

**AMENDED AND RESTATED DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ASPEN VILLAGE SUBDIVISION**

This Declaration made on the 17th day of AUGUST, 2001, by the Aspen Village Homeowners' Association, a Colorado nonprofit corporation, 31300 Highway 82, No. J-6, Aspen, Colorado 81611, hereinafter sometimes referred to as Declarant,

WITNESSETH:

WHEREAS, the Declaration of Protective Covenants, Conditions and Restrictions for Aspen Village Subdivision was recorded May 28, 1996 as Reception No. 393076 (the "Declaration"), and the Final Plat for the Aspen Village Subdivision was recorded in Plat Book 39 at Pages 73-76, and an Amended Plat recorded in Plat Book 48 at Page 17, and the Existing Mobile Home Park Parcel was modified by conveyance of Parcel 1-202 Revised recorded as Reception No. 403214, records of Pitkin County (the "Property"), and

WHEREAS, the Aspen Village Homeowners' Association ("Association") and the members thereof ("Members") sought and obtained the approval of Pitkin County for a change to the conditions of the development permit approving the Aspen Village Subdivision, conditioned upon the Association making changes and additions to the Declaration, and

WHEREAS, this Amended and Restated Declaration has been approved by the Aspen Village Homeowners' Association as required by **Article XI, Section 2**, of the Declaration, and

WHEREAS, in consideration of the release by Pitkin County of the Deed Restriction imposing Resident Occupied RO Affordable Housing restrictions on the sale and use of the Lots within the Aspen Village Subdivision, the Association and the Members have agreed to adopt this Amended and Restated Declaration to accomplish the purpose of reserving ownership within the Aspen Village Subdivision for those persons who are employed within the area.

NOW, THEREFORE, Declarant hereby declares that the Property is hereby made subject to the following easements, restrictions, covenants, and conditions, for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions, and conditions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each owner thereof.



ARTICLE I
Ownership and Transfer Restriction

Section 1. Residential Use. No Owner shall occupy or use any Lot or permit the same or any part thereof to be occupied or used for any purpose other than for the location of a mobile home, modular home, manufactured home, or other approved structure for single-family residential purposes as may be permitted by these Protective Covenants. Furthermore, no Lot may be resubdivided or merged with any other Lot. No improvements upon any Lot shall be occupied by anyone other than the Owner thereof, members of the Owner's family, guests of the Owner for a period of time not exceeding one (1) month, provided the Owner or member of the Owner's family are in occupancy and Roomers approved pursuant to the Association Roommate Rental Regulations.

Section 2. Category Affordable Housing Lots. Pursuant to Resolution Nos. 96-142, 96-143 and Ordinance Nos. 96-17, 96-18, and the Final Plat in Book 39 at Pages 73-76, as amended in Book 48 at Page 17 and as Reception No. 403214, Lots 35, 77 and 87 are restricted to Pitkin County Affordable Housing Category 3 for resale purposes and Category 4 for rental purposes, and Lots 152 through 159 are restricted to Category 3 as described in Resolution No. 96-142, paragraphs 1f and 2a, Reception No. 393063.

Section 3. Employment Required. Except as noted below, Owners must use their Lot as their principal place of residence and Owners must remain employed within or earn income by working at least 1500 hours per year within the Roaring Fork Valley, unless the Owner is retired and over 65 years of age and having been previously employed or earned income within the Roaring Fork Valley for three consecutive years immediately before retirement or a disabled person having been previously so employed prior to such disability. The Roaring Fork Valley as used herein includes the Roaring Fork River Valley to its confluence with the Colorado River and the valleys with tributary streams or rivers, including the Frying Pan River, the Crystal River, Snowmass Creek and Capital Creek. The foregoing use restriction of this **Section 3** shall not be applicable to those Owners who owned a mobile home in Aspen Village Mobile Home Park as of May 8, 1996 and subsequently purchased a Lot in Aspen Village, or to the spouse or child of such a deceased Owner who has resided in the home with such deceased Owner, during the ownership of a Lot within the Property. Use requirements for such persons are:

- a. The trailer and lot are occupied by the owner as their primary residence.
- b. The Owner of the trailer and lot, if eligible to vote, are registered voters in Pitkin County.
- c. The Owner of the trailer and lot file required Colorado Income Tax returns as a full-year resident.



d. Any vehicles owned by the trailer and lot Owner are registered in Pitkin County.

Section 4. Application for Qualification of Purchasers. At least twenty-one days prior to any proposed sale or transfer of any Lot in Aspen Village Subdivision, the proposed purchaser or transferee ("Purchaser") shall provide to the Association and to the Aspen/Pitkin County Housing Authority ("Housing Authority") an affidavit and supporting documentary evidence to establish that the Purchaser is employed or earns income within the Roaring Fork Valley. Supporting documentary evidence may include, as applicable, the following:

- a. Colorado income tax return as a full-time Colorado resident showing earned income.
- b. Documentary evidence of employment within the Roaring Fork Valley for the year preceding the proposed purchase (i.e., wage stubs, employer name, address and phone number) of at least 1500 work hours within the Roaring Fork Valley for the year preceding the proposed purchase.
- c. Other evidence establishing such employment or income earned within the Roaring Fork Valley for the year preceding the proposed purchase.
- d. Affidavit and other documents establishing the proposed Purchaser's agreement and intent to use the Lot in Aspen Village Subdivision as their principal place of residence.

Section 5. Review of Qualifications of Purchaser.

- a. If the Housing Authority questions the sufficiency of the Purchaser's qualifications, it shall promptly advise the Applicant and Association of such questions or concerns and notify Applicant if additional information is needed.
- b. The Association shall review the application and information provided pursuant to the foregoing requirements, and shall require the questions or concerns of the Housing Authority be satisfied by the Purchaser.
- c. Within 10 days, the Association shall give notice to the Purchaser and to the Housing Authority of acceptance or denial of the qualifications of the proposed Purchaser under the above-referenced criteria and, if denied, shall state with particularity the reasons for such denial.
- d. Prior to recording a deed, the Purchaser shall obtain and record with such deed an acknowledgment from the Association and from the Housing Authority that the Purchaser meets the required qualifications.



Section 6. Ownership of Developed Residential Property. If an individual with an ownership interest in property in the Aspen Village Subdivision owns vacant land in the portions of Eagle, Garfield, Gunnison or Pitkin Counties which are part of the Roaring Fork River drainage, the land must remain unimproved. If the land is improved with a residence, the individual must then relinquish the affordable housing unit by listing and selling the ownership interest in that unit. Roaring Fork drainage as used herein includes the Roaring Fork River Valley to its confluence with the Colorado River and the valleys with tributary streams or rivers, including the Frying Pan River, the Crystal River, Snowmass Creek and Capital Creek.

However, a business owner, where the individual owns property in the Aspen Village Subdivision, may purchase another residential unit in the Roaring Fork drainage system under the following conditions: 1) the business owner would contact APCHA that a unit has been found in the free market that they would like to purchase; 2) the business owner would then discuss with the APCHA the needs of the owner; 3) the specific Category would be agreed to by both parties (the owner and APCHA) and 4) the Housing Office has the option to approve the request as long as a recorded deed restriction is placed on the free market property relating to the business. The employer would only be allowed to rent the unit to a qualified employee of Pitkin County unless the residential unit is located in the down valley area. Should the unit be located down valley, the owner would be allowed to rent to an individual employed somewhere in the Roaring Fork drainage, as herein defined, as long as their employee would have the right of first refusal, with the second right of refusal going to someone employed in Pitkin County, with the last right to another qualified employee.

All individuals who owned property in Aspen Village prior to June 27, 2001, are exempt from the requirements of this Section and may hereafter own and develop residential property in the Roaring Fork Valley.

Section 7. Right to Avoid Non-Complying Transfer. In the event any Owner shall attempt to sell his or her Lot without obtaining the Association acceptance of the Purchaser's qualifications, or in the event the Housing Authority determines that the proposed Purchaser is not qualified, such sale shall be voidable, and may be voided by a certificate of non-compliance duly recorded in the office of the Clerk and Recorder of Pitkin County, Colorado, by the Association or by the Housing Authority.

Section 8. Pre-Approved Transfers.

a. In the event of any default on the part of any Lot owner on any first mortgage which entitles the holder thereof to foreclose the same, any sale under such foreclosure, or delivery of a deed to the first mortgagee in lieu of such foreclosure shall be made free and clear of the Purchaser qualification provisions of this Article, but such purchaser or transferee shall thereafter be subject to the use restrictions and other provisions herein, provided that if the foreclosure sale purchaser or transferee in lieu of such foreclosure shall be the first mortgagee, such

mortgagee may thereafter sell and convey the Lot free of the Purchaser qualification provisions hereof, but its grantee shall thereafter be subject to the use restrictions and other provisions hereof.

b. The following transfers of a Lot shall also be approved by the Association for transfer under the provisions of this Section:

(i) The transfer by operation of law to a spouse of a deceased Owner or of joint tenant's interest to the surviving joint tenant(s) or of a co-tenant's interest to another previously existing co-tenant;

(ii) The transfer of a deceased's interest to a devisee or devisees by will to the deceased's spouse or his heirs at law under intestacy laws or by a gift without consideration;

(iii) The transfer of an owner's interest by treasurer's deed pursuant to a sale for delinquent taxes.

In the event that the Lot shall be transferred in any manner described in paragraphs (i) through (iii) above, the transferee owner, his grantees or successors in interest, shall thereafter be subject to all the terms and conditions of this Declaration; provided that any child of a deceased Owner receiving transfer of ownership under (i) or (ii) above shall have a period of one year following such transfer to comply with the use restrictions of **Section 3** above.

Section 9. Lease of Lot and Improvements Thereon. The Owner of any Lot shall not lease the whole or any part of any Lot, or the improvements thereon, for any term to any person or persons or renew or extend any previously authorized lease where any part of the improvements on the Lot will not actually be occupied by the Owner thereof for less than one month or any period of time in excess of three (3) months in any one (1) calendar year, unless consent thereto shall have been duly given by the Association, by an instrument, in writing, signed by an officer of the Association. Any consent given to a proposed lease shall be to a person employed in the Roaring Fork Valley as described in **Section 3** above and be for no more than a year, providing that for good cause shown to the Association, such period may be extended to maximum period of two years and no longer and may be conditioned upon compliance by the Owner with any requirements made by the Association with respect to such leasing. Whenever the Owner applies for consent to any lease, the Owner shall deliver to the Association a copy of the proposed lease to which consent is requested and evidence of tenant's employment.

Also, with such Association consent, an Owner in residence may have a maximum of two roommates provided the roommates names are registered with the Association and upon compliance with the Association rules and regulations.

Section 10. Related Documents. Resolution No. 165-2000 by the Pitkin County Commissioners and the recorded Amended Deed Restriction, Occupancy and Resale Agreement and



the restrictions on use and resale of the Lot shall be covenants running with the land and may be enforced by the Association or the Housing Authority; and in the event of litigation, the prevailing party shall be entitled to an award of their costs and reasonable attorney's fee and related expenses.

Section 11. Enforcement by Pitkin County. The Aspen/Pitkin County Housing Authority is made a beneficiary to this **Article I** and Pitkin County is made a beneficiary of **Article VI, Section 2**, which provisions may be enforced by the beneficiary. No modification or amendment of said provisions shall be valid or enforceable without the prior written consent of Pitkin County. If applicable County restrictions are more restrictive than these Covenants, the applicable County restrictions may be enforced by the Aspen/Pitkin County Housing Authority or Pitkin County.

ARTICLE II **Definitions**

Section 1. "Association" shall mean and refer to the Aspen Village Homeowners' Association, a Colorado nonprofit corporation, its successors and assigns.

Section 2. "Property" shall mean and refer to that certain real property known and platted as the Aspen Village Subdivision Parcels A (the Existing Mobile Home Park Parcel) and B (the Mobile Home Park Expansion Parcel), including the "Water Tank Parcel" and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Lot" shall mean and refer to the designated and approved single-family residential plot and within the Property and improvements and appurtenances conveyed or to be conveyed to an "owner" upon which there has been constructed or will be constructed a mobile home, modular home, manufactured home, or other approved residential structure.

Section 4. "Owner" shall mean and refer to the record owner, whether of one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation. If an entity holds fee title, then Owner shall also refer to the natural person or persons having control of, and the beneficial interest in, such entity.

Section 5. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association and shall include all areas shown on the recorded plat of the Property not conveyed to an owner as part of a Lot.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7(a). "Institutional First Mortgagee" means a bank, or savings and loan association, or any insurance company, or pension fund, or real estate trust, or any other party which



is engaged in the business of mortgage financing, which owns or holds a first and prior mortgage encumbering a Lot, and shall include any corporate subsidiary of such entity.

Section 7(b). “Institutional First Mortgage” means a mortgage executed in favor of a bank, or a savings and loan association, or any insurance company, or a pension fund or a real estate trust, or any other party engaged in the business of mortgage financing, which is a first and prior mortgage encumbering a Lot.

Section 8. “Declaration” shall mean and refer to the within instrument, together with those exhibits which are attached hereto and made a part hereof and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms hereof.

Section 9. “Articles of Incorporation” shall mean and refer to the Articles of Incorporation for the Aspen Village Homeowners’ Association and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof.

Section 10. “Bylaws” shall mean and refer to the Bylaws of the Aspen Village Homeowners’ Association and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms hereof.

Section 11. “Plat” shall mean and refer to the final subdivision Plat of the Aspen Village Subdivision as is recorded in the records of Pitkin County, Colorado, and any other plat referred to therein.

ARTICLE III

Property Subject to this Declaration and Rights of Declarant

Section 1. The name of the common interest community created by this Declaration shall be the Aspen Village Subdivision, which shall be a planned community.

Section 2. The real estate which is included within the Aspen Village Subdivision common interest community is described as follows:

Revised Aspen Village Mobile Home Park Parcel A - Legal Metes and Bonds (**Exhibit A**)

Revised Mobile Home Park Expansion Parcel B - Legal Metes and Bounds (**Exhibit B**)

Pitkin County, Colorado.

Section 3. The Association retains the right to create no more than 159 single-family residential units within the common interest community.

Section 4. The individual Lots created by this Declaration are numbered 1-159 and are set out upon the subdivision plat recorded in Plat Book 39 at Pages 73-76 and amended in Plat Book 48 at Page 17, Pitkin County records.

Section 5. The Association reserves the right to develop common open space for the recreational use of the membership and guests in accordance with the deed restrictions placed thereon and in accordance with a vote of the Membership for such development. The Association further reserves the right to develop up to nine (9) new single-family residence sites for manufactured housing on Lots 151-159 as depicted on the recorded plat, subject to restrictions of **Article I, Section 2**, the affirmative vote of seventy-five percent (75%) of the Members present and voting at a Regular or Special Meeting of the Membership noticed to consider such action.

ARTICLE IV
Association

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to covenants of record or to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to a Lot and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. There shall be no Membership attributed to any of the nine (9) currently undeveloped lots until such time as they are developed and sold by the Association. Any developed residential unit, the land for which has not been sold by the Association to the occupant, but is rather leased by the occupant from the Association, shall similarly bear no membership rights or status, until such time as the Lot is purchased by the resident.

Section 2. Purpose of Association. The Association has been created to further the interests of the property owners within the Property, to assume the responsibility for the architectural control within the Property, to regulate, manage and maintain lands within the Property, and to own certain lands within the Property, all in accordance with this document. The Owners shall be required to pay assessments levied by the Association for the costs of performing its functions hereunder, which assessments shall be prorated as determined by the Board of Directors of the Association. Each Owner of any Lot, by the acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant, which covenant shall run with the land and be binding on every Owner, and agree to pay to the Association: (1) monthly assessments or charges, and (2) special assessments for capital improvements approved in accordance with the Articles and Bylaws, and (3) monthly assessments or charges to effect payment of property taxes which may be assessed against the personal property of the Association which may in the future be located on, or contained in, the Property; and such assessments shall be fixed, established and collected from time to time as hereinafter provided and as provided in Association Bylaws.

Section 3. Use of Assessments. The assessments to be levied by the Association shall be used exclusively for the purpose of promoting the recreating, health, safety, and welfare of the residents of the Property and shall specifically include but not be limited to: the maintenance of all lighting and parking facilities in the Common Area; improvement and maintenance of all common amenities, including the clubhouse, swimming pool and playground; maintenance and repair of roadways and pedestrian easements; the maintenance and development (in accordance with the direction of the Membership) of common open spaces; and the maintenance of private utilities and utility infrastructure owned by the Association. The lien for assessments provided for herein shall be superior to all other liens save and except tax liens and the liens of any bona fide institutional first mortgagee, provided, however, that said mortgage liens are first liens against the property encumbered thereby, subject only to tax liens.

Section 4. Payment of Assessments. A monthly assessment to be paid by each Lot Owner shall be established by the Association. Monthly assessments may be varied from time to time by the Association in accordance with the provisions of the Bylaws and, after establishment, shall remain in effect until modified or terminated by affirmative action by the Association. All monthly assessments are due on the first day of each month after they are levied. If those payments are not received by the fifth day of the month, the Association shall be empowered to institute all appropriate proceedings necessary to collect the same. All assessments are payable to the Association by personal or certified check, money order or cash. In the event any assessment is not paid within five (5) days of the date it is due, there shall be assessed a charge of Ten Dollars (\$10.00) or such other amount as is set by the Board of Directors of the Association for each five (5) day period or portion thereof, commencing as of the first day or portion thereof thereafter, up to a maximum of six (6) five (5) day periods, payable in addition to any assessment then due.

Section 5. Special Assessments. Upon the vote of a majority of the Owners who are present at a Special Meeting of Owners called for that purpose and properly noticed pursuant to the Association's Articles and Bylaws, the Association may be empowered to levy a one-time Special Assessment, which Assessment shall be levied upon each of the Lots in the Subdivision in the same proportion as that Lot's initial purchase price bears to the initial purchase price of all existing developed Lots. Said Special Assessment may be levied only for those purposes listed herein:

a. The construction, alteration, replacement or major repairs to common roads, trails, utilities, or common recreational elements;

b. The purchase of any Lot or Lots within the Subdivision pursuant to the Association's right of first refusal set out in **Article IV, Section 7**, hereof.

Section 6. Effect of Non-Payment of Assessments. If the Owner or Owners of any Lot fail, after demand, to pay any assessment levied by the Association, then the Association shall have a lien. from and after the time of notice of such failure to pay is recorded in the office of the Clerk and Recorder of Pitkin County, Colorado, against the Lot of such Owner or Owners for the amount due and unpaid, plus interest from the date of demand for payment at the rate of twenty percent



(20%) per annum, plus all costs and expenses of collecting any unpaid assessments, including reasonable attorneys' fees. This lien may be foreclosed in the manner provided for foreclosures of deeds of trust and mortgages in accordance with the laws of the State of Colorado. Each such assessment, together with such interest, costs, and reasonable attorneys' fees for its collection, including at the appellate level, shall also be the personal obligation of the person or entity who was the Owner of such property at the time when the assessment fell due, his successors and assigns.

Section 7. Right of First Refusal.

a. **Procedure.** Upon the proposed sale of any Lot and upon receipt of a bona fide contract, the Association shall have the right to purchase the Lot upon the same terms and conditions as the contract for sale of such Lot. The Owner agrees to give the Association notice of the terms and conditions of the proposed sale, by providing a copy of the fully executed contract to purchase the Lot, at least twenty-one (21) days in advance of any proposed sale. Within ten (10) days from the date of delivery of the sale contract to the Association, the Association shall give the Owner notice of its intention to exercise their rights of first refusal to purchase the Lot upon the terms and conditions contained in the sale contract of which they have received notice.

In the event the Association does not exercise the right of first refusal, the Owner shall be free to close upon the sale pursuant to the terms of the sale contract as given to the Association. Should the Owner not close upon the sale pursuant to the terms of such contract, then upon any other proposed sale relating to the initial or any subsequent transaction, by the then Owner, or any subsequent Owner, the Association shall maintain the rights of first refusal as specified herein. In the event the Board of Directors of the Association does not have sufficient funds on hand for any purchase, it may either borrow such funds or it may assess the Members of the Association therefor pursuant to the provisions for such assessments as contained in the Association Articles and Bylaws. Any sale, voluntary transfer or conveyance which is not authorized by the terms hereof for which authorization has not been obtained pursuant to the terms hereof is voidable and may be voided by a certificate of the Board of Directors of the Association, duly recorded in the office of the Clerk and Recorder of Pitkin County, Colorado.

b. **Notices.** Any notice required to be given under this Section shall be deemed delivered upon personal delivery or upon deposit of a notice by mail, return receipt requested, addressed to the Association in care of the then current Association President.

c. **Right to Avoid Non-Complying Transfer.** In the event any Owner shall attempt to sell his or her Lot without affording to the Association the right of first refusal herein provided, such sale shall be voidable, and may be voided by a certificate of non-compliance duly recorded in the office of the Clerk and Recorder of Pitkin County, Colorado, by the Association granted the right hereunder.

d. **Transfers Exempt from First Refusal.** In the event of any default on the part of any Lot owner on any first mortgage which entitles the holder thereof to foreclose the



same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the right of first refusal provisions of this **Section 7**, but the purchaser or grantee under such deed in lieu of foreclosure of such Lot shall be thereupon and thereafter subject to the provisions of this Section. If the purchaser or grantee in lieu of such foreclosure shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the Lot free and clear of the right of first refusal provisions of this Section, but its grantee shall thereupon and thereafter be subject to all of the provisions hereof.

The following transfers of a Lot are also exempt from the right of first refusal provisions of this **Section 7**; provided, however, the Association shall be given twenty-one days' advance notice of any such proposed transfer, together with documents sufficient to establish that the proposed transfer is an exempt transfer:

(i) The transfer by operation of law of a deceased joint tenant's interest to the surviving joint tenant(s) or of a co-tenant's interest to a previously existing co-tenant;

(ii) The transfer of a deceased's interest to a devisee or devisees by will or his heirs at law under intestacy laws or by a gift without consideration;

(iii) The transfer of an owner's interest by treasurer's deed pursuant to a sale for delinquent taxes;

(iv) The transfer of all or any part of a partner's interest as a result of withdrawal, death or otherwise, to the remaining partners, and/or to a partner's interests between one or more partners, and/or to persons becoming partners; provided all partners must meet the qualifications to purchase as described in **Article I**.

ARTICLE V **Property Rights**

Section 1. Easements Reserved. All easements of record and all easements contained on the Plat of the Property are hereby reserved unto the Association, its successors and assigns. In addition, there is hereby reserved to the Association, its successors and assigns, easements for ingress and egress and for the installation and maintenance of all utilities and drainage facilities, over and on each Lot within the Property. Furthermore, the Association shall have the right of access to each Lot to inspect the same, to remove or abate violations of this Declaration therefrom and to abate any violation of law, order, rules, or regulations of any governmental authority having jurisdiction thereof.

The Association and its agents shall be permitted to visit and examine any Lot, at any reasonable hour of the day, and workers may enter at any time, when authorized by the Association or by the Association's managing agent, to make or facilitate repairs in any part of the Property. If the Owner shall not be personally present to permit entry into the Lot at any time when



an entry shall be necessary or permissible hereunder, the Association or its agent may forcibly enter the Lot or improvements thereon without rendering the Association liable to any claim or cause of action for damages by reason thereof (if during such entry the Association shall accord reasonable care to the Owner's property) and without in any manner affecting the obligations and covenants hereof, and the right and authority hereby reserved does not impose, nor does the Association assume by reason thereof, any responsibility or liability whatever for the care or supervision of the Lot or improvement located thereon, or any of the pipes, fixtures, appliances or appurtenances therein contained or therewith in any manner connected, except as may herein be specifically provided.

Section 2. Owners' Private Maintenance Easement. Each Lot Owner within the Subdivision shall have and enjoy an easement three feet (3') in width extending outward from his property boundary onto each Lot adjoining said Owner's Lot for access for the purpose of construction and maintenance for underground utilities, fences or other structures which are on his property line.

Section 3. Members' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area and such easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a. The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area, and in aid thereof to mortgage said Common Area and the rights of such mortgagee in said Common Area shall be subordinate to the rights of the Owners hereunder;

b. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members;

c. The right of the Association to establish, from time to time, certain easements over the Common Area for utilities and common services purposes;

d. Existing easements and agreements of record;

e. All Association Rules and Regulations which may be in effect from time to time with respect to the use and enjoyment of common areas and recreational facilities. Common Facilities are exclusively for use of Owners, registered roommates of Owners, and their guests while with an Owner or registered roommate.



ARTICLE VI
Use Restrictions

Section 1. Commercial Use. No business of any kind or character whatsoever shall be conducted in or from any Lot if said business is in violation of applicable zoning or if it shall generate excessive noise, traffic or shall otherwise become a nuisance within the Property.

Section 2. Animals and Livestock. No dogs, livestock, or wild animals shall be kept or maintained on any Lot. Keeping dogs has been specifically prohibited by the Pitkin County land use approval for this Subdivision and is a violation of these covenants. Any pet that becomes a nuisance by virtue of loud or offensive noise of any kind, or any other offensive activity, including but not limited to destructive behavior, may be evicted from the Property by the Board of Directors of the Association. All pets must be inoculated according to the applicable laws of the County of Pitkin and shall wear tags at all times. The owner of any pet shall be responsible for the removal of all pet litter from his Lot or any other location within the Property where littering has occurred. There will be no feeding or harassment of wildlife. All pets kept on the Property shall be fed inside the residence. Between April 15 and November 15, all food refuse shall be kept in closed and latched wildlife resistant bear proof refuse containers provided by the Association. Any bird feeders must be suspended inaccessible to bears and the area below the feeder kept clean.

Section 3. Radio and Television Antennas. No exposed or exterior radio or television transmission or receiving antennas or facilities shall be erected, placed or maintained on any part of any Lot, unless the size and locating thereof has been approved by the Architectural Control Committee.

Section 4. Tie Down and Skirting. Each mobile home on any Lot shall be securely anchored in accordance with the Pitkin County Code. All open areas situated between the ground level and the floor of the mobile home on any Lot shall be completely skirted and enclosed within sixty (60) days after said mobile home has been constructed or installed on any Lot.

Section 5. Fire Extinguishers. All mobile homes within the Property shall be equipped with a fully operable fire extinguisher in accordance with the laws and regulations of Pitkin County, and each shall also be equipped with a smoke detector.

Section 6. Oil, Gas and Mineral Development. No mining, quarrying, tunneling, excavating or drilling for any substance within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, shall ever be permitted within the limits of the Property.

Section 7. Signs. No signs and no advertising device of any nature shall be placed upon any Lot except for the following:

a. A small sign no larger than 18" x 24" in the form and design approved by the Architectural Control Committee, showing the Owner's name and/or property address of the



Lot which indicates that the Lot is for sale and the party, address and/or telephone number to contact for information about such sale;

b. A name and address sign, the design and location of which shall be approved by the Architectural Control Committee;

c. Any other type of sign as may be approved in writing by the Architectural Control Committee.

In addition to the remedies available by law, the Architectural Control Committee may enter upon said Lot of any Owner for the purpose of removing any sign constituting a violation of this paragraph, and may remove the same without liability on the part of the Architectural Control Committee or the Board of Directors of the Association.

Section 8. Motor Vehicles. No recreational use of the roads or common areas of the Property by motorcycles, scooters or other motor vehicles is permitted. Each Owner shall be required to register with the Association and to display the registration sticker and to park vehicles owned by himself and the occupants of any improvements on his Lot in designated parking areas. Each Owner shall be required to retain off-street parking upon his individual Lot for a minimum of two (2) vehicles at all times. There shall be no parking along any of the subdivision roadways from midnight to 6:00 a.m. Also, there shall be no parking along any of the park roadways any time (day or night) when there is more than 1" accumulation of snow. All visitor vehicles shall be parked within the defined guest parking areas as shown on the plat for the Property. All campers, boats and/or larger vehicles must be parked in the areas designated for long-term parking or outside of the confines of the Property. A large vehicle shall be defined as a vehicle exceeding any of the following dimensions: Ninety-six (96) inches in height, two hundred forty-five (245) inches in length and ninety-eight (98) inches in width. Any vehicles improperly parked on the streets within the Property may be towed without notice, at the expense of the owner thereof. Unlicensed motor driven vehicles shall not be permitted within the Property. There shall be no substantial car repairs performed in the Property. No inoperable, unlicensed or uninsured vehicles shall be permitted within the Property. Any vehicles improperly parked on the streets may be towed without notice at the expense of the owner or possessor. Any unlicensed or inoperable vehicle shall be towed after fourteen (14) days' notice to the owner or possessor thereof, at that individual's expense. In the event it becomes necessary for the Association to remove any of the prohibited vehicles, all charges for such removal shall be paid by the owner or possessor with the next assessment payment after submission of a statement for such charges by the Association to the responsible individual. No Owner shall keep or park more than three (3) motor vehicles on his Lot or Common Areas for the use of the residents of that Owner's Lot. Vehicles left more than 72 hours in a common residential parking area may be towed.

Section 9. Utility Connections. Each Owner must arrange for their own gas, electrical, cable and telephone connections with the appropriate utility company. All charges for trash removal, water, sewer and snow removal will be paid through such monthly assessment as may be levied by



the Association. No Owner shall, without first obtaining the written consent of the Association (which consent shall not be unreasonably withheld or delayed) or without strictly complying with any applicable rules of the Association, make any alteration of water, gas, steam risers or pipes, electrical conduits, wiring or outlets, or plumbing fixtures, nor shall the Owner install any electrical or other equipment which shall impose an excessive load on such risers or pipes, electrical conduits, wiring or outlets or plumbing fixtures or on existing water, gas, steam or electrical supplies. For the purpose of protecting any cables, pipes or underground lines, digging of any nature shall be permitted only with the express written permission of the Association. The Association shall have no liability whatsoever to the Owner or any other third party resulting from any damage or injury of any nature whatsoever in connection with such digging, and the Owner does indemnify, save and hold harmless the Association from and on account of any such liabilities or expenses related thereto, including legal fees and court costs.

Section 10. Road Damage. Each Owner is responsible for any damage caused to public or private roads during the construction of improvements upon his Lot by any vehicle belonging to either himself or any one using the roads of the Property while engaged in any activity benefitting the Owner. Lugged vehicles are not permitted on the roads within the Property. Furthermore, each Owner shall also be responsible for any damage caused by utility cuts in roads for the benefit of his Lot.

Section 11. No Obnoxious or Offensive Activity. No trespassing upon another Owner's Lot is allowed. No obnoxious or offensive activity, nor any unsightly object, shall be carried on, erected or maintained upon any Lot, nor shall anything be done or replaced thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance or annoyance to others or which may endanger the health of any resident of or visitor to the Property. Sound generation of any type by any means is prohibited where it is of such magnitude as to disturb the quiet enjoyment of the residents of the Property. Radios, television and stereos shall be kept at a low volume so they will not disturb neighbors and cannot be heard beyond a lot line. The Board of Directors is hereby authorized to establish a period of "Quiet Hours" during which time all activities resulting in noise impacts upon adjacent lots shall cease. Quiet Hours are between 9:00 p.m. and 8:00 a.m. each day, unless later amended by Board action. Construction hours are from 8:00 a.m. to 8:00 p.m. unless later amended by Board action.

Section 12. No Hazardous Activities. No activities shall be conducted on, and no improvements shall be conducted on any Lot which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, 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 a safe, well designed interior or exterior fireplace. No firearms shall be discharged within the Property.

Section 13. Zoning. No Lot within the Property shall ever be occupied or used by or for any structure or any purpose or in any manner which are contrary to the applicable zoning requirements of the County of Pitkin, State of Colorado, or its successor, or any other competent



governmental body, validly enforced from time to time, except as may be allowed under said regulations as a non-conforming use.

Section 14. Compliance with Laws. All Owners will comply with all ordinances, laws, rules, regulations, and requirements of all governmental authorities applicable to the use and occupancy of any Lot in the Property. The speed limit within the Property shall be 15 m.p.h.

Section 15. Maintenance of Drainage. There shall be no interference with the established drainage pattern within the Property, except as is approved by the Architectural Control Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern which exists at the time of the filing of these covenants. Established drainage patterns may include the drainage pattern approved by the Architectural Control Committee.

Section 16. Landscaping. The surface of any Lot or any part thereof shall not be regraded without the prior approval of the Architectural Control Committee. All spaces shall be attractively landscaped and maintained in harmony with the general character of the landscaping of the Property, and the intent of these Protective Covenants. All spaces shall be attractively landscaped, maintained and mowed at all times.

Section 17. Maintenance of Space. All Lots and other parts of the Property adjacent to the Lot shall be maintained and kept clean at all times by the Owner or occupant. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept on any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet or comfort of the occupants of the surrounding Lots. No bulk materials, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Lot except building materials during the course of construction and only for such reasonable periods of time as is necessary prior to the collection of or disposal thereof. All trash cans shall be stored out of sight. Outdoor storage of bottles, cans, boxes, appliances, equipment, business materials or other personal property on a patio, deck, carport or elsewhere visible on the Lot is prohibited.

Section 18. Damage to Mobile Home and/or Other Improvements. Any mobile home and/or other improvements that have been substantially damaged by any casualty shall, within sixty (60) days thereof, be moved in its entirety or restored in accordance with the specifications of the Architectural Control Committee. The same conditions shall apply to the restoration of any other improvements on any space. Any change in any restoration from the original condition of the mobile home or the improvement shall be approved in writing by the Architectural Control Committee in accordance with the procedures as defined herein.



Section 19. Height, Floor Area Ratio and Setback Restrictions.

The following restrictions generally follow the zoning restrictions of Resolution No. 165-2000 and the Pitkin County Land Use Code, but may be more restrictive or in addition to the zoning requirements, such as subparagraphs d. and e. of this section.

a. Allowable Height and Calculation.

Pitched or Curved Roofs: There shall be no mid-point of any primary roof, excluding dormers, which exceeds 16'-0" or for a carport or storage shed mid-point which exceed 10'-00" above the existing or finished grade, whichever is lower. Dormers entitled to such exclusion may not exceed 20% of the surface area of the roof excluding overhangs and must be setback from the elevation defining the eave line at least 2 feet.

The mid-point of a pitched roof shall be defined as the point which is halfway between the top of the ridge or highest point and the eave point on the roof, which is the point directly above the outside face of the wall structure below that roof. The mid-point of a curved roof shall be defined as the point which is halfway between the uppermost point of the curve and the eave point on the roof. The maximum height of the eave point is 14 feet.

No point on any roof, primary or dormer, shall exceed 24'-0" or on a carport or storage shed shall exceed 12' 0" above existing or finished grade, whichever is lower. Chimneys and flues may exceed this by 5'-0". For roofs which do not occur directly above a grade (such as a dormer), then existing grade directly below that roof shall be used in the height limit calculation.

All measurements shall be computed vertically and plumb excluding from such calculation, the bottom surface of egress and window wells, and excluding the bottom surface of below grade exterior stairwells.

Existing Grade or Natural Grade means the natural elevation of the ground surface prior to development.

Finished Grade shall be defined as the ground surface topography after development.

Flat Roofs: There shall be no point of a dwelling roof or its parapet wall which exceeds 14'-0" or for a carport or shed which exceeds 10'-00" above existing or finished grade, whichever is lower. A flat roof shall be defined as a roof having a pitch of 1:12 or less.

Finished Grade: At no point shall finished grade vary from existing grade by more than 2'-0". At no point shall finished grade vary from existing grade by more than 1'-0" in the setbacks.



b. Allowable Floor Area and Calculation.

Allowable Floor Area: The allowable floor area of improvements on a lot is the horizontal square footage of the lot, as calculated by a survey, multiplied by a Floor Area Ratio of .35, except as modified for small lots.

Allowable Floor Area = Lot Square Footage x .35 (except as otherwise allowed herein)

Floor area shall be defined as the square footage of a structure calculated from the exterior face of the walls; provided, however, that exterior finishes (e.g., brick veneer) less than 8" thick horizontally shall be exempt from the floor area calculation. Exterior finishes greater than 8" shall be counted as floor area. Areas within a dwelling unit with a ceiling height of less than 5'-6" shall be exempt from the floor area calculation and limit. A crawl space or below grade space exceeding 5'-6" in ceiling height shall be included in floor area calculations.

Small Lot Floor Area: All lots shall be allowed a floor area for improvements of 1,000 square feet regardless of lot size, but a lot owner may elect to build less than allowed.

Structure Limits: A lot may have only one dwelling unit, one carport or garage, and any number of storage sheds whose total floor area does not exceed the allowable storage shed floor area for the lot.

A dwelling shall be defined as a building or portion thereof which is intended and used as the residence or sleeping place of one or more human beings. Below grade space shall be allowable not to exceed above ground living space or the footprint of the structure on a lot.

A carport shall be defined as structure with a roof and which is detached from the dwelling structure on the lot. A storage shed may adjoin a carport, forming a continuous roof. Carports cannot be used for dwelling.

Garages are allowed in place of a carport only under the following conditions:

- a. The floor area of the garage shall count in the structure floor area calculation for the lot.
- b. Two uncovered parking spaces shall be provided on the lot.
- c. Garage shall adjoin dwelling structure by sharing a minimum of 80% of one side wall with the dwelling structure. All garages shall be constructed to meet all applicable Code requirements and meet dwelling setback and height restrictions.



c. **Floor Area Exemptions and Limits.**

Carport: 400 square feet of carport area shall be exempt from the Allowable Floor Area and carport shall not exceed 400 square feet in area. The carport area shall be defined as the area under the carport roof.

Storage Shed: A storage shed shall be defined as the area bounded by and including the storage shed walls or roof support structure, detached from the main dwelling structure on the lot. Storage sheds cannot be used as a dwelling. 150 square feet of storage shed floor area shall be exempt from the Allowable Floor Area. Maximum storage shed roof overhang is 1 foot. The maximum allowable storage shed area on a lot is 150 square feet inclusive of storage shed area under 5'-6" in height.

Mechanical Room(s): A mechanical room shall be defined as the separate room in the main dwelling structure which encloses its heating, cooling, air or water filtering, or water heating or equipment storage. 100 square feet of mechanical room area shall be exempt from the Allowable Floor Area. Mechanical room area in excess of 100 square feet shall be included in the Allowable Floor Area.

Stairwells: The area of a stairwell shall be included in the calculation of Allowable Floor Area on the floor from which the stairwell originates. If a stairwell originates on the basement level, it shall count in the calculation of basement floor area. Stairwells originate at their lowest point. Stair sections which stack vertically over more than one floor shall be considered one stair and one stairwell for the purposes of Allowable Floor Area calculation.

Basements: 800 square feet of basement area shall be exempt from the Allowable Floor Area, regardless of the percentage of basement side elevation exposed above either natural or finished grade. Basement area in excess of 800 square feet shall count towards the Allowable Floor Area.

A basement shall be defined as that portion of a structure which is 50% or more below the natural or finished grade which touches the side building elevation. The measurement of structure below grade shall be taken at the most restrictive (lowest elevation) grade condition along the entire structure and applied to the entire structure, excluding light, egress and exterior stairwells. For the purposes of determining the percentage of a basement which is below grade, the basement shall be defined as the portion of the below grade structure which is bound (located) between the finished floor and the bottom of the floor structure of the lowest floor above.

Light, Egress, and Below Grade Exterior Stair Wells: Below grade exterior light, egress, and stairwells shall be exempt from the Allowable Floor Area. The total area of the below grade exterior light, egress, and stairwells on a structure shall not exceed 15% of the Allowable Floor Area for that structure.



A light, egress, or exterior stairwell shall be defined as below grade area adjoining a structure which allows light into the structure or egress from the structure. The outside face of a light or egress wells shall not exceed 6'6" in horizontal distance from the face of the structure which they service.

Eaves, Roof-overhangs, Porches and Above Grade Exterior Stairs: Eaves, roof-overhangs, porches and above grade exterior stairs shall be exempt from the Allowable Floor Area for up to and including the first 3'-0" of such structures, measured horizontally. The total horizontal area of the eaves, roof overhangs, porches, and above grade exterior stairs on a structure which exceed 3'-0" in depth shall not exceed 15% of the Allowable Floor Area for that structure.

A porch shall be defined as an area on the exterior of a structure with a roof.

Decks, Balconies, and Other Projections: Decks, balconies, and any other exterior projection from the dwelling which exceeds 1'-0" in height from finished grade shall be exempt from the Allowable Floor Area up to 15% of the Allowable Floor Area. Any area of the decks, balconies, and above grade projections exceeding 1'-0" in height from finished grade which exceed 15% of the Allowable Floor Area for that structure shall count towards the Allowable Floor Area.

A deck or balcony shall be defined as a structure which exceeds a height of 1'-0" above any finished grade within 5'-0" of that structure and is not covered by a roof.

d. Minimum Setback Requirements.

All structures on lots shall meet the following setback requirements:

Front Yard Setback: The minimum front yard setback for all structures on lots 4,000 square feet or less in total area shall be 5'-0". The minimum front yard setback for all structures on a lots over 4,000 square feet in total area shall be 10'-0".

The front yard shall be defined by the lot line which the driveway cut crosses.

Side Yard Setback: The minimum side yard setback for a structure shall be 10'-0" on one side yard and 5'-0" on all the others. Placement of the alternate side yard setbacks shall be at the owner's discretion.

Carports and storage sheds shall have a 1'-0" minimum side yard setback.

Rear Yard Setback: The minimum rear yard setback for a structure shall be 5'-0", except as otherwise provided.

Carports and storage sheds shall have a 1'-0" minimum rear yard setback.



A setback shall be defined as the distance from a lot's property line outside of which the entirety of a structure, including its decks, balconies, stairs, light and egress wells, porches, and roof must remain, except encroachments may be allowed by setback exemptions.

e. **Setback Exemptions.**

Eaves and Roof Overhangs: Eaves and roof overhangs of the dwelling structure on a lot shall be granted a 2'-0" encroachment into all setbacks.

Light and Egress Wells: Light and egress wells shall be granted a 2'-0" encroachment into side yard setbacks only.

Pre-manufactured Homes: Any dwelling, excluding its porches, decks, and below grade areas, but including its eaves, which is pre-manufactured and brought to the site shall receive an additional 1'-0" encroachment allowance into any two setbacks at the owner's discretion.

ARTICLE VII
Architectural Control Committee

Section 1. Architectural Control Committee. For the purpose of insuring that the Property is developed and improved as an area of high architectural standards, construction and maintenance, the Board of Directors of the Association reserves the power to control buildings, structures, maintenance, other improvements, and all construction done or placed on each Lot. No structure shall be placed upon or permitted to remain upon any Lot, or altered in any way which will change its exterior appearance without the prior approval in writing of the Architectural Control Committee of the Association or its assigns. "Structure" as used herein shall mean any tangible thing above or below the surface of the ground which may affect the appearance of the property or the health or safety of any person including, by way of illustration and not by way of imitation, any building, garage, porch, shed, deck, patio, fence, wall, sign, barbecue pit, tank, excavation, pipe, pole, wire, cable, or other landscaping features. For the purpose of exercising such power, the Board of Directors of the Association shall appoint an "Architectural Control Committee" ("Committee"), made up of five (5) members. Two (2) members shall be from the Board of Directors of the Association, and three (3) members appointed by the Board of Directors of the Association for one (1) year terms. The Committee shall adopt such rules and regulations as are necessary to carry out its duties. The vote of a majority of such Committee shall control the Committee decisions, which shall be in writing, signed by the chairman or secretary of the Committee. In the event that any of the provisions of these rules and regulations conflict with the Land Use Code applicable in Pitkin County, as applied to the Subdivision, the more restrictive of the two shall govern and control the decision of the Committee.

Section 2. Permitted Homes. Except as hereinafter provided, no buildings, improvements or structures intended for residential use or replacement structures for existing mobile homes as of the date hereof shall be erected, placed, permitted or maintained on a Lot other than a



single-family residence, first class mobile home, modular home, or prefabricated home or other approved construction which shall have been manufactured, constructed, erected or made after 1976, having no less than five hundred (500) square feet in total floor space. Each home shall be located on the Lot within the designated building envelope in accordance with the rules and regulations of the Committee. No home shall be placed on any Lot until such home is approved in writing by the Committee as to size, condition, location and appearance. Improvement color schemes shall use neutral or earth tone colors and be compatible with existing neighborhood improvements. All homes must have complete sanitary facilities, including a lavatory, toilet, wash basin, tub or shower, kitchen sink, and must be connected to the sewage outlets in conformance with the state and county health requirements. Upon the demand of the Committee, a photograph of any proposed home shall be furnished for approval. Any person moving a mobile home onto a space shall be fully responsible for any damage to the Property, or to any property, or for any personal injury occurring as a result of the improvement of the mobile home, its appurtenances or other improvements onto, in or out of the Property.

Section 3. Procedure for Approval of Structures. The Architectural Control Committee of the Association may impose reasonable requirements with respect to the information to be furnished and the form and manner of presenting the same in order to obtain approval for any structure or improvement. The Owner shall submit plans and specifications, which shall clearly and completely show and set forth the essential features and intent of the approval, in order that the Committee may approve the quality of workmanship and materials, harmony of external design with existing structures and location with respect to topography and finish grade elevation. When submitting plans and specifications for all structures to the Committee, those plans and specifications shall show at least the following: (a) the location of all existing and proposed structures on the Lot; (b) all Lot lines; (c) all materials and colors to be used which shall be shown by means of samples of these materials and colors. All plans and specifications shall be submitted in duplicate. Plans and specifications for any structure shall be deemed and considered disapproved unless approval is expressly given and is evidenced in writing executed by the Committee. Notwithstanding the foregoing, if the Committee fails to approve final plans and specifications for structure and does not expressly indicate approval or affirmatively impose additional requirements or request additional information to be furnished, either verbally or in writing, within forty-five (45) days after a written request is made for written approval, the structure shall be deemed approved by the Committee, provided, however, that the design and location and kinds of materials of the building or structure to be built upon any Lot shall still comply with the restrictions herein set forth and shall still be in harmony with the existing improvements upon the Lot. The Committee may condition any approval for any new structure upon the correction of all existing non-conformities with these Protective Covenants, and with the provisions of the Code of Pitkin County. All construction shall be completed within six (6) months from the start thereof, provided that the Committee may extend such time when, in its opinion, conditions warrant such extension. If any construction is not completed, the Board of Directors of the Association shall have the right to institute appropriate court proceedings to require the removal of all unfinished construction.



Section 4. Meetings of Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. No such meeting shall be held without thirty (30) days' notice to the Owners of the Lots immediately adjacent to the Lot for which a structure is proposed. The Committee may, from time to time, by resolution in writing adopted by the majority of the members, designate a representative (who may, but need not, be one of its members) to take any action or perform any duties for or on behalf of the Committee, except the granting of approval for any structure or improvement. The action of such representative within the authority of such representative or the written consent or a vote of the majority of the members of the Committee shall constitute the action of the Committee. The Committee shall report, in writing, all final action of the Committee, and the Board of Directors of the Association shall keep a permanent record of such reported action. A copy of this written report shall be delivered to the Owner proposing the structure and the Owners of the Lots immediately adjacent to the Lot for which a structure is proposed. No decision of the Committee shall be deemed to be final until a written report is delivered in accordance with the requirements of this Section. No member of the Committee, any Committee representative, the Committee, the Association, or any member of the Board of Directors of the Association shall be liable for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Committee, unless due to the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Committee shall not be responsible for reviewing, nor shall its approval of an improvement be deemed approval of the improvement or structure from the standpoint of safety, whether structural or otherwise, or of conformance with building codes or other governmental laws or regulations.

Section 5. Appeal to Board of Directors of Association. Any person or entity aggrieved by any decision of the Committee shall have the right to appeal the decision by written notice thereof to the Board of Directors of the Association within fourteen (14) days of the date of written notification of any decision of the Committee. In that event, the Board of Directors of the Association, with reasonable promptness and upon no less than ten (10) days' written notice to the Owner, the Committee and any other affected Owner, shall decide whether or not the Committee has improperly disapproved any proposed structure. The decision of the Board of Directors of the Association shall be final and binding upon all parties.

Section 6. Inspection of Work. The Committee or its duly authorized representative shall have the right to inspect any exterior structure or improvement prior to or after completion. If, as a result of the inspections or otherwise, the Committee finds that any improvement has been done without obtaining approval of the Committee, or was not done in substantial compliance with the description and materials by the given applicant to the Committee, or was not completed within six (6) months after the date of the approval of the Committee, or that these rules and regulations were not complied with in any other manner, the Committee shall notify the Owner in writing of non-compliance, which shall specify the particulars of non-compliance and shall require the Owner to take such actions as may be necessary to remedy the non-compliance. If the Committee gives any notice of non-compliance, the Owner may appeal to the Board of Directors of the Association by giving written notice of such appeal to the Board and the Committee within fourteen (14) days after receipt of the notice of non-compliance by the Owner. If, after notice of non-compliance, the Owner



fails to commence diligently to remedy such non-compliance, the committee shall request a finding of non-compliance by the Board of Directors of the Association, by giving written notice of such request to the Association and the Owner, within thirty (30) days after delivery to the Owner of a notice of non-compliance from the Committee. In either event, the Board of Directors of the Association shall hear and decide the matter with reasonable promptness and, after no less than ten (10) days' notice of such hearing to the Owner and the Committee, shall decide whether or not there has been such non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. The decision of the Board of Directors of the Association shall be final and binding upon all parties.

Section 7. Correction of Non-Compliance. If the Board of Directors of the Association determines that a non-compliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date of the receipt by the applicant of the ruling of the Board of Directors of the Association. If the Owner does not comply with the Board ruling within such period, the Board may, at its option, post a notice of non-compliance against the Lot on which the non-compliance exists, may remove the non-complying improvement from the Lot, or may otherwise remedy the non-compliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board may exercise all of its legal rights and remedies in order to collect such monies.

ARTICLE VIII **Enforcement**

Section 1. Association's Right to Perform Owner's Obligations at Owner's Expense. If the Owner shall fail to make any repairs as herein required, or shall fail to comply with any other covenant or condition hereof on his part to be performed, the Association may, without notice in the case of emergency or otherwise after ten (10) days' notice to the Owner (or if the Owner or any person dwelling on the Lot shall expressly request the Association, its agents or servants to perform any act not hereby required to be performed by the Association, the Association may, upon such request), enter the Lot and improvements therein, and make such repairs, comply with such covenant or condition or arrange for others to do the same, without liability to the Association and, in such event, the Association, its agents, servants and contractors shall, as between the Association and Owner, be conclusively deemed to be acting as agents of the Owner and all contracts therefore made by the Association shall be so construed whether or not made in the name of the Owner. Any amounts expended by the Association for such repairs in excess of \$100.00 shall be due and payable upon the next assessment payment to be made after submission of a statement for such charges from the Association to the Owner. The Owner agrees to indemnify the Association against, and to save the Association harmless from, all liability, loss, damage, and expense arising from injury to persons or property occasioned by the failure of the Owner to comply with any provision hereof, or due wholly or in part to any act, default or omission of the Owner, or any person dwelling on or visiting on the Lot, or by the Association, its agents, servants and contractors when acting pursuant to the terms hereof. In addition to the other legal remedies hereinbefore and hereinafter provided for, in



case of violation of any covenants of this Declaration by the Owner, the same shall be restrainable by injunction and neither the mention herein nor the election hereafter of one or more of the remedies provided shall preclude the Association from enforcing any other right, remedy, option, election, or priority allowed by law, whether or not herein specifically set forth.

Section 2. Enforcement of Declaration. In the event of any violation or threatened violation of any of the provisions of this Declaration, the Board of Directors of the Association, or Aspen/Pitkin County Housing Authority as to **Article I** and Pitkin County as to **Article VI, Section 2**, or any Owner within the Property may bring an action or proceeding at law or in equity for an injunction, specific performance, damages or such other remedies as may be available. Judgments against any person for any violation or threatened violation of any of the Declaration herein shall include reasonable attorneys' fees together with court costs incurred therein. The Association or any other Owner bringing such enforcement action shall have a lien against the Lot owned by any such person to secure payment of any judgment, which shall bear interest at the rate of twenty percent (20%) per annum.

If an informal procedure for correcting a violation may have a reasonable chance of success, then the Board of Directors of the Association may elect to proceed as follows:

a. The Board may defer initiating a lawsuit until it is determined that the informal procedure is unlikely to be successful in correcting such violation.

b. The Board may contact the Owner and discuss the violation and, if the existence of a violation is confirmed, attempt to obtain the acquiescence and agreement of the Owner to remedy such violation and agree upon the specific actions and a time schedule within which the remedy shall be completed.

c. In the event the initial attempts to contact the Owner regarding the alleged violation are unsuccessful, then the Board may send a notice of violation of this Declaration by U. S. mail signed by the Board, which shall describe the violation and give notice that the Owner shall have a period of thirty days within which to correct the violation and bring the use or the improvements or other matters in violation in compliance with this Declaration. The notice shall be mailed to the Owner at the Owner's address as shown by the records of the Clerk and Recorder of Pitkin County or the records of the Homeowners' Association, and may be recorded in the records of Pitkin County.

d. Owner may request a hearing before the Board to discuss the violation.

e. In the event the violation is not remedied within the thirty-day period, then the Board shall take other appropriate action to enforce the provisions of this Declaration.

The covenants, conditions and restrictions contained in this Declaration shall be enforceable by proceeding for prohibitive or mandatory injunction. Damages shall not be deemed an adequate remedy for breach or violation but, in an appropriate case, punitive damages may be awarded. In any action to enforce any covenant, condition or restriction contained herein, the party or parties bringing such action, if successful in the action, shall be awarded reasonable attorneys' fees. No violation or breach of any restriction, covenant or condition contained in this Declaration and no action to enforce the same shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith for value or the title or interest of the holder thereof or the title acquired by any purchaser upon foreclosure of any such mortgage or deed of trust. Any such purchaser shall, however, take title subject to this Declaration.

Section 3. Enforcement of Rules. The Association's Board of Directors shall have the power to adopt and enforce such residential Regulations as may be necessary or appropriate to the regulation of uses within Aspen Village Subdivision. Upon adoption and notice to all current residents by regular mail, such regulations or amendments thereto shall be effective and enforceable against property owners, roommates, guests and visitors within the Subdivision. A warning system for infractions of said Regulations shall be employed whereby written notice of any infraction shall be delivered to the unit owner, either by posting or by regular mail. A second infraction notice of the same, or any other Regulation, to any Owner shall be delivered by certified mail. Each notice shall state the infraction, date of infraction and shall require that the infraction cease or be abated. If, after delivery of the second warning, the infraction has not ceased or is not abated within 30 days, the Owner shall be assessed a fine, not to exceed \$50.00, which shall become a part of the next month's assessment upon his or her unit. In the event of a second offense, a fine not to exceed \$150.00 may be assessed. Upon a third and all subsequent offenses, a fine not to exceed \$450.00 may be assessed by the Board. All fines levied, if not paid within thirty (30) days, shall be added to that Owner's next assessment and subject to all of the provisions of **Article IV, Section 6**, hereof.

Section 4. No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors of the Association shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors of the Association with respect to any improvement. Specifically, the approval by the Committee of any improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar proposals, plans, specifications or other materials submitted with respect to any other improvement.

ARTICLE IX Variances

The Board of Directors of the Association may allow variances from compliance with any of the terms or provisions of **Article VI** of this Declaration (provided that if the proposed action also requires a County zoning variance, then a variance shall not be granted unless the County Board of Adjustment also grants a variance) when circumstances such as topography, natural obstructions or hardship may require and, if such variance is granted, no violation of the covenants, restrictions and conditions of this Declaration shall be deemed to have occurred with respect to the matter for which



the variance was granted. Any such variance shall be evidenced in writing, duly executed by the Board of Directors of the Association, and shall be granted only after a meeting, notice of which has been sent to all Owners owning Lots immediately adjacent to the Lot in question. The granting of such variance shall not operate to waive any of the terms and provisions of such of these covenants, conditions or restrictions for any purpose except as to the particular property and particular provision hereof covered by the variance. Neither the Architectural Control Committee nor the Board of Directors shall have the power to vary, modify or make exceptions to any of the zoning regulations which are adopted in relation to the Subdivision, including, but not limited to, zoning limits on heights, setbacks, or maximum floor areas for individual Lot structures.

ARTICLE X
Immunities and Liability

Section 1. Association's Immunities. The Association shall not be liable for, nor shall there be any abatement of any assessment or other compensation by reason of:

- a. Any interference with light, air, view or other such interest of any Owner;
- b. Any Lot taken to comply with any law, ordinance or governmental regulation; or
- c. Unless due to the negligence of the Association, (i) any failure, curtailment, insufficiency of water supply, sanitary sewer, electricity, gas, telephone or other service to be supplied to the Owner, or (ii) any failure of the Association to make or delay by the Association in making or inconvenience in its making of any repairs, alterations, or decorations to or in the Property, of the Lot or to any fixtures or appurtenances therein, or (iii) any injury or damage to persons or property caused by the elements or by another Owner or by another person in the Property.

Section 2. Liability and Insurance. Occupancy of a Lot shall constitute full acknowledgment that the Owner has inspected the Lot, acceptance as is and that the Association and its agents have been fully released from any responsibility for any injuries or damage occurring in or in any way connected with the premises or nearby streets, and from any claims for damages that may be caused by the re-entering and taking possession of the space by the Board of Directors of the Association or its agents under the terms and conditions of the Protective Covenants and applicable law. Each Owner shall indemnify and hold the Association and its agents and employees free from any and all claims from damages or injuries from any cause whatsoever, sustained by the Owner, any member of the Owner's family or guests, including, but not limited to, claims for damages or injuries to personal property. The Association shall have no liability whatsoever for damages or injuries to any of the improvements or personal property on any Lot or any damages resulting from injuries to the Owner, any person occupying any Lot, or any guest, which may occur to the Lot or any other act beyond the control of the Owner.



ARTICLE XI
General Provisions

Section 1. Benefits of Declaration. This Declaration is made for the benefit of all of the property located in Aspen Village Mobile Home Park Subdivision and for the Owners thereof.

Section 2. Amendment and Termination. These restrictions, covenants and conditions in this Declaration shall continue until January 1, 2016, and from year to year thereafter. They may be amended or terminated by written instrument executed by the Association and by the owners of a majority of the parcels of the property described herein, provided, however, the provisions of **Article I** shall remain in effect until modified or terminated with the approval of Pitkin County.

Section 3. Notices. All notices required to be given or to which any owner may wish to be given to the Association or its agent shall be presented in writing addressed to "Aspen Village Homeowners' Association, 31300 State Highway 82, No. J-6, Aspen, Colorado 81611." Any notice to be given by the Association to any owner may be given in any manner under applicable law, and in the absence thereof, shall be deemed given and received when placed in the U. S. mail, certified mail, return receipt requested, first class postage prepaid thereon correctly addressed to such owner at the last address on file with the Association.

Section 4. Attorneys' Fees. In the event of any dispute concerning any tenancy, including the enforcement of these rules and regulations, requiring the circumstances of the employment of legal counsel, the prevailing party shall be entitled to recover all reasonable attorneys' fees incurred therein, whether or not court proceedings are commenced.

Section 5. Governing Law. The rules and regulations shall be governed by and construed in accordance with the laws of the State of Colorado.

Section 6. Effect on Partial Invalidity. If any clause or provision herein contained shall be adjudged invalid, such fact shall not affect the validity of any other clause or provision of these Protective Covenants, or give rise to any cause of action in favor of either party against the other.

Section 7. Paragraph Headings. The paragraph headings in this instrument are for convenience only and shall not be considered in construing the restrictions, covenants and conditions contained herein.

Section 8. Singular and Plural. Wherever utilized herein, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular. Furthermore, wherever utilized herein, the masculine shall be deemed to include the feminine and the feminine shall be deemed to include the masculine.

Section 9. Severability. Each of the covenants, restrictions and conditions contained in these Protective Covenants shall be deemed independent and separate and the invalidation of any one shall not affect the validity and continued effect of any other.

IN WITNESS WHEREOF, the Aspen Village Homeowners' Association has caused its corporate signature to be hereto affixed and this instrument to be signed by its duly authorized officer this 17th day of AUGUST, 2001.

ASPEN VILLAGE HOMEOWNERS' ASSOCIATION
a Colorado nonprofit corporation

By: *Stephanie Gerwin*
STEPHANIE GERWIN, President

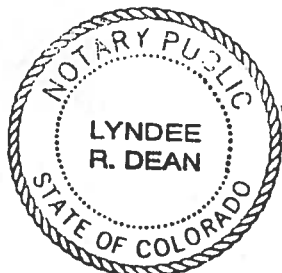
ATTEST:
José Luis Rico
JOSÉ LUIS RICO, Secretary

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

The foregoing document was acknowledged and sworn to before me this 17th day of AUGUST, 2001, by Stephanie Gerwin, as President of Aspen Village Homeowners' Association.

WITNESS my hand and official seal.

My commission expires: 12-01-01



Lyndee R. Dean
Notary Public

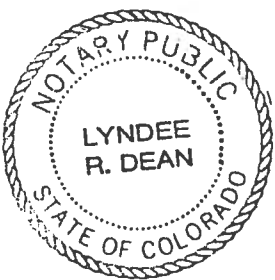


STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

The foregoing document was acknowledged and sworn to before me this 17th day of AUGUST, 2001, by Jose Luis Rico, as Secretary of Aspen Village Homeowners' Association.

WITNESS my hand and official seal.

My commission expires: 12-01-01



Lyndee R. Dean
Notary Public

BOARD OF COUNTY COMMISSIONERS OF
PITKIN COUNTY, COLORADO

By: Patti Kay-Clapper
55 Vice Chairman

ATTEST: Lyndee R. Dean
Pitkin County Clerk

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

The foregoing document was acknowledged and sworn to before me this 10th day of AUGUST, 2001, by Patti Kay-Clapper as Vice-Chairman of the Pitkin County Board of County Commissioners.

WITNESS my hand and official seal.

My commission expires: 10-20-2002

Janette Jones
Notary Public
530 E. Main
Aspen, Co 81611



STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

The foregoing document was acknowledged and sworn to before me this 10th day of AUGUST, 2001, by LYNDEE R. DEAN, as Pitkin County Clerk.

WITNESS my hand and official seal.

My commission expires: 10-20-2002

Janette Jones
Notary Public
530 E. Main Street, Aspen, CO
81611
NOTARY PUBLIC
STATE OF COLORADO

ASPEN/PITKIN COUNTY HOUSING
AUTHORITY

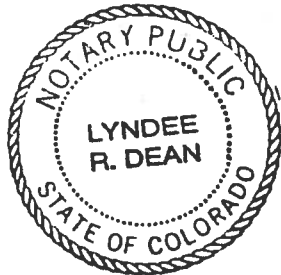
By: Mary J. Roberts

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

The foregoing document was acknowledged and sworn to before me this 14th day of AUGUST, 2001, by MARY J. ROBERTS, as EXEC. DIRECTOR of the Aspen/Pitkin County Housing Authority.

WITNESS my hand and official seal.

My commission expires: 12-01-01



Lyndee R. Dean
Notary Public

aspenvil2covenants.06

Exhibit A
ASPEN VILLAGE MOBILE HOME PARK PARCEL

A parcel of land situated in Sections 6 and 7, Township 9 South, Range 85 West of the 6th Principal Meridian, Pitkin County, Colorado, described as follows:

Beginning at a brass cap found in place for the Southeast corner of said Section 6; thence N 49°30'33" W 1467.01 feet; thence N 43°01'10" W 250.53 feet; thence S 80°15'34" W 144.68 feet to the point of beginning; *thence N 17°37'51" W 41.44 feet; *thence N 56°06'32" E 55.90 feet; *thence N 44°11'45" W 310.00 feet; thence *N 46°14'02" W 348.33 feet; *thence N 54°06'59" W 209.82 feet; thence S 40°17'31" W 233.70 feet; thence S 37°55'49" E 181.05 feet; thence S 58°01'34" E 372.04 feet; thence S 33°12'24" E 162.46 feet; thence S 10°54'52" E 19.85 feet; thence S 37°10'26" E 95.52 feet; thence S 57°47'54" E 28.14 feet; thence S 24°40'14" W 275.72 feet; thence S 31°54'02" W 23.12 feet; thence S 26°27'25" W 51.74 feet; thence S 14°30'45" W 21.59 feet; thence S 24°00'21" W 228.53 feet; thence S 25°39'03" W 199.76 feet; thence S 28°44'37" W 150.32 feet; thence S 26°02'03" W 375.61 feet; thence S 39°13'40" W 90.94 feet; thence S 24°49'58" W 302.63 feet; thence N 68°48'06" E 98.84 feet; thence N 83°41'00" E 71.40 feet; thence N 85°19'00" E 137.80 feet; thence N 72°45'00" E 422.70 feet; thence S 86°19'00" E 119.70 feet; thence N 85°49'00" E 268.80 feet; thence S 84°41'00" E 117.30 feet; thence S 83°23'00" E 245.80 feet; thence N 80°11'13" E 99.80 feet; thence N 05°29'58" W 352.38 feet; thence S 80°34'28" W 255.76 feet; thence N 15°05'07" W 219.63 feet; thence N 52°54'36" W 201.98 feet; thence N 46°24'40" E 200.91 feet; thence N 11°14'35" W 77.70 feet; thence N 47°04'28" E 158.50 feet; thence N 44°22'41" W 271.30 feet; thence N 46°03'55" W 26.86 feet; thence N 41°32'56" W 367.67 feet; thence 49.90 feet along an arc of a 93.94 foot radius curve to the right having a central angle of 30°26'00" and subtended by a chord bearing N 65°02'34" E 49.31 feet; thence N 80°15'34" E 26.35 feet to the point of beginning.

Calls marked with an asterisk have been rotated 0°51'45" to the left of C.D.O.T. description of Parcel A-202 Rev. to match Aspen Village Subdivision bearings.

Prepared by: Douglas N. Manley PLS 33188

Exhibit B
ASPEN VILLAGE MOBILE HOME PARK EXPANSION PARCEL

A parcel of land situated in Sections 6, 7 and 8, Township 9 South, Range 85 West of the 6th Principal Meridian, Pitkin County, Colorado, described as follows:

Beginning at a brass cap found in place for the Southeast corner of said Section 6; thence N 65°53'50" W 300.00 feet; thence N 65°05'32" W 297.69 feet; thence N 65°38'48" W 299.66 feet; thence N 45°29'52" W 297.06 feet; thence N 44°22'41" W 26.04 feet; thence S 47°04'28" W 158.50 feet; thence S 11°14'35" E 77.70 feet; thence S 46°24'40" W 200.91 feet; thence S 52°54'36" E 201.98 feet; thence S 15°05'07" E 219.63 feet; thence N 80°34'28" E 255.76 feet; thence N 05°29'38" E 352.38 feet; thence N 80°14'00" E 97.90 feet; thence N 83°39'00" E 134.50 feet; thence N 78°28'00" E 216.40 feet; thence N 83°10'00" E 130.90 feet; thence N 75°46'00" E 155.60 feet; thence N 75°59'00" E 78.40 feet; thence N 24°20'00" E 196.33 feet; thence N 65°53'50" W 99.62 feet to the point of beginning, containing 13.70 acres more or less.

