the Lot in which settlement occurs to the extent necessary from time to time to maintain the grading and drainage patterns of the Lot established by Declarant.

(c) Not to water the lawn or other landscaping excessively.

(d) Not to plant flowerbeds (especially annuals), vegetable gardens, and other landscaping which requires regular watering adjacent to the foundation and slabs of the residence. If evergreen shrubbery and grass is used within five (5) feet of the foundation wall or slab, then the Owner shall water the shrubbery and grass by controlled hand-watering and shall avoid excessive watering.

(e) Not to install piping and headings for sprinkler systems within five (5) feet of foundation walls and slabs.

(f) To install any gravel beds in a manner which will assure that water will not pond in the gravel areas, whether due to non-perforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn.

(g) To install a moisture barrier (such as polyethylene) under any gravel beds.

(h) To maintain the gutters and down spouts which discharge water into extensions or splash blocks, as provided by Declarant, by assuring that (I) the gutters and downspouts remain free and clear of all obstructions and debris; (II) the water that flows from the extension or the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (III) the splash blocks are maintained under sill cocks.

(i) Not hose down garage slabs since this allows excess water to seep into the edges of the slab.

(j) To re-caulk construction joints opening up between portions of the exterior slabs in order to thereby seal out moisture.

5.6.4 *Disclaimer of Liability.* Notwithstanding the provisions of any warranty, whether express or implied, given by Declarant to the Owner(s) of any Lot, Declarant shall not be liable for any loss or damage to the residence caused by resulting from or in any way connected with the Owner's failure to comply with his obligations under this Declaration. Except as contained in any written express warranty provided by the Declarant to an owner of any Lot, Declarant, including its officers, directors, employees, and related business entities shall not be liable for any loss or damage to the residence or any owner thereof caused by, resulting from, or in any way connected with the movement (heaving or settling) or cracking of any slab-on-grade concrete, including basement slabs, garage slabs, driveways, walkways, or patios. This disclaimer of liability includes any limitation or loss of use of the basement of the residence because of heaving or cracking of the basement floor, including the inability to use the basement as additional living space.

5.6.5 *Design Review.* In the event that it is necessary or desirable to change the established drainage over any Lot or the Common Elements, then the party responsible for the maintenance of such real property shall submit a plan to the Design Review Committee for its review and approval in accordance with Article 15 of this Declaration (Design Review Committee) and any such change shall also be made in accordance with all laws, regulations and resolutions of any applicable governmental entities. Additions and/or modifications to the residence, particularly to the floor slab and patio areas, or the installation of a swimming pool, can affect the structural integrity of the residence. Each Owner of a Lot shall consult and follow the recommendations of a professional engineer licensed in the State of Colorado and experienced with construction techniques in problem soil areas prior to commencing any addition and/or modification of the residence or the installation of a swimming pool.

Section 5.6.6 For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading by the Declarant is completed.

**ARTICLE 6**  
**EASEMENTS, PROPERTY RIGHTS OF OWNERS RESERVATIONS BY**  
**DECLARANT, AND RESTRICTIONS**

Section 6.1 Owners' Easements.

Every Owner has a right and easement of enjoyment in and to the Common Elements, which shall be appurtenant to and shall pass with the title to every Unit subject to the provisions contained herein. Every Owner shall have a right of access to and from his Unit over and across those portions of the Common Elements on which driveways are located.

Section 6.2 Recorded Easements.

The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements and licenses of record or of use as of the date of recordation of this Declaration. In addition, the Property is subject to those easements set forth in this Article 6 and Article 8, provided, however, that any easement created herein shall not include that area in where window wells, decks, roof overhangs, or like construction shall exist.

Section 6.3 Reservation of Development Rights and Special Declarant Rights. Declarant reserves the following Special Declarant Rights to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Community

6.3.1 *Declarant's Rights to further subdivide Lots 39-41 and Lots 104-110.* In accordance with the Plat, Declarant shall reserve the right to resubdivide Lots 39-41 and Lots 104-110 as duplex lots and to construct improvements thereon.

6.3.2 *Declarant's Rights to Construct Improvements on Existing Lots.* Declarant may construct improvements upon any of the Lots indicated on the Map.

6.3.3 *Easement Rights Incident to Construction on Common Elements.* Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of the Units or improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to the Lots by the Owners.

6.3.4 *Easement Rights Incident to Construction on Adjacent Lots.* Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the surrounding Lots adjacent to the construction for a reasonable purpose and for a reasonable amount of time necessary to the construction of the adjacent improvement.

6.3.5 *Limitations on Declarant Rights.* No more lots are being created under these Declarant Rights. The Declarant Rights may be exercised at any time, but not more than ten (10) years after the recording of this Declaration. The quality of construction of any buildings and improvements to be created shall be consistent with the quality of those constructed pursuant to this Declaration as initially recorded.

#### Section 6.4 Other Easements.

6.4.1 Each Lot is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or improvements presently situated, or to be built in the future, on the Lots.

6.4.2 There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Lots and the structures and improvements situated thereon for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable tv and electricity. Said blanket easement includes future utility services not presently available to the Lots that may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Lots and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations.

6.4.3 The Lots may have common access roads and/or driveways serving more than one Lot, and there is granted hereby a non-exclusive easement to the Owners of Lots served by any such driveway for ingress and egress purposes over and across such driveway. There may also be portions of the Common Elements on which parking areas will be constructed and, if so constructed, there is granted hereby a non-exclusive easement to the Owners for parking purposes over such areas, subject to the rules and regulations of the Association governing such use. No Owner shall hinder nor permit his guests to hinder reasonable access by any other Owner and his guests to the Lots and parking areas.

6.4.4 *Drainage Easement.* An easement is hereby granted to the Declarant and the Association for drainage and drainage facilities across the five (5) rear and five (5) side feet of each Lot; provided, however, that if a residence, garage, window well, deck, roof overhang or like construction is located upon any of the area(s) described in this section, then such easement shall be reduced in width to the width of the distance from the nearest Lot line to the exterior wall of the residence, garage, window well, deck, roof overhang or like construction on such Lot that is nearest to such Lot line. Except for residences or garages, as provided in the preceding



sentence, no improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each five-foot rear and side yard drainage easements, at any reasonable time, to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time; provided, however, that such right and authority in the Declarant shall automatically cease at such time as the Special Declarant Rights terminate, at which time said reserved right shall vest solely in the Association.

6.4.5 *Minor Violations of Setback Restrictions.* If, upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation" for purposes of this Section, is a violation of not more than four (4) feet beyond the required setback lines or Lot lines. This provision shall only apply to original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

#### Section 6.5 General Maintenance Easement.

An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Executive Board or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs, to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, or to exercise its rights under Article 9 below, including the right to enter upon any Lot for the purpose of performing maintenance, repair, replacement or improvement to the exterior of any residence, as set forth in Article 9 below.

#### Section 6.6 Association as Attorney-in-Fact.

Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Unit, does irrevocably constitute and appoint the Association and/or Declarant with full power of substitution as the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association or Declarant may consider necessary or advisable to give effect to the provisions of this Section and this Declaration generally. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment.

Section 6.7 Delegation of Use.

Any Owner may delegate his right of enjoyment to the Common Elements to the members of his family, his tenants, guests, licensees, and invitees, but only in accordance with and subject to the limitations of the Association Documents.

Section 6.8 Reservation of Easements, Exceptions, and Exclusions.

The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Elements, for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, and conduit installation areas, to create other reservations, exceptions, and exclusions with respect to the Common Elements for the best interest of all the Owners and the Association and to assign its right to future income, including the right to receive Assessments.

Section 6.9 Emergency Access Easement.

A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

Section 6.10 Residential Use; Certain Permitted Business Activities.

Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes, except that each Owner may lease or rent the carriage unit over the garage on their Lot subject to the Rules and Regulations. Notwithstanding the foregoing, however, Owners may conduct business activities within their homes provided that all of the following conditions are satisfied:

6.10.1. The business conducted is clearly secondary to the residential use of the home and is conducted entirely within the home;

6.10.2. The existence or operation of the business is not detectable from outside of the home by sight, sound, smell or otherwise, or by the existence of signs indicating that a business is being conducted;

6.10.3. The business does not result in an undue volume of traffic or parking within the Community, which determination shall be made by the Executive Board in its sole discretion from time to time;

6.10.4. The business conforms to all zoning requirements and is lawful in nature; and

6.10.5. The business conforms to any rules and regulations that may be imposed by the Executive Board from time to time on a uniform basis to protect the peace, tranquility and quality of the Community.

#### Section 6.11 Household Pets.

No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or manner as to create a nuisance to any resident of the Lots. The Association shall have, and is hereby given, the right and authority to: set a size or poundage limit on pets; regulate the type(s) of pets that are permitted to be kept; determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to pets; or determine that an Owner is otherwise in violation of the provisions of this Section, and to take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets. These restrictions may be more fully defined by the Association in the Rules and Regulations.

#### Section 6.12 Temporary Structures; Unsightly Conditions.

Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by the Declarant or a Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Lot as to be visible from a street or from any other Lot.

#### Section 6.13 No Nuisances or Illegal Activity.

No nuisance shall be allowed upon the Common Elements or within a Unit, nor any use or practice that is the source of annoyance to Owners or which interferes with the peaceful possession and proper use of the Property by the Owners. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist. As used herein, the term "nuisance" shall include each violation of this Declaration, the Articles of Incorporation, Bylaws, rules, regulations, standards and/or guidelines of the Association or the Design Review Committee, but shall not include any activities of Declarant which are reasonably necessary to the development and construction of, and sales activities in, the Community. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of the Community or any portion thereof.

All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community, or any portion thereof, shall be observed. Owners shall not engage in any act or conduct upon the Common Elements or within a Unit that is criminal in nature or quasi-criminal in nature as defined by the Town of Gypsum, the criminal code of the State of Colorado, or any other governmental entity with jurisdiction over the Property.

Section 6.14 Trash Receptacles; Wildlife Protection.

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. In order to protect wildlife, no garbage may be stored on the Property unless it is within the garage of each Unit. No garbage may be placed outside of the home or garage at any time except for pick-up as further regulated in the Rules and Regulations. All Owners within Aspen Ridge at Buckhorn Valley shall be required to use the same trash collection service. Therefore, the Association shall provide trash collection services as part of its maintenance obligations. The scope of trash removal services to be provided and paid for by the Association shall be determined by the Executive Board in its sole discretion (e.g., the Board may elect to provide and pay for all regularly scheduled trash pickups, but require each Owner to be responsible for scheduling and paying for, any extraordinary trash pick-ups and/or recycling services). Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any Lot. All equipment for the storage or disposal of trash shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

Section 6.15. No Hazardous Activities; No Hazardous Materials or Chemicals.

No activities shall be conducted on any Lot or within improvements constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Lot and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace, or except such campfires or picnic fires on property which may be designated for such use by the Association. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Lot except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property.

Section 6.16. No Annoying Lights, Sounds or Odors.

No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others. Any exterior lighting installed or maintained on a Lot or Improvements shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby property.

Exterior lighting wattage shall be no greater than 40 Watts, shall have a cover fixture, and shall be placed at an angle so that the actual light source (ie. the light bulb) is not visible from a horizontal plane. Further, no annoying light, sound or odor shall be permitted which may be seen, heard or smelled from any Lot.

**ARTICLE 7**  
**MAINTENANCE, LANDSCAPING AND SPECIAL EASEMENT**

Section 7.1    Owner's Responsibility

The Owner shall be responsible for maintaining all portions of the Owner's Unit, including any exterior area, unless modified herein. The Owner shall maintain the exterior of the Owner's Unit which shall include without limitation the following: snow removal from the roof; painting of the exterior, including trims, siding and porches (if any); refinishing of fences; roof repair; maintenance and replacement of windows; and window washing. Further, the Owner shall maintain all landscaping including, but not limited to, lawns, trees and shrubs, and all walls, gates, sidewalks and driveways. Should any of the Unit or Lot be damaged or destroyed, whether or not insurance coverage is provided for the damage or destruction, the Owner shall be obligated to cause the damage or destruction to be promptly repaired. The obligation to maintain and/or repair the Unit shall meet the standard of the initial condition of the Unit when purchased by the initial owner, subject to normal and reasonable wear and tear.

The Owner shall have the sole discretion to determine the manner in which such maintenance shall be performed. However, the Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy, or otherwise offensive to the senses and perceptible from another Unit or Common Elements. No Owner shall make any addition or other alteration to any portion of the exterior of the Owner's Unit without the express consent of the Design Review Committee described in this Declaration. The Association shall be entitled to reimbursement for costs of repair from any Owner who causes, or whose tenant, employee or guest causes, damage to the exterior of the Owner's Unit or the Common Elements by any act of negligence or willful misconduct.

Section 7.2    Maintenance Contract.

The Association or Executive Board may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Elements. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

Section 7.3    Owner's Failure to Maintain or Repair.

In the event that a Unit and the improvements thereupon are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the improvements on the Unit are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently

pursue the maintenance or repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board shall have the right to enter upon the Unit to perform such work as is reasonably required to maintain the Unit or restore the Unit and the buildings and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the maintenance and/or restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 11 of this Declaration.

Section 7.4 Special Easement.

The Association and the Executive Board and their respective representatives are hereby granted a nonexclusive easement to enter upon and use the Exterior Maintenance Area as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article 7.

## ARTICLE 8

### SIDE-YARD EASEMENTS

Section 8.1 Purpose of Easements.

The easements created by the grant herein shall be for the benefit of certain Lots to expand the general area for use and enjoyment of those Lots. The easements will expand the usable area of certain Lots into the side-yard of the adjacent Lot. The Lot which is benefited by the easement shall be referred to as the "Benefited Lot" and the Lot which is burdened by the easement shall be referred to as the "Burdened Lot." The Owner of the Benefited Lot ("Benefited Owner"), and his family members, tenants, guests and invitees, shall have the right to use the easement in a manner that is consistent with the Declaration, to the exclusion of the Owner of the Burdened Lot ("Burdened Owner"), except as otherwise provided herein. Not all Lots will be granted the benefit of an easement nor will all Lots be burdened by the easements created.

Section 8.2 Grant of Easements.

Declarant hereby grant creates a perpetual, exclusive easement to the Benefited Lots over and across the side-yards of the Burdened Lots within the fenced boundaries and approximately five (5) to ten (10) feet in width ending at the foundation of the residence on the Burdened Lot and at the fence lines at the front and rear of the Burdened Lot. The Side-Yard Easements shall be easements appurtenant to the Benefited Lots, and shall inure to the benefit of the Benefited Owners' heirs, successors, assigns, guests and invitees. The Benefited Owners' use of the Easement shall be exclusive, and the Burdened Owners' heirs, successors, assigns, guests, and invitees shall not have a right to the use of the Easement and shall not interfere with Benefited Owners' use thereof. The Benefited Owners' use of the Easement shall be limited to the normal use associated with one single-family dwelling on the Benefited Lot.

Section 8.3 Declarant's Right to Specify Benefited and Burdened Lots.

Declarant hereby reserves the right to, but is not required to, more specifically describe the easement at the time of conveyance of a Benefited Lot or Burdened Lot with respect to the particular Lots being conveyed. Additionally, Declarant reserves the right to specify which Lots shall be benefited and burdened by the Easement and to change any designations at any time prior to the end of the Declarant Control Period, as defined in the Bylaws and as determined by the Act.

Section 8.4 Permitted Uses.

Permitted uses of the Easements include those uses permitted by applicable zoning and also include, without limitation, the placement of limited landscaping, chairs and tables, and similar temporary improvements. The Easement may be used as a general recreation, picnic, social and garden area as though such land were owned by the Benefited Owner; provided that, such Easement shall not be used in any manner, at any time, to unreasonably disturb the Burdened Owner, his family members, tenants, guests and invitees. The uses shall be subject to the limitations of Section 6.4.4 (Drainage Easements).

Section 8.5 Costs and Indemnity.

All costs associated with the Easement, including repair, maintenance, and snow removal, shall be borne by the Benefited Lot. The Benefited Owner shall indemnify and hold the Burdened Owner harmless from all claims for damages or liens arising from the use, repair, maintenance, and snow removal by the Benefited Owner on or over the Easement.

Section 8.6 Right of Entry of Burdened Owner.

Although the Benefited Owner's use is exclusive, the Burdened Owner shall have the right at all reasonable times to enter upon the Easement, for the following purposes: (1) emergency, (2) performing work related to maintenance and/or repair of the residence located on the Burdened Lot, and (3) any other necessary purpose for which permission is granted by the Benefited Owner.

Section 8.7 Right of Drainage.

The Burdened Lot shall have the right of drainage over, across and upon the Easement for normal precipitation upon and irrigation of the Burdened Lot, as long as such is done in accordance with the approved drainage plan. The Benefited Owner shall not do or permit to be done any act which interferes with such drainage.

Section 8.8 Fencing.

Declarant will provide specific fencing between adjacent Lots. Any other fencing will not be allowed.

## ARTICLE 9

### MECHANIC'S LIENS

#### Section 9.1 No Liability.

If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Unit. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Elements or any Unit other than of such Owner with any mechanic's lien or other lien or encumbrance whatever and the right and power to charge any lien or encumbrance of any kind against the Common Elements or against any Owner or any Owner's Unit for work done or materials furnished to any other Owner's Unit is hereby expressly denied.

#### Section 9.2 Indemnification.

If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within thirty (30) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

#### Section 9.3 Association Action.

Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or its bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien if authorized by law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien may be effected against an individual Unit or Units.

## ARTICLE 10

### INSURANCE AND FIDELITY BONDS

#### Section 10.1 General Insurance Provisions.

The Association shall maintain, to the extent reasonably available:

10.1.1 Property insurance on the Common Elements and Common Elements for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the



time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property policies; and

10.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements and Elements and the Association, in an amount deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Manager, and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

10.1.3 The Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Units that the Association is not obligated to insure to protect the Association or the Owners.

#### Section 10.2 Cancellation.

If the insurance described in Section 10.1 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

#### Section 10.3 Policy Provisions.

Insurance policies carried pursuant to Section 10.1 must provide that:

10.3.1 Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

10.3.2 The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

10.3.3 No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

10.3.4 If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

#### Section 10.4 Insurance Proceeds.

Any loss covered by the property insurance policy described in Section 10.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance

proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 10.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 10.5 Association Policies.

The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

Section 10.6 Insurer Obligation.

An insurer that has issued an insurance policy for the insurance described in Section 10.1 shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

Section 10.7 Repair and Replacement.

10.7.1 Any portion of the common interest community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

10.7.1.1 The regime created by this Declaration is terminated by law;

10.7.1.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

10.7.1.3 Sixty-seven percent (67%) of the Owners vote not to rebuild; or

10.7.1.4 Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a deed of trust or mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

10.7.2 The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Elements is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of Aspen Ridge at Buckhorn Valley

and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to the Common Expense liabilities of all the Units.

Section 10.8 Common Expenses.

Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 10.9 Fidelity Insurance.

To the extent reasonably available, fidelity bonds may be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two months' current Assessments (determined by dividing the quarterly assessment by three) plus reserves as calculated from the current budget of the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bond may be obtained for the Manager and its officers, employees, and agents, as applicable. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 10.10 Worker's Compensation Insurance.

The Executive Board shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 10.11 Other Insurance.

The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 10.12 Insurance Obtained by Owners.

Each Owner shall obtain and at all times maintain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering the full replacement value of the Owner's Unit. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Unit.

Each Owner shall obtain and at all times maintain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering the full replacement value of the Owner's personal property and personal liability insurance in a limit of not less than One

Hundred Thousand Dollars (\$100,000.00) in respect to bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to personal property, and if higher limits shall at any time be customary to protect against tort liability such higher limits shall be carried. In addition, an Owner may obtain such other and additional insurance coverage on the Unit as such Owner in the Owner's sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Executive Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Unit. No Owner shall obtain separate insurance policies on the Common Elements.

All Owners are required to maintain on file copies of all such current policies to evidence their obligations hereunder and to facilitate recovery of all appropriate awards or proceeds by the Association.

## **ARTICLE 11 ASSESSMENTS**

### **Section 11.1 Obligation.**

Each Owner, including Declarant, by accepting a deed for a Unit, is deemed to covenant to pay to the Association the following: (1) the Annual Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Elements and to perform the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted under the Act; and (3) Default Assessments which may be assessed against a Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

### **Section 11.2 Purpose of Assessments.**

The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of Aspen Ridge at Buckhorn Valley, to pay Association expenditures, for the improvement and maintenance of the Common Elements, and for all other purposes and activities which may be required of the Association.

### **Section 11.3 Initial Annual Assessment.**

Until the effective date of an Association budget ratified by the Owners with a different amount for the Annual Assessments, the amount of the Annual Assessment against each Lot shall not exceed Two Hundred Ninety-Five and No/100 Dollars (\$295.00) per Lot per quarter, exclusive of any amounts due to the Master Association and/or any district(s), and/or any other person or entity. However, the Lots upon which no improvements are built ("Vacant Lots") shall

not pay Annual Assessments but pay assessments for expenses according to the benefit received as provided in the next section.

Section 11.4 Vacant Lot Assessment.

**11.4.1 Any expenses which benefit all Lots shall be apportioned as assessments among the Lots in accordance with their Allocated Interests. Notwithstanding the foregoing, however, it is recognized that the Vacant Lots receive and benefit from fewer services funded by the assessments than the other Lots. Colorado Revised Statutes §38-33.3-315(3)(b) provides that “[a]ny common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited.” Based on this provision, the Vacant Lots shall pay Assessments only for expenses for which they receive a direct benefit in proportion to the number of Lots benefited.**

11.4.2 During the period of Declarant control, the Declarant may, in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amounts, which shall constitute an advance against Assessments then or thereafter due from the Declarant; provided however, that any such advances which have not been credited against Assessments due from the Declarant as of termination of the period of Declaration control shall then be repaid by the Association to the Declarant, without interest, to the extent that the Association has funds in excess of its working capital funds, reserve funds, and operating expenses to date for the calendar year in which the period of Declarant control terminates; and provided further, however, than any of such advances which are not repaid to the Declarant shall continue to constitute advances against Assessments then or thereafter due from the Declarant until termination of the Special Declarant Rights. If the Declarant elects in its discretion to pay any amounts as provided in this subsection, Declarant shall not, under any circumstances, be obligated to continue payment or funding of any such amounts in the future.

Section 11.5 Budget.

Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Notice of the meeting shall be given as provided in the Bylaws. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 11.6 Annual Assessments.

Annual Assessments for Common Expenses shall commence upon adoption of the annual budget and those made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 11.5

above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements; expenses of management; and insurance premiums for insurance coverage as deemed desirable or necessary by the Association; care of grounds within the Common Elements; routine repairs and renovations within the Common Elements; wages; common water and utility charges for the Common Elements; payment for common irrigation water and utility charges for services provided to each Lot; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements within the Common Elements on a periodic basis, as needed.

Annual Assessments shall be payable in quarterly installments on a prorated basis in advance and shall be due on the first day of each quarter. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

#### Section 11.7 Apportionment of Annual Assessments.

Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided among the Units on the basis of the Allocated Interests in effect on the date of assessment, subject to the following provisions. All expenses (including, but not limited to, costs of maintenance, repair, and replacement) relating to or benefiting fewer than all of the Units to the extent not covered by insurance shall be borne by the Owners of those affected Units only.

#### Section 11.8 Special Assessments.

In addition to the Annual Assessments authorized by this Article, the Association, if permitted under the Act, may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 11.6 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments subject to the requirements that any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's residence or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Special Assessments shall be based on a budget adopted in accordance with Section 11.3 above provided that, if necessary, the Association may adopt a new budget pursuant to Section 11.3 prior to levying a Special Assessment. Notice in writing in the amount of such Special Assessments and the time for payment of the Special Assessments

shall be given promptly to the Owners, and no payment shall be due less than ten (10) days after such notice shall have been given.

Section 11.9 Default Assessments.

All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 11.10 Effect of Nonpayment; Assessment Lien.

Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid on or before its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

11.10.1 Assess a late charge for each delinquency in such amount as the Association deems appropriate;

11.10.2 Assess an interest charge from the due date at the rate of twelve percent (12%) per annum, or such other lawful rate as the Executive Board may establish not to exceed twenty-one percent (21%) per annum;

11.10.3 Suspend the voting rights of the Owner during any period of delinquency;

11.10.4 Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

11.10.5 Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

11.10.6 Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

Section 11.11 Personal Obligation.

The amount of any Assessment chargeable against any Unit shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 11.12 Successor's Liability for Assessments; Subordination of Lien.

The provisions of the Act shall govern and control (a) the obligations of successors to the fee simple title of a Unit on which Assessments are delinquent and (b) the subordination of the lien for the Assessments provided for in this Declaration.

Section 11.13 Payment by Mortgagee.

Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgagee.

Section 11.14 Escrow Agreement with Mortgagee.

The association may enter into an escrow agreement with the holder of a Unit Owner's mortgage so that assessments may be combined with the Unit Owner's mortgage payments and paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the federal housing administration, department of housing and urban development, veterans' administration, or other government agency.

Section 11.15 Statement of Status of Assessment Payment.

Upon payment of a reasonable fee set from time to time by the Executive Board and upon written request delivered personally or by certified mail, first-class postage prepaid, return receipt requested to the Association's registered agent, the Association shall furnish to any Owner, Mortgagee, prospective Mortgagee, or their designees a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the association, the executive board, and every unit owner. If no statement is furnished to the unit owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the association shall have no right to assert a lien upon the unit for unpaid assessments which were due as of the date of the request. The Association shall maintain financial records sufficiently detailed to enable the Association to comply with this section.

Section 11.16. Surplus Funds.



Any surplus funds of the Association remaining after payment of or provision for Assessments and any prepayment of or provision for reserves shall be retained by the Association and need not be paid to the Owners or credited to them to reduce their future Assessments.

Section 11.17. Working Capital Fund.

The Association shall require the first Owner of any Lot who purchases that Lot from Declarant to make a non-refundable contribution to the Association in an amount equal to one quarter's then current installment or estimated installment of the Annual Assessment (regardless of whether or not the Annual Assessments have commenced). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Lot and shall be maintained for the use and benefit of the Association, including, without limitation, to meet expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payment of Assessments as the same become due. Upon the sale of his Lot, an Owner shall be entitled to reimbursement at closing in the form of a credit on the closing settlement statement) from the purchaser of such Lot (but not from the Association) for the portion of the aforesaid contribution to working capital fund which has not been used by the Association at the time of conveyance of the Lot by such Owner, without interest.

**ARTICLE 12  
ASSOCIATION AS ATTORNEY-IN-FACT**

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association upon their damage or destruction, or a complete or partial taking as provided below. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

**ARTICLE 13  
DAMAGE OR DESTRUCTION**

Section 13.1 The Role of the Executive Board.

Except as provided in Section 13.6, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the name of the Association under Article 10, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 10 is sometimes referred to as the "Association-Insured Property").

Section 13.2 Estimate of Damages or Destruction.

As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in Article 13 shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

Section 13.3 Repair and Reconstruction.

As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 13.4 Funds for Repair and Reconstruction.

The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Article 11, Section 11.6, if permitted under the Act, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

Section 13.5 Disbursement of Funds for Repair and Reconstruction.

The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

Section 13.6 Decision Not to Rebuild Common Elements.

If Owners representing not less than sixty-seven percent (67%) of the total allocated votes in the Association (other than Declarant), fifty-one percent (51%) of the Mortgagees holding First Mortgages (based on one (1) vote for each Mortgage which encumbers a Unit), and all directly adversely affected Owners agree in writing not to repair and reconstruct improvements within the Common Elements; and, if no alternative improvements are authorized, then, in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Elements by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with the Act.

**ARTICLE 14  
CONDEMNATION**

Section 14.1 Rights of Owners.

Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 14.2 Partial Condemnation; Distribution of Award; Reconstruction.

The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Elements was conveyed and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Owners who represent at least 67% of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 13 above regarding the disbursement of funds in respect to casualty damage or destruction that is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Unit among the Owners, first to the Mortgagees and then to the Owners, as their interests appear.

Section 14.3 Complete Condemnation.

If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Article 13, Section 13.5 above.

## **ARTICLE 15 DESIGN REVIEW**

Section 15.1 Master Declaration. The provisions for architectural control contained in this Declaration shall be in addition to, and not in lieu of, the architectural control provisions contained in Article 4 of the Master Declaration. The granting of approval for proposed work hereunder shall not dispense with the need to also comply with the approval procedures set forth in the Master Declaration, if the Design Review Committee of the Master Association is active. All proposed construction, modifications, alterations and improvements shall be approved pursuant to this Declaration before being submitted for approval pursuant to the Master Declaration.

Section 15.2 Exceptions. Approval of the Design Review Committee shall not be required for any improvements to the Property made by Declarant and any improvement to the Common Elements made by the Association.

### Section 15.3 Composition of Committee, Authority of Representative.

15.3.1 The Design Review Committee (DRC) shall consist of three (3) or more persons appointed by the Executive Board; provided however, that until the termination of Declarant control as defined in the Bylaws, the Declarant may appoint the Design Review Committee. The power to appoint the DRC shall include, without limitation, the power to constitute the initial membership of the DRC, appoint member(s) to the DRC on the occurrence of any vacancy, and remove any member of the DRC, with or without cause, at any time, and appoint the successor. Each such appointment may be made for such term of office, subject to the power of removal, as may be set from time to time in the discretion of the Executive Board. The terms of office of those members who were appointed by the Declarant shall automatically terminate at the time of termination of Declarant control. If no Committee has been appointed, nevertheless the provisions of Section 15.1 and 15.4.5 shall be complied with such that all applicable governmental approvals and the approval of the Master Association Design Review Committee shall be obtained.

15.3.2 The DRC may at any time, from time to time, appoint a representative to act on its behalf. If the DRC does so, then the actions of such representative shall be the actions of the DRC, subject to the right of appeal as provided below. However, if such a representative is appointed by the DRC, then the DRC shall have full power over such representative, including the power to at any time withdraw the authority to act on behalf of the DRC and the power to at any time remove or replace such representative.

### Section 15.4 Review and Approval by Committee; Reimbursement for Expenses; Requirement for Approval by Governmental Entities.

15.4.1 "Improvements" shall mean all exterior improvements, structures, and any appurtenances thereto or components thereof of every type and kind, and all landscaping features, statues, ornaments, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, gardens, windbreaks, plantings, trees, shrubs,

flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball backboards and hoops, whether fixed or movable, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

15.4.2 No Improvements shall be constructed, erected, added, deleted, placed, planted, applied or installed upon any Lot unless complete plans and specifications therefore shall have been first submitted to and approved by the DRC, with the plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee.

15.4.3 The DRC shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residence, landscaping and structures.

15.4.4 In its review of such plans and specifications and other information, the DRC may require that the applicant reimburse the DRC for the actual expenses incurred in the review and approval process. Such amounts, if any, shall be levied in addition to the Assessments against the Lot and shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection of such Assessments, as more fully provided in this Declaration.

15.4.5 In addition to the required approval of the DRC, the construction, erection, addition, deletion, placement, application or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of a building permit by the Town of Gypsum, Colorado, if required, shall be a precondition to commencement of any construction, erection, addition, deletion, placement, application or installation of any Improvements.

Section 15.5 Procedures. The DRC shall decide each request for approval within thirty (30) days after the complete submission of the plans and specifications and other information which the Committee may require in conjunction therewith. If the DRC fails to decide any request within thirty (30) days after the complete submission of the plans and specifications and other information required, then the request for approval shall be deemed to have been denied by the Committee.

Section 15.6 Vote and Appeal. A majority vote of the DRC is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the DRC decides a request for approval, then any Owner shall have the right to an appeal of such decision to the full Committee, upon a request therefor submitted to the Committee within thirty (30) days after such decision by the Committee's representative. Subsequent to the conveyance by the Declarant of all of the property owned by the Declarant, an applicant shall have the right to appeal an adverse decision by the DRC to the

Executive Board, upon a written request therefore, submitted to the Executive Board within thirty (30) days after such decision by the DRC.

Section 15.7 Prosecution of Work After Approval. After approval of any proposed Improvement by the DRC, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the terms and conditions of the approval. Failure to complete the proposed Improvement within one (1) year after the date of approval, or such lesser time as may be provided by the DRC as a term and condition of approval, or to complete the Improvement in complete conformance with terms and conditions of the approval, shall constitute noncompliance with the requirements for approval of Improvements by the DRC and a violation of this Article; provided however, the DRC may, in its discretion, grant written extensions of time for completion of any proposed Improvement.

Section 15.8 Inspection of Work. The DRC or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted by the Committee. However, unless the Committee expressly states in writing that an Improvement is being or has been completed in conformance with the DRC approval therefore, no such conformance shall be implied from any inspection of the Improvement either during the work or after completion thereof.

Section 15.9 Standards/Guidelines. The DRC, with the advice of the Executive Board, has the authority, at any time to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural standards, guidelines, rules and regulations to interpret and implement the provisions of this Article and the Declaration. Without limiting the generality of the foregoing, such provisions may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submission in order to obtain review by the Committee, may state procedural requirements, or may specify acceptable Improvements that may be installed without the prior approval of the Committee. In addition, such provisions may provide for blanket approvals, interpretations or restrictions on Improvements. By way of example, and not by way of limitation, such provisions may state that a certain exterior paint color will be acceptable and will not require approval. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be done and used in accordance with this Article and the Declaration. Standards adopted after termination of the Declarant's right to appoint the members of the DRC shall not be effective until approved by the Executive Board.

Section 15.10 Variance. The DRC may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only if the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the Project and shall not militate against the general intent and purpose of this Article and the Declaration.

Section 15.11 No Waiver; No Precedent. The approval or consent of the DRC to any application shall not be deemed to constitute a waiver of any right to withhold or deny approval

by the Committee as to any application or other matters whatsoever as to which approval or consent may be required. The approval or consent of the DRC shall not be deemed to constitute a precedent as to any other matter before the DRC. The granting of a variance or adjustment shall not be deemed to constitute a waiver of any right to grant or deny any other future variance or adjustment as to any other request for variance or adjustment nor shall any such variance or adjustment be deemed to constitute a precedent as to any other matter before the DRC.

Section 15.12 Maintenance of Records. The DRC shall maintain written records of all applications submitted to it and all actions taken by it for such period of time as may be determined by the Executive Board, and such records shall be available to Members for inspection at reasonable hours upon notice of five (5) business days, or at the next regularly scheduled meeting of the Association if such meeting occurs within thirty days after the request.

## **ARTICLE 16 MORTGAGEE'S RIGHTS**

The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgages on Units. To the extent permitted under Colorado law and applicable, necessary, or proper, the provisions of this Article 16 apply to this Declaration and also to the Articles and Bylaws.

### Section 16.1 Approval Requirements.

Unless at least sixty-seven percent (67%) of the First Mortgagees (based on one vote for each Mortgage owned), and at least sixty-seven percent (67%) of the Owners (other than Declarant) have given their prior written approval, the Association shall not be entitled to:

16.1.1 By act or omission seek to abandon, partition, subdivide, sell, or transfer all or part of the Common Elements (provided, however, that the granting of easements or rights of way for public utilities or for other purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause);

16.1.2 Fail to maintain insurance required to be maintained under this Declaration;

16.1.3 Use hazard insurance proceeds for losses to improvements in the Common Elements for other than the repair, replacement, or reconstruction of such property.

### Section 16.2 Title Taken by Mortgagee.

Any First Mortgagee who obtains title to the Unit pursuant to remedies exercised in enforcing the First Mortgage, including foreclosure of the First Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit (i) is acquired or (ii) could have been acquired under the statutes of Colorado governing foreclosures, whichever is earlier. Such First Mortgagee shall also become liable for any

Assessments having priority over the First Mortgage pursuant to the terms and provisions of the Act.

Section 16.3 Distribution of Insurance or Condemnation Proceeds.

In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any First Mortgagee against the Unit.

Section 16.4 Right to Pay Taxes and Charges.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**ARTICLE 17**  
**DURATION OF COVENANTS AND AMENDMENT OF DECLARATION**

Section 17.1 Term.

The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 17.2 Amendment.

This Declaration and/or the Plat, may be amended at any time by the affirmative vote or agreement of Owners holding not less than sixty-seven (67%) of the votes possible to be cast at a meeting of the Owners called for that purpose, except as limited by Article 16. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and/or the Plat to the fullest extent permitted under the Act.

Section 17.3 Expenses.

All expenses associated with preparing and recording an amendment to the Declaration shall be the sole responsibility of the Association, unless otherwise provided by the Act.

Section 17.4 Amendment by Declarant.

Notwithstanding anything to the contrary contained in this Declaration or the Act, the Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any security interest holder, or any other person, in order to comply with the requirements, standards, or guidelines of any of the governmental agencies or of recognized secondary mortgage markets. Such right of amendment shall terminate automatically when Declarant no longer owns any portion of the Property.



Section 17.5 Correction of Error.

Notwithstanding anything to the contrary contained in this Declaration or the Act, the Declaration may be amended in whole or in part, at any time from time to time, by the Declarant without the consent or approval of any other Owner, any security interest holder, or any other person, in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically when Declarant no longer owns any portion of the Property.

**ARTICLE 18  
LIMIT ON TIMESHARING**

No Units shall be used (i) for the operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, or (ii) for the operation of a reservation or time-use system among co-Owners or a Unit managed by a party other than the co-Owners themselves or a system whereby co-Owners are required as a condition of purchase of a fractional interest in the Unit to subject the fractional interest to a pre-determined reservation or time-use system among co-Owners, regardless of whether or not the co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating.

**ARTICLE 19  
COVENANTS RELATING TO THE MASTER DECLARATION**

Section 19.1 Master Declaration Matters.

Each Owner, by accepting a deed to a Unit, recognizes that (a) the Property is subject to the Master Declaration, (b) by virtue of his ownership, he has become a member of the Master Association. Each Owner, by accepting a deed to a Unit, acknowledges that he has received a copy of the Master Declaration. The Owner agrees to perform all of his obligations as a member of the Master Association as they may from time to time exist, including, but not limited to, the obligation to pay assessments as required under the Master Declaration and other governing documents of the Master Association.

Section 19.2 Enforcement of Master Declaration.

19.2.1 The Association shall have the power, subject to the primary power of the Executive Board of the Master Association, to enforce the covenants and restrictions contained in the Master Declaration, but only if said covenants and restrictions relate to the Property, and to collect assessments on behalf of the Master Association.

19.2.2 This Declaration is intended to supplement the Master Declaration as it applies to the Property. In addition to all of the obligations which are conferred or imposed upon the Association pursuant to this Declaration, the Bylaws or the Articles of Incorporation, the Association shall be subject to all of the obligations imposed upon it pursuant to the Master Declaration and the Bylaws of the Master Association. The Association and all committees thereof shall also be subject to all superior rights and powers that have been conferred upon the Master Association pursuant to the Master Declaration and the Bylaws of the Master

Association. The Association shall take no action in derogation of the rights of, or contrary to the interests of, the Master Association.

## **ARTICLE 20 ACKNOWLEDGMENTS**

Each Owner is hereby advised of the following matters affecting the Property and the Owners' use and enjoyment thereof:

### Section 20.1 Construction Activities.

The Property is located in an area that is subject to ongoing construction activities relating to the development of the Buckhorn Valley. The Construction Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances, including but not limited to noise and dust. The Construction Activities may include, without limitation: (i) construction traffic (including, without limitation, construction vehicles, equipment and vehicles used or owned by construction contractors or their employees), traveling on the roads within Buckhorn Valley and potentially causing a blocking of streets and alleys by, including but not limited to, heavy equipment, vehicles, and/or construction materials; and (ii) construction activities (including, without limitation, grading, excavation, clearing, site work and the construction of improvements) relating to infrastructure and improvements for Aspen Ridge at Buckhorn Valley.

### Section 20.2 Mountain Conditions.

Each Owner acknowledges that ownership of real property in mountain areas involves certain inherent inconveniences. These include, but are not limited to, (a) dripping water onto decks and porches from snow melt, (b) snow and ice build-up on roofs, decks and porches during winter months, and the need to remove snow from roofs and decks to prevent damage from overloading such structures, (c) the need to open windows to cool a residence, and (d) other inconveniences arising from the sometimes severe winter conditions in the Rocky Mountains.

## **ARTICLE 21 GENERAL PROVISIONS**

### Section 21.1 Restriction on Declarant Powers.

Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

### Section 21.2 Enforcement and Fines

Except as otherwise provided in this Declaration, the Executive Board, Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Executive Board of the Association, Declarant, or

by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to levy and collect fines, in the same manner as with Assessments, for the violation of any provision of any of the aforesaid documents. Enforcement and fine procedures shall be adopted in the Rules and Regulations from time to time and amended as necessary.

Section 21.3 Severability.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 21.4 Conflicts Between Documents.

In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 21.5 Owner's and Association's Address for Notices.

If there is more than one owner of a Unit, all Owners of the Unit shall designate one mailing address to be registered with the Association and used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit shall furnish such address to the Association within five (5) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the Unit.

If no address is registered or if all of the Owners cannot agree, then the address set forth in the deed to the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

If the address of the Unit is the registered address of the Owners, then any notice shall be deemed duly given if delivered to any person occupying the Unit or, if the Unit is unoccupied, if the notice is held and available for the Owners at the principal office of the Association.

Any notice delivered to a First Mortgagee in accordance with the terms of this Declaration shall be sent to the address for such party specified in the First Mortgage unless the First Mortgagee notifies the Association in writing of a different address.

All notices and demands intended to be served upon the Executive Board shall be sent to such address as the Executive Board may designate from time to time by notice to all of the Owners.

All notices given in accordance with this Section shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date first written above.

**DECLARANT:**

Gypsum Aspen Ridge, LLC  
a Colorado limited liability company

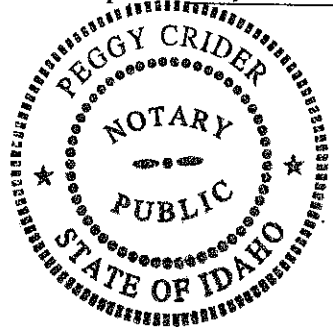
By: *Laurence A. Dawson*  
Laurence A. Dawson

STATE OF IDAHO )  
) SS.  
COUNTY OF Ada )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of April, 2007, by Laurence A. Dawson, as \_\_\_\_\_ of Gypsum Aspen Ridge, LLC, a Colorado limited liability company

My commission expires: 7.21.2007

[SEAL]



*Peggy Crider*  
Notary Public

**CONSENT TO RECORDATION OF DECLARATION**

New Frontier Bank, which is the holder of the recorded first Deed of Trust concerning the Property described in the foregoing Amended and Restated Declaration, hereby acknowledges that it has read and approved the Amended and Restated Declaration and agrees that the lien of said Deed of Trust shall be subject to the Amended and Restated Declaration.

DATED this 18<sup>th</sup> day of April, 2007.

NEW FRONTIER BANK

By: Earl Lindeman

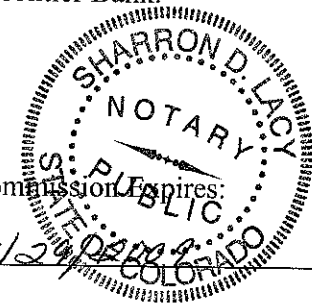
Its: Vice-President

STATE OF Colorado )  
County of Weld ) ss.

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of April, 2007 by Earl Lindeman, the Vice President of New Frontier Bank.

Sharon D. Lacy

Notary Public

My Commission Expires: 08/29/2009  


**EXHIBIT A**

**PROPERTY DESCRIPTION**

**Lot 1 through and including Lot 110, Aspen Ridge at Buckhorn Valley P.U.D., according to the Amended Final Plat recorded on September 18, 2006 at Reception No. 200625426, County of Eagle State of Colorado.**

**EXHIBIT B**

**ALLOCATED INTERESTS AND FORMULA**

<b><u>Lot Number</u></b>	<b><u>Allocated Interest</u></b>
Lots 1-110	0.91% per lot

The formula for the Allocated Interests is an equal allocation among all Lots, until the resubdivision occurs to create the duplex lots. After resubdivision, the Allocated Interests shall be as follows:

<b><u>Lot Number</u></b>	<b><u>Allocated Interest</u></b>
Lots 1-38, Lots 42-103	0.833 % per lot
Lot 39A	0.833 % per lot
Lot 39B	
Lot 40A	
Lot 40B	
Lot 41A	
Lot 41B	
Lot 104A	
Lot 104B	
Lot 105A	
Lot 105B	
Lot 106A	
Lot 106B	
Lot 106A	
Lot 106B	
Lot 107A	
Lot 107B	
Lot 108A	
Lot 108B	
Lot 109A	
Lot 109B	
Lot 110A	
Lot 110B	

## EXHIBIT C

### **RULES AND REGULATIONS**

These Rules and Regulations (the "Rules") have been adopted and implemented to protect the investment of the members and to enhance the values of the properties subject to regulation by the Association. Terms which are defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Aspen Ridge at Buckhorn Valley (the "Declaration") shall have the same meaning herein, unless defined otherwise in these Rules.

#### **I. GARBAGE AND TRASH.**

No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored, or allowed to accumulate on any Lot except within the garage, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up. To reduce potential bear and other wildlife problems, refuse must be disposed of as follows:

1. Prior to disposal, any refuse shall be kept within the garage in a suitable receptacle with a tight-fitting lid;
2. Trash containers shall be taken to the collection point the morning of collection and shall not be put out the night before the morning of collection;
3. There shall be no compost piles, no dumps, and no underground disposal of refuse within the Planned Community.

#### **II. PETS.**

- A. No animals, live stock or poultry of any kind, including horses, shall be raised, bred or kept in or on any Lot, except that provided, however, that the Owners of each Lot may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose and are not kept in such number or manner as to create a nuisance to any resident of the Lots.
- B. An Owner may have an aggregate of not more than three domesticated animals (e.g., two cats and one dog) per household, subject to all applicable local ordinances. The Board, in its sole discretion, may reasonably restrict the household pet from being kept on a case-by-case basis.
- C. In no event will any dog whose breed is known for its viciousness or ill temper, in particular, the American Staffordshire Terrier (known as a "Pit Bull Terrier") be permitted in the Community, nor any animal of any kind that has venom or poisonous capture mechanisms, or if let loose would constitute vermin, will be allowed in the Community. The Board reserves the right to make a determination that any particular pet is too dangerous to be allowed in the Community. No animal of any kind shall be permitted which in the sole opinion of the Review



Committee makes an unreasonable amount of noise or odor, is a nuisance, or is a threat to public safety.

D. Pet owners shall clean up after their pet(s) and dispose of any bodily wastes in suitable containers. Pets shall not be allowed to damage grass, shrubs, trees or any other portion of the Association Property. Expenses and costs resulting from damage to shrubs, trees or Association Properties will be the responsibility of the Owner of the Lot at which the responsible pet is kept.

E. Pets, including dogs and cats, shall not be allowed to roam unrestrained on the Association Properties or outside the Owner's Lot.

F. Pets shall not be chained or tethered outdoors, unattended, so as to become an annoyance or nuisance to others from barking or such other cause.

G. Animals must be licensed as required by law.

H. With the exception of bird feeders, the feeding, baiting, salting, or other means of attracting wildlife is prohibited.

I. All household pets shall be controlled by their Owner and shall not be allowed off the Owner's Lot except when properly leashed and accompanied by the pet Owner or such Owner's representative.

J. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet, and shall be responsible for all costs incurred by the Association or its agent as result of noncompliance with these animal and pet regulations.

K. When outside the residence on an Owner's Lot, dogs shall be confined by: (1) confinement in an area bounded by an above-ground fence; (2) confinement in a kennel; (3) confinement in an area bounded by an invisible electric fence attached to the Owner's residence; or (4) a leash. Dogs shall not be allowed to chase or molest persons or their property, wildlife or domestic animals.

L. Dogs shall not be allowed to bark continuously, which shall be defined as barking for a fifteen (15) minute period, including successive barks or a series of barks which repeat or resume following a brief or temporary cessation.

M. Any violation of the Declaration or of these Rules and Regulations concerning pets, shall subject an Owner to the rights and remedies allowed or provided the Association in the Declaration, and shall also subject the Owner to a reasonable fine assessment imposed by the Association, after notice and a hearing, as follows:

1. First offense/violation: Written notice warning letter to pet owner and/or Owner.

2. Second offense/violation: A \$100.00 fine may be assessed against the Owner, except for a violation of section II C, which shall carry a fine of \$500.00 per day until cured.

3. Third offense/violation: A \$200.00 fine may be assessed against the Owner.

4. Fourth offense/violation and each subsequent offense/violation: A \$500.00 fine may be assessed against the Owner.

5. Fifth or Continuing Offense/Violation: The Association may take action to have the pet removed from the Community Area by mandatory injunction or otherwise.

### **III. MOTOR VEHICLES/PARKING.**

**A. Vehicle Repairs.** No maintenance, servicing, repair, mechanical work, body work, engine work, dismantling or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed structure which screens the sight and sound of such activity from the street and from other Lots. No work may be conducted or carried on so as to become an annoyance, nuisance, eyesore or hazard. Car washing will only be permitted in the Lot Owner's driveway. In the event of violation hereof, in addition to the rights and remedies available under the Declaration, a reasonable fine may be assessed, after notice and hearing, as follows:

1. First Offense/Violation. Written notice/warning letter to the Owner and/or vehicle owner.

2. Second Offense/Violation. A \$100.00 fine may be assessed against the Owner and/or vehicle owner.

3. Third Offense/Violation. A \$200.00 fine may be assessed against the Owner and/or vehicle owner.

4. Fourth Offense/Violation. A \$500.00 fine may be assessed against the Owner and/or vehicle owner.

**B. Trailers, Campers and Junk Vehicles.** No boat, camper (on or off supporting vehicles), trailer, tractor, truck, industrial or commercial vehicle (both cabs or trailers), towed trailer unit, motorcycle, disabled, junk, or abandoned vehicles, motor home, camper, recreational vehicle, or any other vehicle, the primary purpose of which is recreational, sporting or commercial use, shall be parked or stored in, on, or about any Lot or street within the Community Area except within the attached garage or unless such vehicles are concealed from view and approved by the Design Review Committee. For the purposes of this covenant, a 3/4-ton or smaller vehicle commonly known as a pickup truck shall not be deemed a commercial vehicle or truck.

**C. Inoperative, Unused or Abandoned Vehicles.** No inoperative, unused or abandoned vehicle shall be stored, parked, maintained or kept upon any part of the Community, including any street, or way of access within the Community. "Inoperative, abandoned or unused vehicle" shall mean any automobile, truck, motorcycle, motorbike, boat, trailer, camper, house trailer, or similar vehicle which has not been driven under its own propulsion or has not been moved out of the

Community for a period of two (2) weeks or longer, or which does not have an operable propulsion system. In the event that the Board shall determine that the vehicle is an abandoned or inoperable vehicle, then a written notice describing the vehicle shall be personally delivered to the Owner thereof, if known, or shall be conspicuously placed upon the vehicle. If the vehicle is not then removed within 48 hours of such notice, except in the event of emergencies, the Board shall have the right to remove the vehicle and the vehicle owner shall be responsible for all towing and storage charges. Exemptions from this two (2) week provision (for the purpose of keeping a vehicle within the Community during vacation periods), may be applied for by an Owner by written request by such Owner to the Association. No request for exemption shall be deemed granted in the absence of written approval thereof by the Board.

D. Restrictions on Parking and Storage. Subject to the Declaration, each recreation or accessory vehicle such as a house trailer, camping trailer, boat trailer, boat, hauling trailer, running gear, or accessories thereto, motor driven cycle, self-contained motorized recreational vehicle, van or other type of recreational equipment, parked or stored in the Community shall be parked or stored, at any one time, wholly within the boundaries of the garage or driveway of the Lot. Automobiles or trucks (non-commercial vehicles) parked or stored in the Community shall be parked or stored at anyone time either within the boundaries of the garage or driveway of the Lot. At no time shall any automobile, recreational vehicle or accessory vehicle be parked on, beside or along the roadways in the Community. This restriction, however, shall not restrict trucks or other commercial vehicles within the Community, which are necessary for construction or for the maintenance of the Association Properties or Lots. The provisions of this section shall be subject to, and may be modified and/or supplemented by, the Association.

E. Motor Vehicle Fines. In the event of any violation of the Declaration or those Rules concerning motor vehicles and parking, then in addition to all rights and remedies provided by the Declaration, a reasonable fine assessment may be imposed, after notice and hearing, as follows:

1. First Offense/Violation. Written notice of intent to tow may be given to the Owner/vehicle owner or posted on subject vehicle. If the vehicle in violation is not removed within forty-eight (48) hours after notice of intent to tow, the Association shall be entitled to tow the subject vehicle and the Owner and vehicle owner (if different) shall be jointly and severally liable for all expenses, costs and fees incurred in such towing and/or storage.

2. Second Offense/Violation. A \$100.00 fine may be assessed against the Owner. Additionally, if the vehicle in violation is not removed within forty-eight (48) hours after notice of intent to tow, the Association shall be entitled to tow the subject vehicle and the Owner and vehicle owner (if different) shall be jointly and severally liable for all expenses, costs and fees incurred in such towing and/or storage.

3. Third Offense/Violation. A \$200.00 fine may be assessed against the Owner. Additionally if the vehicle in violation is not removed within forty-eight (48) hours after notice of intent to tow, the Association shall be entitled to tow the subject vehicle and the Owner and vehicle owner (if different) shall be jointly and severally liable for all expenses, costs and fees incurred in such towing and/or storage.

4. Fourth and Subsequent Offense(s)/Violation(s). A \$500.00 fine may be assessed against the Owner. Additionally if the vehicle in violation is not removed within forty-eight (48) hours after notice of intent to tow, the Association shall be entitled to tow the subject vehicle and the Owner and vehicle owner (if different) shall be jointly and severally liable for all expenses, costs and fees incurred in such towing and/or storage.

#### **IV. WATERING RESTRICTIONS.**

A. The water from the water irrigation system is to be used only to irrigate lawns, shrubs and trees within the Community Area. Any other use is strictly forbidden. The Association may, if necessary to conserve water, prohibit the use of water to irrigate rear and side yard lawns. Watering shall occur only during the months of the year and during the hours of the day as the Board may direct from time to time. No water shall be wasted by allowing five (5) gallons or more of irrigation water to run into the streets or drainage culverts.

B. Each residence shall only have one exterior water faucet. No potable water from the water supply that is delivered to each residents through its water tap for such Lot to the Town of Gypsum water system shall be used, in any quantity, to water or irrigate any exterior lawns, shrubs, trees or any other landscaping.

C. Any violation of the Declaration or of these Rules and Regulations concerning watering restrictions, shall subject an Owner to the rights and remedies allowed or provided the Association in the Declaration, and shall also subject the Owner to a reasonable fine assessment imposed by the Association, after notice and a hearing, as follows:

1. First offense/violation: Written notice warning letter to Owner.

2. Second offense/violation: A \$100.00 fine may be assessed against the Owner.

3. Third offense/violation: A \$200.00 fine may be assessed against the Owner.

4. Fourth offense/violation and each subsequent offense/violation: A \$500.00 fine may be assessed against the Owner.

#### **V. OTHER RESTRICTIONS.**

A. Nuisance. No noxious, offensive, dangerous or unsafe activity shall be carried on any Lot or the Association Properties; nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or occupants or which may interfere with their peaceful enjoyment of their own Lot. No Owner shall make or permit any disturbing noises or nuisance activities or do or permit anything to be done that will interfere with the rights, peaceful enjoyment and comforts of convenience of other Owners or occupants. No Owner or occupant shall play, or suffer to be played, any musical instrument or operate, or

suffer to be operated, an engine, device, phonograph, television set or radio at high volume or in any other manner that shall cause unreasonable disturbances to other Owners or occupants.

B. Compliance with Laws. No unlawful use may be made of any portion of the Community. Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of Colorado, and with all local ordinances, rules and regulations. The violating Owner shall hold the Association and other Owners harmless from all fines, penalties, costs and prosecutions for any violation or noncompliance.

1. First offense/violation: Written notice warning letter to Owner.
2. Second offense/violation: A \$100.00 fine may be assessed against the Owner.
3. Third offense/violation: A \$200.00 fine may be assessed against the Owner.
4. Fourth offense/violation and each subsequent offense/violation: A \$500.00 fine may be assessed against the Owner.

C. No Temporary Structures. No tent, shack, temporary structure, or temporary building shall be placed upon any property within the Community.

D. Restrictions on Signs and Advertising. No sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Community Area so as to be evident to public view, except: (a) the American flag; (b) signs as may be approved in advance in writing by the Design Review Committee; or (c) signs, posters, billboards or any other type of advertising device or display erected by Declarant incidental to the development, construction, promotion, marketing or sales of Lots within the Community Area. In regard to political signs, Owners may display one political sign per political office or ballot issue that is contested in the election. A political sign may be no larger than 36" x 48" or the maximum allowed by any applicable town or county ordinance that regulates the size of political signs on residential property, whichever is smaller. The political sign may not be displayed later than 14 days after the election day. A sign advertising a Lot for sale or for lease may be placed on a Lot; provided, however, that standards relating to dimensions, color, style, and location of such sign shall be determined from time to time by the Design Review Committee.

E. Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of an Improvement.

F. Owner's Right to Lease Lot. The term "lease" shall include any agreement for the leasing or rental of a Lot, or any portion thereof, including subleases. All Owners shall have the right to lease such Owner's Lot provided that:

- (a) All Leases shall be in writing and notice of the lease, including the name of the tenant(s) and the duration of the lease, shall be delivered to the Executive Board or the Association's managing agent, if any within thirty (30) days after such lease has been executed by the lessor and the lessee;

(b) All Leases shall provide that the terms of the lease and the lessee's occupancy of the Lot shall be subject to this Declaration, the Articles of Incorporation, Bylaws and the Rules and Regulations of the Association and that any failure by the lessee to comply with any of the aforesaid documents in any respect shall be a default under such Lease; and

(c) All leases shall be for a term of no less than six (6) months.

G. Miscellaneous Restrictions. No clotheslines, chain-linked dog runs, drying yards, service yards, wood piles or storage areas shall be so located on any Lot as to be visible from a street, from the ground level of any other Lot or from the Common Elements.

H. Refrigerating, cooling, heating apparatus. No type of refrigerating, cooling or heating apparatus shall be permitted on a roof and no such apparatus shall be permitted elsewhere on a Lot, except when approved by the Design Review Committee. Without limiting the foregoing, conventional air conditioning units located on the ground of a Lot are permissible when approved in accordance with the preceding sentence.

I. Audio Visual Reception. Except as may otherwise be permitted by the Design Review Committee, no exterior radio antennae, television antennae, or other antennae, satellite dish, or audio or visual reception device of any type shall be placed, erected or maintained on any Lot, except inside a residence or otherwise concealed from view; provided, however, that any such devices may be erected or installed by the Declarant during its sales or construction upon the Lots; and provided further, however, that the requirements of this subsection shall not apply to those "antennae" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended from time to time. As to "antennae" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996 and/or applicable regulations, as amended, the Association shall be empowered to adopt rules and regulations governing the types of "antennae" (including certain satellite dishes) that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996 and/or applicable regulations, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and maintenance.

J. Fences. No fences shall be permitted unless first approved in writing by the Design Review Committee, except such fences as may be constructed, installed or located by the Declarant in its development or construction of improvements in the Community.

K. Wind Generators. No wind generators shall be constructed, installed, erected or maintained on any Lot.

## VI. PAYMENTS AND FINES

A. Returned Check Charges. In addition to any and all charges imposed or allowed under the Declaration, Articles of Incorporation, Bylaws or these Rules, a fifty dollar (\$50.00) fee shall be assessed against an Owner, in the event any check or other instrument attributable to or for the benefit of such Owner or Owner's properties not honored by the bank or is returned by the bank

for any reason whatsoever, including but not limited to insufficient funds. Such return check charge shall be due and payable immediately, upon notice thereof, in the same manner as provided for payment of assessments under the Declaration. Notwithstanding this provision, the Association shall be entitled to all additional remedies as may be provided by applicable law.

B. Application of Payments Made to the Association. The Association reserves the right to apply any and all payments received on account of any Owner or the Owner's property (hereinafter collectively "owner"), to payment of any and all legal fees and costs (including attorney's fees), expenses of enforcement and collection, late fees, return check charges, lien fees and interest owing or incurred with respect to such owner pursuant to the Declaration, Bylaws and Rules of the Association prior to application of the payment to the special or general assessments due or to become due with respect to such Owner.

C. Fine Assessments. All fines and assessments shall be due and payable immediately upon notice of such fine or assessment, as described in the Policies and Procedures for Enforcement (the "Policies and Procedures") established below. Notwithstanding anything to the contrary in these Rules and in the Policies and Procedures, the Association shall be entitled to take such action and perform such work as specified in these Rules or as otherwise permitted or required by law, the Declaration or the Bylaws, prior to, in the absence of, or during the pendency of any hearing. If any fine assessment is not paid within ten (10) days after the due date, a late charge in the amount of \$15.00 shall be assessed to compensate the Association for the expenses, costs and fees involved in handling such delinquency.

Owners shall be personally, jointly and severally liable for all fines/penalty assessments. In the event a fine assessment is not paid within fifteen (15) days, the Association may thereafter commence an action at law, *or* in equity, *or* both, against any Owner personally obligated to pay the same, for recovery of said assessment plus late charges, as aforesaid. The prevailing party shall be entitled to recover its reasonable attorney's fees and associated costs and expenses incurred in connection with such legal proceedings.

**VII. COLLECTION PROCEDURES.** The Association has adopted the following procedures and policies for the collection of assessments and other charges of the Association.

A. Due Dates. The annual assessment as determined by the Association and as allowed for in the Declaration shall be due and payable in 4 installments due on the first day of the month following the close of the calendar quarter. Assessments or other charges not paid to the Association by the 10<sup>th</sup> day of the beginning month in which they are due shall be considered past due and delinquent.

B. Invoices. The Association may, but shall not be required to invoice an Owner as a condition to an Owner's obligation to pay assessments or other charges of the Association. If the Association provides an Owner with an invoice for quarterly installments of the annual assessments, although invoices are not required, the invoice should be mailed *or* sent to the owner between the 15<sup>th</sup> and 20<sup>th</sup> day of the month preceding each due date.

C. Late Charges Imposed on Delinquent Installments. A quarterly installment of the annual assessment shall be past due and delinquent if not paid by the 10<sup>th</sup> day of the month in which it is due. The Association shall impose a twenty dollar (\$20.00) late charge on the outstanding or past due balance then due the Association. An additional twenty-dollar (\$20.00) late charge shall accrue during each and every subsequent 10-day period that the assessment remains unpaid.

D. Interest. Delinquent assessments, fines or other charges due the Association shall bear interest at the rate set forth in the Declaration.

E. Attorney's Fees on Delinquent Accounts. As an additional expense permitted under the Declaration, Articles and Bylaws, the Association shall be entitled to recover its reasonable attorney's fees incurred in the collection of assessments or other charges due the Association from a delinquent owner.

F. Collection Letters.

1. After an installment of the annual assessments or other charge due the Association, becomes 30 days past due, the Association may cause, but shall not be required to send, a collection letter to be sent to the Owners who are delinquent in payment.

2. Additionally, the Association may, but shall not be required to send a letter to the Owner advising that their account has been referred to the Association's attorneys for collection.

G. Use of Certified Mail/Regular Mail. In the event the Association shall cause a collection letter or notices to be sent to a delinquent Owner by regular mail, the Association may also cause, but shall not be required to send, an additional copy of that letter or notice by certified mail.

H. Liens. The Association may file a Notice of Lien against the property of any delinquent Owner in accordance with the terms and provisions of the Declarations, Articles and Bylaws.

I. Referral of Delinquent Accounts to Attorneys. The Association may, but shall not be required to refer delinquent accounts to its attorneys for collection. Upon referral to the attorneys, the attorneys shall take all appropriate action to collect the accounts referred. The Owner(s) of the Unit with the delinquent account shall be responsible for, and pay as an assessment on such Unit, any attorney's fees incurred in this instance.

J. Referral of Delinquent Accounts to Collection Agencies. The Association may, but shall not be required to refer delinquent accounts to one or more collection agencies for collection. Upon referral to a collection agency, the agency shall take all appropriate action to collect the accounts referred.

K. Ongoing Evaluation. Nothing in this procedure shall require the Association to take specific actions other than to notify Owners of the adoption of these procedures. The Association has the option and right to continue to evaluate each delinquency on a case by case basis.



**IX. POLICIES AND PROCEDURES FOR ENFORCEMENT OF THE DECLARATION, BYLAWS AND RULES.**

**A. Notice of Violation.** Notice of Hearing of any provisions of the Declaration, Bylaws or Rules shall be provided to the applicable Owner as soon as reasonably practicable following discovery by the Board of such violation. The notice shall describe the nature of the violation and shall further state that the Board may seek to protect its rights as they are specified in the governing legal documents.

**B. Services of Notices.** Service of all notices required or permitted to be given hereunder shall be made as follows:

If to an Owner: By personal delivery to the Owner; or by U.S. Mail, postage prepaid, addressed to the last registered address of the Owner as contained in the Association's records.

If to the Association: By personal delivery or U.S. Mail, postage prepaid, addressed to the Association in care of its registered agent and office, as maintained with the Colorado Secretary of State or such other address as the parties may be advised of in writing.

Any notice personally delivered shall be deemed received on the date of delivery, and any notice mailed shall be deemed received on the fifth day following the date of mailing.

**C. Request for Hearing.** In the event any Owner desires to attend a hearing or Board meeting to challenge or contest any alleged violation and possible fine, said Owner must, within 14 days from receipt of the Notice of Hearing, request such hearing by notifying the Association, in writing, of such hearing request. In the event a proper and timely request for a hearing is not made as provided herein, the right to a hearing shall be deemed forever waived. If a hearing is not requested within the aforementioned 14 day period, the Board shall determine if there was a violation, and if so, assess a reasonable fine within the guidelines contained in these Rules, all within 60 days of the expiration of the aforementioned 14day period. The fine assessment is due and payable immediately upon receipt of notice of the said assessment. The Association's managing agent shall give notice of said assessment to the applicable Owner as provided in these Policies and Procedures. In requesting a hearing before the Association, an Owner shall state and describe the grounds and basis for challenging or denying the alleged violation as well as such other information the Owner deems pertinent.

**D. Discovery.** Upon written request to the Association, not later than ten days prior to the date of hearing, the Owner shall be entitled to: (a) obtain the names and addresses of witnesses, to the extent known to the Association, and (b) inspect and make copies of any statements, writings and investigative reports relative to the case contained in the Association's records. Nothing in this section shall, however, authorize the inspection or copying of any writing or other thing which is privileged from disclosure by law or otherwise made confidential or protected, such as attorney work product.

E. Board to Conduct Hearing. The Board shall hear and decide cases set for hearing pursuant to these Policies and Procedures. The Board may appoint an officer or other Owner to act as the presiding officer (the "Presiding Officer") at any of the hearings.

F. Conflicts. It shall be incumbent upon each Board member to make a determination as to whether s/he is able to function in a disinterested and objective manner in consideration on each hearing before the Board. Any Board member incapable of objective and disinterested consideration on any hearing before the Association shall disclose such to the President of the Association prior to the hearing on the case, if possible, or, if advance notice is not possible, then such disclosure shall be made at the hearing, and said Board member shall be disqualified from all proceedings with regard to the hearing. If disqualification of any Board member(s) results in an even number of remaining Board members eligible to hear a case, the Presiding Officer shall appoint an Association member, in good standing, to serve as a voting member of the hearing board.

G. Hearing. Each hearing shall be held at the scheduled time, place and date, provided that the Presiding Officer may grant continuances for good cause. At the beginning of each hearing, the Presiding Officer shall explain the rules, procedures and guidelines by which the hearing shall be conducted and shall introduce the case before the Board by Reading the notice of hearing. The general procedure for hearing shall consist of opening statements by each party; presentation of testimony and evidence, including cross-examination of witnesses by each party; and closing statements by each party. Notwithstanding the foregoing, the Board may exercise its discretion as to the specific manner in which a hearing shall be conducted and shall be authorized to question witnesses, review evidence and take such other reasonable action during the course of the hearing which it may deem appropriate or desirable to permit the Board to reach a just decision in the case. Rules of law regarding trials and presentation of evidence and witnesses shall be applicable to the hearing insofar as the Presiding Officer deems adherence to such rules of law to be in the interests of justice; provided that any relevant evidence should be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the course of serious affairs. Neither the complaining parties nor the Owner must be in attendance at the hearing. However, the decision of the Board at each hearing shall be based on the matters set forth in the notice of hearing, request for hearing and such evidence as may be presented at the hearing. Unless otherwise determined by the Board of Directors, all hearings shall be open to attendance by all members of the Association.

H. Decision. After all testimony and other evidence have been presented to the Board at a hearing, the Board shall render its decision thereon within ten days after the hearing. A decision, either a finding for or against the Owner, shall be by a majority of the Board. The Board shall issue written findings of fact and conclusions, and, if applicable, shall impose a reasonable fine as provided in the Association's Rules. The Board may also issue and present for recording with the Clerk and Recorder of San Miguel County, Colorado, a notice of finding of violation. Upon satisfactory compliance with the Association's governing documents, the notice of violations may be released by the Association issuing and recording a release of notice of findings of violations.

I. Enforcement and Attorney's Fees. In accordance with the Declaration, Bylaws and Rules, it is hereby declared to be the intention of the Association to enforce the provisions by of the

Documents by any and all means available to the Association at law or in equity, and to seek recovery and reimbursement of all attorney's fees, Association expenses and costs incurred by the Association in connection therewith.

J. Enforcement. Modification. Amendments. Repeal and Re-Enactment. Notwithstanding anything to the contrary contained in these Policies and Procedures, the Association hereby reserves the right, at any time and from time to time hereafter, to modify, amend, repeal and/or re-enact these Policies and Procedures in accordance with the Declaration, Bylaws and applicable law. The Board shall have the right to change the rules and regulations after a thirty day written notice to Owners if the change is required to protect the physical health, safety or peaceful enjoyment of the Owners in the Community. The Board and its management company are empowered to enforce these rules and regulations. All rules and regulations shall be in effect at all times.

K. Miscellaneous.

1. Failure by the Association, the Board or any person to enforce any provision of these Policies and Procedures shall in no event be deemed to be a waiver of the right to do so thereafter.

2. The Provisions of these Policies and Procedures shall be deemed to be independent and several, and the invalidity of anyone or more of the provisions hereof, or any portion thereof, by judgment or decree of any court of competent jurisdiction, shall in no way affect the validity or enforceability of the remaining provisions, which provisions shall remain in full force and effect.

3. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular and the use of any gender shall include all genders.

4. The captions to the sections are inserted herein only as a matter of convenience and for reference, and are in no way to be construed so as to define, limit or otherwise describe the scope of these policies and procedures or the intent of any provision hereof.

**X. ALTERNATIVE DISPUTE RESOLUTION POLICY**

The Association hereby adopts the following Policy regarding Alternative Dispute Resolution:

(a) *Meeting with Board.* In the event of any dispute involving the Association and an Owner, except in the case of the collection of assessments, it is the intention of the Association to resolve the dispute informally and without the need for litigation. The Owner or the Association shall notify the other in writing of the claim, stating (i) the nature of the Claim, including the date, time, location, persons involved, (ii) the basis of the claim (i.e. the provisions of the Declaration, the Bylaws, the Articles, Rules or Regulations or other authority out of which the claim arises); (iii) what the claimant wants the other to do or not do to resolve the claim; and (iv) that claimant

wishes to resolve the claim by mutual agreement and is willing to meet in person with the other at a mutually agreeable time and place to discuss in good faith ways to resolve the claim.

The parties shall make every reasonable effort to meet either in person or by conference call to resolve the claim by good faith negotiation.

(b) *Mediation.* If a meeting is unsuccessful or does not occur, all claims or disputes, except in the case of the collection of assessments, shall be initially submitted to mediation in good faith. The parties shall jointly appoint a mediator and will share equally in the cost of mediation. If a party does not respond within ten (10) days of receipt of a request to mediate or if the parties cannot agree on a mediator within ten (10) days of the request, the mediation requirement shall be deemed fulfilled. If mediation does occur, it shall be completed within thirty (30) days from the date of request.

If mediation is unsuccessful or does not occur, the parties shall submit the dispute to arbitration.

(c) *Binding Arbitration.* If the matter cannot be resolved within thirty (30) days of the notice, alternative dispute resolution (ADR) in the form of Binding Arbitration, shall be pursued by the Owner and/or the Association, except in the case of the Association's collection of assessments or the enforcement of the covenants, bylaws, or rules and regulations of the Association by the Association.

(d) This policy is an agreement of the Association and Owners to mediate and/or arbitrate all claims except the stated exceptions and is specifically enforceable under the applicable arbitration law of the State of Colorado. The arbitration shall be final and binding and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

(d) *Costs.* If the claims are resolved through negotiation as provided above, each party shall bear all of its own costs incurred in resolving the claim, including its attorney fees, unless the parties otherwise agree. If the claims are not resolved through negotiation and the claim goes to arbitration, the prevailing party shall receive as a part of its award from the opposing party all of its costs, including attorney fees, and any expenses incurred as a result of the dispute resolution procedures of this policy.

(e) *Deviations.* The Board may deviate from the procedures set forth in this policy if in its sole discretion such deviation is reasonable under the circumstances.

(f) *Amendment.* This policy may be amended from time to time by the Board of Directors.