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**DECLARATION OF PROTECTIVE COVENANTS
FOR SOPRIS MESA SUBDIVISION,
EAGLE COUNTY, COLORADO,
A PORTION OF ASPEN, MOUNTAIN VIEW**

This Declaration is made and effective this 31st day of August, 1998, by FENDER LANE DEVELOPERS, LTD.

RECITALS

A. Declarant is the owner of that certain real property platted as Sopris Mesa Subdivision, Eagle County, Colorado, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (hereinafter Sopris Mesa).

B. Sopris Mesa constitute a portion of that subdivision known as Aspen, Mountain View, Eagle County, Colorado and Declarant wishes by this Declaration to subject Sopris Mesa to the Master Declaration of Protective Covenants for the Residential Areas of Aspen, Mountain View, Eagle County, Colorado, recorded April 14, 1981 in Book 321 at Page 619 of the records of Eagle County, Colorado (hereinafter Master Declaration), as the same may be amended from time to time, in accordance with applicable provisions of the Master Declaration. Declarant further wishes to impose additional covenants, conditions and restrictions upon Sopris Mesa as provided in the within Declaration.

NOW, THEREFORE, in accordance with the purposes set forth in the Master Declaration and to further the desire of the Declarant that Sopris Mesa be a community of uncommon quality, value, desirability and attractiveness, Declarant hereby declares as follows:

ARTICLE 1.

1.1 **Master Declaration.** Declarant, as owner of all of Sopris Mesa, as the same is described on Exhibit A attached hereto, and as a qualified successor to Declarant as defined in the Master Declaration, hereby declares that Sopris Mesa is annexed to and made a part of Aspen, Mountain View and shall, at all times, be owned, held, used and occupied subject to all of the provisions, covenants, conditions and restrictions contained in the Master Declaration except as is hereinafter specifically stated in this Declaration, and to the additional provisions, covenants, conditions and restrictions contained in this Declaration.

1.2 **Colorado Common Interest Ownership Act.** Sopris Mesa is a Common Interest Community as defined by the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101 *et seq.*, as the same may be amended from time to time (hereinafter the Act). The provisions of the Act, together with the provisions of the Master Declaration and this Declaration, shall regulate and

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control the ownership, maintenance and use of all Lots within Sopris Mesa. As stated hereinabove, Sopris Mesa is hereby annexed to and made a part of the larger community known as Aspen, Mountain View. Aspen, Mountain View was created and the Master Declaration was recorded prior to the effective date of the Act. On April 29, 1998 the Aspen, Mountain View Homeowners Association elected to be treated as a Common Interest Community under the Act. Thus, upon the recording of the within Declaration, and the recording of the Statement of Election as provided in C.R.S. 38-33.3-118, there shall be one Common Interest Community known as Aspen, Mountain View, which shall consist of several filings, one of which is Sopris Mesa. The owners of all Lots within Sopris Mesa shall become members of the Aspen, Mountain View Homeowners Association as provided in Article 5 hereof. The maximum number of Lots within Sopris Mesa shall be twenty-four (24), and the maximum number of Lots within Aspen, Mountain View, including Sopris Mesa, shall be ninety-two (92).

ARTICLE 3. LAND CLASSIFICATIONS

3.1 **Lots.** Each numbered lot of Sopris Mesa as depicted on the Final Plat of Sopris Mesa is and shall be a Lot as that term as defined and used in the Master Declaration.

3.2 **Common Area.** No portion of Sopris Mesa constitutes Common Area as that termed is defined and used in the Master Declaration.

3.3 **Easements.** No portion of Sopris Mesa shall constitute Greenbelt Area as that term is defined and used in the Master Declaration. Any portion of Sopris Mesa encumbered by any easement as depicted upon the Final Plat may be utilized and improved to the extent reasonably necessary to properly use and enjoy the easement for the purposes designated thereon as permitted by the Master Declaration.

ARTICLE 4. ADDITIONAL COVENANTS APPLICABLE TO SOPRIS MESA

4.1 **Building Envelopes.** The Final Plat for Sopris Mesa depicts a building envelope for each Lot within Sopris Mesa. All above ground improvements on any Lot, except permitted landscaping and necessary crossings by access drives, bridges or paths and except improvements necessary or desirable in connection with any easements referred to herein or depicted upon the Final Plat, or other easements approved by the owner of any Lot and by Declarant, shall be located within the building envelope established for that Lot as depicted upon the Final Plat.

4.2 **Wildlife Mitigation Agreement.** The ownership, use, and occupancy of all Lots within Sopris Mesa and improvements constructed thereon shall be subject to all terms and conditions of the Wildlife Mitigation Agreement for Sopris Mesa Subdivision dated June, 1998, which is attached hereto as Exhibit B and incorporated herein by this reference. The Association is

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hereby authorized to enforce all provisions of the Wildlife Mitigation Agreement in accordance with its terms and applicable provisions of the Master Declaration. In the event of any conflict between the provisions of the Wildlife Mitigation Agreement and the Master Declaration, the provision more suitable for the protection of wildlife within and surrounding Sopris Mesa shall prevail. All provisions of the Wildlife Mitigation Agreement shall serve as guidelines in any decision by the Association or the Design Review Committee regarding the use of any Lot within Sopris Mesa or the location or design of any improvement constructed thereon.

4.3 Wildfire Protection Measures. All roofs of any improvement constructed within Sopris Mesa shall be made of materials which meet, or which are chemically or otherwise treated in such a way that they meet, the standards necessary to obtain a "non-combustible class A" fire rating as determined by the Basalt and Rural Fire Protection District. Additionally, each improvement shall have an adequate "defensible space" as requested by the Basalt and Rural Fire Protection District. "Defensible space" is defined as an area surrounding a structure where grasses, brush, trees and other common wildfire fuels, living and dead, have been thinned, removed, or modified to eliminate or reduce the presence of flammable material. Creation of a "defensible space" surrounding improvements within Sopris Mesa shall be consistent, to the greatest extent reasonably practicable, to the provisions of the Wildlife Mitigation Agreement.

4.4 Fire Sprinkler System. Any improvement constructed within Sopris Mesa which is in excess of 5,000 square feet exclusive of garages and patios, shall include an automatic fire sprinkler system constructed in accordance with the standards for the installation of sprinkler systems applicable to dwellings of the size and type of the improvement in question as established from time to time by the National Fire Protection Association, or its successor.

ARTICLE 5. ASSOCIATION

5.1 The Association. Aspen, Mountain View Homeowners Association (hereinafter Association) has heretofore been formed and is the Association to which reference is made in the Master Declaration and the within Declaration. Its members presently consist of the owners of all Lots within other filings of Aspen, Mountain View. Each owner of a Lot within Sopris Mesa shall automatically, upon acceptance of a deed for a Lot within Sopris Mesa, become a member of the Association. The person or persons who constitute the owner of a Lot shall automatically be the holder of the membership appurtenant to that Lot, and the membership appurtenant thereto shall automatically pass with the fee simple title to the Lot. Declarant shall hold a membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot except that a owner may assign some or all of his rights as an owner and as a member of the Association to a tenant or mortgagee and may arrange for a tenant to perform some or all of such owner's obligation as provided in either the Master Declaration or this Declaration, but no owner shall be permitted to relieve himself of the responsibility for the fulfillment of the obligations of an owner under either of such Declarations.

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5.2 **Affairs of the Association.** The affairs of the Association shall be governed by the Board of Directors in accordance with the applicable provisions of the Master Declaration, as the same may be amended from time to time, and by the applicable provisions of the Act. The duties and powers of the Association shall be as provided in the Master Declaration and the Act.

5.3 **Allocated Interests.** "Allocated interest" means the common expense liability and the votes in the Association allocated to each Lot, which interests are allocated as follows:

5.3.1 The common expense liability for each Lot is calculated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within Aspen, Mountain View, as of the date of the calculation. Such fraction is then multiplied by the common expenses or the assessment in question to determine that Lot's share thereof. The common expense liability of a Lot is determined without reference to the size, location, value or use of the Lot in question.

5.3.2 One (1) vote in the Association is allocated to each Lot within Aspen, Mountain View.

5.3.3 The foregoing allocation may not discriminate in favor of Lots owned by Declarant or an affiliate of Declarant.

5.3.4 If Lots are added to or withdrawn from Aspen, Mountain View, (i) the common expense liability for each Lot shall be reallocated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in Aspen, Mountain View following the addition or withdrawal of such Lot(s), and (ii) one (1) vote in the Association shall continue to be allocated to each Lot within Aspen, Mountain View following the addition or withdrawal of such Lot(s).

ARTICLE 6. DESIGN REVIEW COMMITTEE

6.1 **Design Review Committee.** The Design Review Committee shall be composed of between three (3) and five (5) natural persons. Prior to Declarant's sale of twenty (20) Lots, Declarant may from time to time appoint and remove the members of the Design Review Committee in Declarant's sole discretion. Upon the sale of the twentieth (20th) Lot, any new members of the Design Review Committee shall be appointed by the remaining members of the Design Review Committee. The persons serving on the Design Review Committee shall serve at the pleasure of Declarant, and Declarant may appoint a new member at any time, provided there shall at all times be a least three (3) persons serving on the Design Review Committee. The Design Review Committee shall have and exercise all the powers, duties and responsibilities set out in this instrument.

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6.2 **Approval by Design Review Committee.** In addition to the review and approval of the Design Review Committee as specified in the Master Declaration, no improvements of any kind, including, but not limited to, dwelling units, greenhouses, garages, tool sheds, work areas, fences, walls, driveways, towers, antennae, satellite dishes, kennels, exterior lighting, corrals, flagpoles, curbs and walks shall be constructed, erected, altered or permitted to remain within Sopris Mesa, nor shall any excavating, tree cutting and clearing or landscaping be done within Sopris Mesa, unless the complete architectural and site development plans and specifications (and such other items as are included in the "Plans" defined below) for such construction, alteration or landscaping are approved by the Design Review Committee prior to the commencement of such work, except as Declarant may be specifically permitted to do by this Declaration or required to do by any subdivision improvements agreement between the Declarant and Eagle County. In particular, but without limiting the generality and scope of the foregoing, no roof may be placed on any structure unless the finished exterior material and color of such roof is specifically approved by the Design Review Committee. Revegetation of all infills and cuts will be required. Plans addressing the revegetation of infills and cuts shall provide for adequate weed control, the use of native grasses, shrubs or trees, and the use of certified, weed-free seed. Such plans will be submitted to the Design Review Committee prior to any excavation, and the Design Review Committee's approval of such plans shall be required before such excavation begins.

At least three (3) complete sets of the architectural and site development plans and specifications shall be submitted to the Design Review Committee along with a grading and drainage plan, a soils and foundation report and an individual sewage disposal system (ISDS) design both prepared and certified by a professional engineer, and a complete list of all finished exterior materials and colors to be used (collectively referred to herein as the "Plans"). All copies of the Plans shall be signed and dated for identification by the Owner or his architect. The Design Review Committee shall have the right to request whatever additional specification information, plans, specifications, reports and the like it deems necessary to evaluate the development proposal throughout the approval and construction process. In addition, the Design Review Committee may adopt rules and regulations which shall specify additional information, reports, plans, specifications and the like required to be submitted to the Design Review Committee and to be deemed part of the Plans for all purposes hereunder. In the event the Design Review Committee fails to take any action within sixty (60) days after three (3) copies of the Plans have been submitted to it and the submittal has been certified in writing by the Design Review Committee as complete, then all of such submitted architectural plans shall be deemed to be approved. The Design Review Committee shall not unreasonably disapprove any Plans. The majority vote of the full number of members of the Design Review Committee then in office shall be required for any approvals described herein, but unless such majority votes to approve, the vote of two members of the Design Review Committee to disapprove shall constitute disapproval. In the event the Design Review Committee shall disapprove any Plans, the person or entity submitting such Plans may appeal the matter to the next annual or special meeting of the Members of the Association where a vote of sixty-six and two-thirds percent (65⅔%) of the Members' votes entitled to be cast at said Members' meetings shall be required to change the decision of the Design Review Committee.

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6.3 **Building Permit.** An Owner may apply for a building permit from the Eagle County Building Department at any time; provided, however, that the Plans approved by the Building Department shall not differ in any substantial way from the Plans approved by the Design Review Committee. If the plans approved by the Building Department differ in any substantial way as determined by the Design Review Committee, then all approvals of the Design Review Committee shall be deemed automatically revoked.

6.4 **Variances.** Unless specifically prohibited by a provision of this Declaration, the Design Review Committee may, by an affirmative vote of a majority of the full number of members of the Design Review Committee then in office, allow reasonable variances as to any of the covenants and restrictions governing architectural control contained in this Declaration and/or policies or rules promulgated by the Design Review Committee, on such terms and conditions as it shall require. No variance shall be granted which contravenes any provision of this Declaration which was required by an approval obtained by Declarant from Eagle County for Sopris Mesa or which violates the Eagle County Land Use and Building Codes. No variance shall be granted without written notice of the request for such variance provided ten (10) days prior to the hearing for said variance to all Owners. Notice to such Owners shall be deemed effective when placed in the United States mail, first-class postage prepaid, certified with return receipt requested, and addressed to the last known address for each Owner as provided to the Association.

6.5 **General Requirements.** The Design Review Committee shall exercise its best judgment to see that all improvements, construction, alterations, excavating, tree-cutting and clearing and landscaping within Sopris Mesa harmonize (to the greatest extent possible) with the natural surroundings within Sopris Mesa and with other structures and improvements within Sopris Mesa as to design, materials, color, siting, height, grade, finished ground elevation of neighboring lots and other design features.

6.6 **Materials and Landscaping.** The Design Review Committee shall evaluate, among other things, the materials and colors to be used on the outside of buildings or structures, and the harmony of landscaping and finished grade and floor elevation with the natural setting and the native trees and other vegetation within Sopris Mesa. It shall encourage "xeriscape" landscaping which emphasizes the use of indigenous foliage.

6.7 **Lighting.** The Design Review Committee shall consider exterior lighting plans and, with possible exception for lighting necessary for safety, will require that all exterior lighting be directed downward and towards the applicant's property. It will also recommend that all Owners make every effort possible to limit the use of exterior lighting at night. It shall encourage Owners to build in such a fashion that all light sources not be directly visible from outside of the Owners' respective Lot. The intent behind these considerations is to preserve the rural character of Sopris Mesa by limiting exterior lighting as much as possible while maintaining a safe atmosphere.

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6.8 **Preliminary Approvals.** Lot Owners who anticipate constructing or modifying structures or improvements on a Lot or excavating, tree-cutting and cleaning or landscaping on a Lot may submit preliminary sketches or plans thereof to the Design Review Committee for informal and preliminary approval or disapproval. All preliminary sketches should be submitted in at least three (3) sets and should contain sufficient general information on those matters required to be in the complete Plans to allow the Design Review Committee to act intelligently in giving an informed preliminary approval or disapproval. The Design Review Committee shall never be committed or bound by any preliminary or informal approval or disapproval. The preliminary approval process is offered as an accommodation only, and the Design Review Committee may set fees for this service.

6.9 **Architectural and Site Development Plans.** The Design Review Committee shall disapprove any Plans submitted to it which do not contain sufficient information for it to exercise the judgment required of it by this Declaration.

6.10 **Design Review Committee Not Liable.** Neither the Design Review Committee nor any member thereof shall be liable for damages to any person or entity submitting any Plans for approval, or to any Owner or Owners of Lots, by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such Plans. Neither the Design Review Committee nor any member thereof shall have any liability or responsibility for any representations made to any Owner or prospective Owner by any third parties. The decisions of the Design Review Committee shall be governed by this Declaration and any rules or regulations duly adopted by the Design Review Committee pursuant to this Declaration.

6.11 **Written Records.** The Design Review Committee shall keep and safeguard for at least three (3) years complete permanent written records of all approved applications, including one (1) set of the finally approved Plans, and of all actions of approval or disapproval and all other formal actions taken by it under the provisions of this Declaration.

6.12 **Authority to Promulgate Rules and Regulations.** The Design Review Committee may promulgate and adopt rules and regulations necessary to implement this Declaration. These rules and regulations may include submission requirements concerning the type of information, reports, plans and specifications, and other information necessary to make an informed decision regarding requests for development, alterations and the like.

ARTICLE 7. DECLARANT'S RESERVED RIGHTS

Declarant hereby expressly reserves to itself and its successors and assigns the following described rights which may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the recording of this Declaration and ending on the date of termination of such rights as established in this Article. The reserved rights

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hereinafter set forth may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Lots within Sopris Mesa hereafter made, whether by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the rights reserved by and to Declarant in this Article, even though no specific reference to such rights appears in the conveyancing instruments. Nothing in this Article shall limit or impair any other rights granted or reserved to Declarant by other provisions of this Declaration.

The following rights are hereby reserved to Declarant and its successors and assigns:

7.1 Completion of Improvements. The right throughout Sopris Mesa to complete improvements indicated on the Final Plat of Sopris Mesa, as such Plat may be amended from time to time. Furthermore, the right to construct and complete improvements required by the terms of the Subdivision Improvements Agreement regarding Sopris Mesa Subdivision which has been executed by the Declarant and the Board of County Commissioners of Eagle County, Colorado, as said Agreement may be amended from time to time. Furthermore, the right to create, grant and/or use and enjoy additional non-exclusive easements, and to relocate existing platted easements, upon or across any portion of Sopris Mesa, except building envelopes, as may reasonably be required for the completion by Declarant of the above described improvements or the effective exercise by Declarant of any of the other reserved rights described in this Article.

7.2 Sales, Marketing and Management. The right to construct, locate, maintain, operate, and remove from Lots owned by Declarant, any of the following, in such number, size and location as may be reasonably required by Declarant in connection with the completion of improvements, the management of Sopris Mesa, or the promotion, marketing, sale or rental of Lots:

7.2.1 Sales offices, management offices, and construction offices, and structures containing or relating to the same. Such offices shall be removable by Declarant or its successors promptly upon the Declarant ceasing to be a Lot owner;

7.2.2 Signs identifying and advertising Sopris Mesa and the Lots therein, or relating to development or construction thereon;

7.2.3 Model residences constructed or to be constructed on Lots;

7.2.4 Parking areas and facilities, and lighting necessary or desirable in the marketing of Sopris Mesa and the Lots therein to prospective owners;

7.2.5 Employees in offices;

7.2.6 Equipment;

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7.2.7 Vehicles; and

7.2.8 Marketing and construction materials.

Together with the right to attract, invite or bring prospective purchasers of Lots into Sopris Mesa at all times, and to permit them to use and enjoy any common area.

7.3 Withdrawal Rights and Procedure. The right at any time to withdraw from Sopris Mesa any Declarant owned Lot or Lots. Withdrawal may only be accomplished by the recording by Declarant of an amendment to this Declaration and an amendment to the Final Plat. Upon the recording of such amendments, the withdrawn Lot(s) shall no longer be a part of Sopris Mesa or subject to the Master Declaration or the within Declaration. Each Declarant owned Lot is hereby described and declared to be a separate portion of real estate that is subject to this right of withdrawal, and Declarant expressly reserves the right to withdraw one or more Declarant owned Lots from Sopris Mesa. Once a Lot has been conveyed to an owner other than Declarant, that portion of the real estate is no longer subject to this right of withdrawal. The withdrawn property shall be subject to whatever easements, if any, may be reasonably necessary for access or utility service to, or operation, management, use or enjoyment of Sopris Mesa or any part thereof. Similarly, the owner(s) of the withdrawn property shall have whatever easements, if any, are reasonably necessary for access or utility service to or for use or enjoyment of the withdrawn property. At the time any withdrawal of real estate is accomplished, Declarant shall record whatever documents are necessary to establish such reciprocal easements in the Eagle County records.

7.4 Transfer of Declarant's Reserved Rights. Any one or more rights created or reserved under this Article for the benefit of Declarant may be transferred to any person by an instrument describing the right or rights transferred and recorded in Eagle County. Such instrument shall be executed by the Declarant and the transferee.

7.5 Termination of Declarant's Reserved Rights. The rights reserved to Declarant in this Article shall automatically terminate and expire upon the first to occur of (i) the date which is ten (10) years after the recording of this Declaration, or (ii) Declarant's relinquishment and surrender of such rights by recorded instrument.

ARTICLE 8. GENERAL PROVISIONS

8.1 Declaration to Run. All of the covenants, conditions and restrictions contained in the within Declaration shall be a burden on the title to all of the Lots within Sopris Mesa, the benefits thereof shall inure to the owners of all Lots, and the benefits and burdens of all said covenants, conditions and restrictions shall run with the title to all of the lands within Sopris Mesa.

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8.2 **Termination of Declaration.** In the event this Declaration has not been sooner lawfully terminated pursuant to any applicable law of the State of Colorado or Eagle County, Colorado, and the provisions herein contained, this Declaration may be terminated on January 1, 2025, by the affirmative vote of seventy-five percent (75%) of the owners of Lots within Sopris Mesa at a meeting of such owners duly held. If this Declaration is not so terminated, then it shall continue to be in full force and effect for successive twenty-five (25) year periods unless, at the close of any such twenty-five (25) year period, this Declaration is terminated by the affirmative vote of seventy-five percent (75%) of the owners of Lots within Sopris Mesa. In the event of any such termination, a properly certified copy of the Resolution of Termination shall be placed on record in Eagle County, Colorado, not more six (6) months after the meeting at which such vote is cast.

8.3 **Amendment of Declaration.** This Declaration may be amended by the affirmative vote of sixty-seven percent (67%) of the owners of the Lots within Sopris Mesa, said vote to be cast at a meeting of such owners duly held, provided that a properly certified copy of the Resolution of Amendment shall be placed on record in Eagle County, Colorado, no more six (6) months after said meeting.

8.4 **Severability.** Shall any part or parts of this Declaration be declared invalid or unenforceable by any Court of jurisdiction, such decision shall not effect the validity of the remaining provisions of this Declaration.

8.5 **Paragraph Headings.** The paragraph headings within this Declaration are for convenience only and shall not be construed to be a specific part of the terms hereof.

8.6 **Limited Liability.** The Declarant and the Association and its Board of Directors shall not be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith without malice. The owners of Lots within Sopris Mesa severably agree to indemnify the Declarant and the Association and its Board of Directors against loss resulting from such action or a failure to act if the Declarant and the Association and the Board of Directors acted or failed to act in good faith and without malice.

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IN WITNESS WHEREOF, this Declaration of Protective Covenants for Sopris Mesa Subdivision has been executed as of the day and year first above written.

FENDER LANE DEVELOPERS, LTD.,
a Florida Limited Partnership,
By: J.N.M. Missouri Heights, Inc.,
a Florida Corporation, General Partner

By: [Signature]
James N. McGarvey, Jr., President

STATE OF FLORIDA)
) ss
COUNTY OF Duval)

The above and foregoing instrument was acknowledged and sworn to before me this 8th day of September, 1998, by James N. McGarvey, Jr., as President of J.N.M. Missouri Heights, Inc., General Partner of Fender Lane Developers, Ltd.

Witness my hand and official seal.

My commission expires: 5-21-2002

My address is: 2453 So. Third Street
Jacksonville Beach, FL 32250

[Signature]
Notary Public



Patricia H. Kelley
MY COMMISSION # CC722880 EXPIRES
May 21, 2002
BONDED TRULY TRUST INSURANCE, INC.

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EXHIBIT A

LEGAL DESCRIPTION OF SOPRIS MESA

Sopris Mesa Subdivision, according to the Final Plat thereof, recorded September _____, 1998 at Reception No. _____, in the office of the Clerk and Recorder of Eagle County, Colorado.



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*Western Ecosystems, Inc.**Ecological Consultants**905 West Coach Road, Boulder, CO 80302 (303) 442-6144*

**WILDLIFE MITIGATION AGREEMENT
FOR
SOPRIS MESA SUBDIVISION, EAGLE COUNTY, COLORADO**

June, 1998

Fender Lane Developers, Inc., the proponent, proposes developing 24, 2.5-7.0 acre lots on 88.7 acres in the southwestern portion of Eagle County, Colorado. The proposal is known as Sopris Mesa Subdivision and is adjacent to, and will be associated with, the Aspen, Mountain View Subdivision. This undeveloped agricultural property is surrounded by partly built-out subdivisions, including three approved filings of the Aspen, Mountain View Subdivision to the north and east, King's Row Subdivision to the west, Harmony View Subdivision to the south, and Red Table Acres Subdivision to the east. Central Ranch, a large irrigated pasture functioning as open space, occurs within these subdivisions, and borders Sopris Mesa property to the south and east.

The largest portion of the property is irrigated pasture land which was once part of Grange Ranch and which is contiguous with the Central Ranch pasture. The pasture contains a mixture of non-native hay grasses and common dandelions, the former of which were planted historically after the native sagebrush shrubland was removed. Shallow upland slopes surrounding the irrigated portions of the pasture contain remnant native vegetation, including sagebrush, arrowleaf balsamroot, a variety of less-dominant native grasses and forbs, and a small clump of Gambel's oak.

This property and the surrounding subdivisions are classified on current Colorado Division of Wildlife (CDOW) Wildlife Resource Information System (WRIS) maps as deer winter range and elk winter range, severe winter range, and critical habitat. A wide variety of other wildlife are associated with the property, but their ranges are not delineated on CDOW WRIS maps.

This wildlife mitigation and enhancement plan was developed to avoid, minimize, and mitigate wildlife impacts resulting from proposed residential development associated with Sopris Mesa Subdivision. The wildlife planning process involved conducting field surveys to identify important wildlife habitats and providing that information to planners who reconfigured the conceptual design to avoid and minimize conflicts. The specifics contained herein have evolved from existing wildlife information, results of field surveys, discussions, and meetings with CDOW and Aspen, Mountain View Subdivision Homeowners Association representatives, input from Eagle County (County) and the public, and meetings and



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discussions with staff and professionals representing the proponent. This plan not only considers the Sopris Mesa portion of the Aspen, Mountain View Subdivision, but also considers how this development can be integrated into existing and approved, but unbuilt, residential developments to facilitate continued wildlife use.

This plan is organized by wildlife issues. Where mitigation measures apply to more than one issue, they are discussed under the most appropriate issue and only mentioned under other issues.

Fender Lane Developers, Inc. (developer), its successors or assigns, including the Sopris Mesa Subdivision and/or Aspen, Mountain View Subdivision Homeowners Association (association), which might undertake some or all of the owner's commitments, as delineated below, propose to commit to the following wildlife mitigation measures, at or before approval by Eagle County of the first Final Plat for Sopris Mesa Subdivision. By signature below, the developer and association recognize that the measures herein committed to adequately mitigate wildlife-related impacts associated with construction and habitation of Sopris Mesa Subdivision.

1.0 WILDLIFE MOVEMENT CORRIDORS

The proposed development has incorporated a wildlife movement corridor through the subdivision to allow animals to migrate between and within their summer and winter ranges. The corridor bisects the property between Lots 5 and 18 on the east and Lot 6 on the west, as shown on the July, 1997 Preliminary Plan map. No additional development, other than for roads and utilities, shall be permitted within this designated corridor. The minimum width of this corridor shall be 600 feet. The effective minimum corridor width may expand slightly depending upon where owners of contiguous lots site their homes. Use of this corridor will also be facilitated by the establishment of building envelopes, and fencing, dog, and other restrictions that are part of this agreement. Some animals will additionally use broader gaps between homes for movements.

This corridor is the first corridor that has been established in this area as part of the Eagle County planning process. This corridor is intended to allow elk and other wildlife to continue their present access from the northeast to winter forage in the Central Ranch open space, then depart through the subdivision to a large block of presently undeveloped lands to northwest. It should be recognized that for this corridor to continue functioning, these corridors will have to be protected through adjacent private lands, ultimately connecting them to the National Forest.

2.0 BUILDING ENVELOPES

Building envelopes, defining a general area on each lot in which all structural development is permitted, have been established on each parcel. These approximately 20,000 square foot envelopes are outside of the wildlife movement corridor and have been additionally sited to avoid, to the extent practical, native habitats (of higher value to wildlife). It is the



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developer's intention that all structures (e.g., house, garage, all fencing, dog runs, etc.), as well as surrounding landscaping, and all disturbance to native vegetation, with the possible exceptions of utilities and driveways, be contained within the designated building envelope established on each parcel. This will allow homeowners some flexibility in the exact siting of their home and ancillary facilities, while insuring that development follows a design minimizing habitat losses and facilitating continued wildlife use of the property.

No vegetative manipulation will be permitted outside of building envelopes, except where manipulation is required as part of a valid winter range enhancement program and/or as may be required to revegetate those areas disturbed by construction along access and utility easements. No vegetative clearing for wildfire mitigation shall extend beyond the designated building envelope. For example, if a 30 foot clearing is required around a residence to reduce wildfire hazard, the residence must be located at least 30 feet from the edge of the designated building envelope. The objective of this measure is to minimize the amount of natural habitat loss.

Homeowners will be educated to appreciate and maintain the existing and restored vegetative community, particularly shrubby areas which provide critical cover and forage values. The area of fertilized, irrigated landscaping each residence is permitted to have will be restricted to $\leq 7,500$ square feet. This figure may be further reduced or restricted based on conditions which may be imposed by a future water augmentation plan. Residents will also be educated to recognize that they have moved into wildlife habitat, that some wildlife will have strong compulsions to eat what homeowners plant, and that the CDOW, developer, and the association will not be liable for damage to landscaping.

3.0 BIG GAME WINTER RANGE

The entire Sopris Mesa property is contained within CDOW-designated deer winter range and elk winter range, severe winter range, and critical habitat. To compensate for elk displaced from developed portions of Sopris Mesa (i.e., from the construction of homes, garages, driveways, and other developed areas), a no net loss of forage policy has been established. This will require seeding and/or transplanting sagebrush onto suitable portions of lots presently containing non-native (i.e., pasture) vegetation. This compensation will be implemented by the developer of Sopris Mesa at the same time that the construction of the infrastructure for the subdivision occurs. This will allow vegetative restoration to occur prior to the construction of any dwellings. It should also be recognized that restored sagebrush areas may have to be temporarily fenced to exclude horse access from the Central Ranch before vegetation can withstand grazing. Furthermore, the intended, ultimate goal of this effort is to restore a sagebrush community to a species composition and density approaching that of adjacent, undisturbed sagebrush stands. The seed mix developed for the site could, therefore, contain native grasses and forbs as well as big sagebrush. Development of a mature sagebrush community will take years to accomplish. Therefore, while initial reclamation efforts may be implemented by the proponent, it will eventually be the responsibility of the homeowners association and some individual lot owners to manage the reclaimed sagebrush community toward its ecological climax.

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As an approximate quantification of native sagebrush habitat lost to development, a total of 2.75 acres (6 lots whose likely 20,000 ft.² building envelope locations would be located in native habitat), plus road and driveway acreage, will be assumed to be impacted and, therefore, require replacement, as defined in this section. Based on the Preliminary Plan lot configuration (July 1997), anticipated road and driveway acreage would be unlikely to result in impacts to more than 1.0 acre of native habitat. Thus, a total of 3.75 acres of sagebrush habitat requires restoration.

Other methods may also be employed to maintain the functional value of the acreage of critical big game winter range lost to this development. Compensatory enhancement is usually accomplished by aerial fertilization, but a variety of other techniques may also be implemented, including controlled burning, brush beating, etc. Not all of these methods would be appropriate on-site. On-site mitigation generally has the highest efficacy, followed by mitigation or enhancement in adjacent areas. It is the intention that all mitigation efforts be focused on those animals affected by Sopris Mesa development.

4.0 PRESERVATION OF CENTRAL RANCH

It is the developer's intention that the Central Ranch be preserved as open space for use, in part, by wildlife.

5.0 RECLAMATION/ LANDSCAPING

Wildlife habitats disturbed by construction activity outside of building envelopes should be reseeded or replanted with those native plant species originally present. Where service access is required, trees could be excluded from buried or overhead utility corridors. Posted speed limits within the development will be slow enough that road shoulders could be reseeded with plants palatable to big game without increasing the probability of road-kills.

Homeowners are strongly encouraged to landscape with native plant species to avoid wildlife damage. The CDOW, developer, and the association will not be liable for wildlife damage to landscaping.

6.0 DOGS AND PET CONTROL

Each residential lot will be permitted to have up to two dogs and offspring up to three months old. Residents will be prohibited from harboring dogs on their property unless they have adequate facilities (i.e., a fenced yard, dog run, or kennel) to contain the animals. Enclosed runs must be located immediately adjacent to the home, within the lot's building envelope, and shall not exceed 1,000 square feet. Homeowners are encouraged to enclose runs to protect dogs from possible mountain lion predation. If facilities are inadequate to contain the resident's dog(s), the animals will be immediately removed from the subdivision until adequate structures can be built.

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At no time are dogs or cats to be allowed to run freely. When dogs move beyond their owner's property line, the dog must be controlled by a leash of no more than 12 feet in length, under the direct control of its owner or authorized representative, unless the dog is legally hunting with its owner or authorized representative, or is being trained for such a purpose. Guests of homeowners shall comply with all Sopris Mesa pet control measures.

If residents have cats, they shall be kept inside the homes at all times. Sagebrush and other native habitats support moderate numbers of birds and cats are a major, if not the major, predator.

The Home Owners' Association for Sopris Mesa Subdivision shall be responsible for enforcing dog and pet covenants. Stray dogs and cats may also be controlled by the County and CDOW. Such control may include the destruction of stray pets under Colorado law. Homeowners not in compliance with these pet restrictions will be responsible for any and all costs incurred by the Homeowners Association, County, and/or CDOW for enforcing these provisions. Should the Homeowners Association knowingly fail to enforce these covenants, the County and/or CDOW may enforce the covenants and recover any and all costs incurred. Association penalties for first, second, and subsequent violations will be a \$50.00 fine, \$100.00 fine, and a \$200.00 fine. At any time after the first offense and warning that the pet owner fails to comply, the Association may request removal of the pet from Sopris Mesa. Non-payment of a fine or failure to remove the pet(s) from Sopris Mesa property, shall be considered a separate violation for each day that a violation continues after notice, and shall be enforced (i.e., fined) accordingly.

Sopris Mesa residents will be educated regarding Sopris Mesa's pet policy. Homeowners should be educated that they should not feed dogs and other pets outside their homes, including decks, to avoid attracting nuisance wildlife or predators.

7.0 FENCING

Fencing will be restricted throughout the Sopris Mesa property to facilitate local and migratory wildlife movements, optimize habitat availability, and reduce wildlife mortality. Fencing approval will be under the purview of the Design Review Board or Homeowners Association. There shall be no fencing of perimeter lot lines, nor of the perimeter of the designated building envelope.

Homeowners will be permitted a privacy fence to enclose up to 4,000 square feet (e.g., around a hot tub), provided it is immediately adjacent to the house and it is entirely within the designated building envelope. Fencing is also permitted around a swimming pool and garden, provided they are also contained within the building envelope. Fencing may be subject to more restrictive provisions as stated in the Protective Covenants or other documents related to the property.

Fencing will be prohibited in the designated movement corridor to facilitate corridor use. With respect to buck & rail fencing, maximum fence height shall not exceed 42 inches, maximum fence width (from a top view) shall not exceed 12 inches.



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Internal barbed-wire fences (used as pasture fences to contain livestock) on the property that are no longer needed will be removed. If fencing is required to restrict domestic livestock grazing on the Central Ranch or other adjacent properties, Sopris Mesa will attempt to work with the adjacent landowners (where those landowners are willing to work with Sopris Mesa) in an attempt install a three-strand, wire fence, with strands located at 18, 30, and 42 inches above mean ground level, with gates in the fence that can be opened outside the period when livestock are present to further facilitate wildlife movements. Other fence designs, including a three-strand wire and pole fence with the top strand being a three inch wide strip of white vinyl, may also be compatible with wildlife movements and the type of livestock being excluded.

8.0 BEARS AND MOUNTAIN LIONS/ TRASH REMOVAL/ NUISANCE WILDLIFE

Sopris Mesa is located in high quality black bear habitat. Most bears do not cause damage where residential areas have encroached into bear habitat. The key is that if a bear doesn't find food it will move on. Black bears are omnivorous and while they mostly eat vegetation, they will eat almost anything. They will eat human food, garbage, hummingbird nectar, bird seed, pet food, grease off grills, suntan lotion, etc. Garbage generally provides the greatest attraction for bears to residential developments. Once a bear has found an easily accessible, consistent food source, it will often overcome its wariness of people and visit the site regularly. This increases the chance of a bear-human encounter. After repeated use of the food source, the bear may even act aggressively toward residents, their pets, or their unsuspecting neighbors. When this happens and wildlife authorities are notified, the bear is usually killed to protect human safety.

The following measures will be required to reduce potential bear problems:

1. There shall be no outside storage of any trash or garbage, no matter how briefly (e.g., overnight), at any residence or anywhere within the development, unless it is contained within individual bear-proof containers which meet North American Bear Society, CDOW, or U.S. National Park Service specifications. These containers presently cost around \$300.00 and can contain one 32 gallon trash can. They are nonmobile and are generally cemented on a stand at the junction of a resident's driveway and the local road. Most homeowners need two containers.

2. Prior to disposal, any refuse that might attract bears should be kept within the garage in a suitable receptacle with a tight-fitting lid. Refuse should not be kept within detached garages or sheds because these structures are more likely to be broken into by bears. Trash containers should be taken to the collection points (e.g., the end of driveways) the morning of collection.

However, following these recommendations may not eliminate bear problems. Bears have broken into attached residential garages in the surrounding area for garbage. Bear-proof containers are the most secure approach to garbage disposal.

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3. There shall be no dumps or underground disposal of refuse within the development. Buried garbage will attract bears.
4. Residents will also be educated that household and garden waste contributions to compost piles compose the materials that can attract bears and create problems. Composted yard waste consisting of leaves, grass, small branches, etc. do not usually attract bears.
5. Pets shall not be fed outside. Bowls of pet food left on the back deck will attract bears and other predators (e.g., coyotes) and nuisance species (e.g., skunks) of wildlife. Some of these wildlife species may carry disease that can be transmitted to pets.
6. With the exception of bird feeders, the feeding, baiting, salting, or other means of attracting wildlife to individual yards will be prohibited.
7. Homeowners will be educated about bears and other local wildlife via the CDOW's brochure entitled "Living with wildlife in bear country". One copy of the brochure shall be provided to each homeowner at closing.

Mountain lions are occasionally present year-round in the vicinity of Sopris Mesa, but may be more common when large numbers of deer and elk (prey species) are present in the area. In other areas of Colorado, where subdivisions have encroached upon mountain lion habitat containing high concentrations of prey species, encounters between lions, humans, and their pets and livestock have increased. The following measures will be implemented to minimize lion-human conflicts:

1. All residents and perspective residents will receive a copy of the CDOW's brochure entitled "Living with wildlife in mountain lion country" explaining what residents should be aware of, what to do if a close encounter occurs, and measures they can take to increase their safety and that of their pets.
2. With the exception of bird feeders, the feeding, baiting, salting, or other means of attracting wildlife to individual yards will be prohibited on Sopris Mesa property.

9.0 HORSES

There will be no boarding of horses on individual lots within the Sopris Mesa property. Any horses owned by residents of the subdivision must be maintained off-site. Lot owners will not be permitted a temporary "saddle-up" area, corral, or other fenced areas to allow horses to be kept overnight, over a weekend, or for any length of time on their property. These measures are intended to minimize the loss of wildlife habitat and to reduce movement restrictions that would be imposed by horse fencing.

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10.0 WILDLIFE MORTALITY ON LOCAL ROADS

Vehicle speeds on proposed roads within the Sopris Mesa and surrounding developments will be slow enough to avoid killing most wildlife that may be crossing roads. However, residents, and particularly contractors, frequently exceed posted limits in some areas. Obeying posted speed limits would not only reduce wildlife mortality, but would also reduce the risks of damage to personal property and injury to motorists.

11.0 EDUCATING RESIDENTS

Homeowners moving to Sopris Mesa will do so partly because of the natural setting and the wildlife it contains. Many homeowners will be unfamiliar with the wildlife of Colorado and its mountains and the responsibility that goes with living in this setting. Homeowners generally don't want to disturb, harass, or impact wildlife, but they often unwittingly do. Homeowners will be educated about local wildlife issues by providing each prospective resident a signed copy of this agreement with initial contract documents, and providing each resident a signed copy of this agreement and the CDOW bear and mountain lion brochures at the time of closing.

12.0 ADDITIONAL COMMITMENTS

The Restrictive Covenants, as set forth above in this Agreement and as they solely relate to the wildlife issues noted above, shall not be amended without the written consent of the County and the Sopris Mesa Homeowners Association. If any conflict occurs between Sopris Mesa control documents, the more restrictive provisions shall take precedent. This entire wildlife mitigation plan and, specifically, those sections addressing pets, fencing, and bears, can be enforced by the association and/or County through the Restrictive Covenants. It is the intention of Sopris Mesa that this Wildlife Mitigation Agreement be made a plat or deed restriction that runs with the land.

Copies of this final signed agreement shall be provided to all prospective residents of the development with initial contract documents and at the time of closing.

13.0 ENDORSEMENT

By its execution of this document, the developer and the association hereby agree that the wildlife impacts associated with residential development at Sopris Mesa have been, and would be, adequately mitigated if this plan were implemented, and further hereby recommends approval of the development proposal and mitigation plan.

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If our agreement is correctly set forth above, please execute and return to the undersigned one copy of this letter.

Sincerely,

(Sopris Mesa) Fender Lake Developers, Ltd

BY: [Signature]

Name and Title of Authorized Official
President of Gen. Partner

Accepted and agreed to this 1 day of June, 1998.

~~Colorado Division of Wildlife~~

~~BY: _____~~

~~Name, Title~~

~~Accepted and agreed to this _____ day of _____, 199_____~~

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Aspen Mountain View Homeowners Association

Where the provisions of the Wildlife Mitigation Agreement for Sopris Mesa Subdivision are in conflict with the Master Declarations of Protective Covenants (and any Supplemental Declarations) for Aspen Mountain View Homeowners Association the above referenced Declarations for Aspen Mountain View Homeowners Association will prevail.

BY:

Rod Carnie

Rod Carnie, President

Accepted and agreed to this 3rd day of July, 1998.



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