

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS OF
THE PEAKS AT ASPEN GLEN

1. Annual meeting ? 3rd wk. March
2. Cost of ins. turned into assoc. 19 units. \$17,000 per year
each triplex? 1.35% coverage + \$4M rate
3. Old Board accountability - resign. 3/22/00
4. New Board checks old bd. records +
deals w/ creditors
- 2 yr. 1 yr.
Bd. Bob, Pete, Sandy
Parfom

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DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF
THE PEAKS AT ASPEN GLEN

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS of The Peaks at Aspen Glen (the "Declaration") is made as of MAY 1, 1998, by Aspen Glen Golf Company, a Colorado limited partnership (the "Declarant").

RECITALS

- A. Declarant is owner of that certain real property located in Garfield County, Colorado, more particularly described on the attached Exhibit A (the "Property").
- B. Declarant desires to create on the Property a townhome project pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statute 38-33.3-101, *et. seq.* (the "Act"), the name of which is The Peaks at Aspen Glen.

ARTICLE I
DECLARATION AND SUBMISSION

1.1 **Declaration.** Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any right, title, or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act.

1.2 **Master Declaration.** The Property is subject to the Master Declaration of Covenants, Conditions and Restrictions for Aspen Glen recorded in the Office of the Clerk and Recorder of Garfield County, Colorado on April 6, 1995, in Book 936 at Page 350, as amended (the "Master Declaration"). The association (hereafter defined) shall constitute a Subassociation as defined in the Master Declaration.

ARTICLE 2
DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

- (a) **"Allocated Interests"** means the undivided interests in the Common Elements, the Common Expenses, and the votes in the Association. The Allocated Interests for each Residential Unit have been allocated so that each Residential Unit's share shall be

computed with the numerator being one (1) and the denominator being the total number of Residential Units created and existing at any one time.

- (b) "Annual Assessment" means the Assessment levied annually.
- (c) "Articles" mean the Articles of Incorporation for The Peaks at Aspen Glen Homeowners Association, as amended from time to time.
- (d) "Assessments" mean the Annual, Special, and Default Assessments levied pursuant to Article 10 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.
- (e) "Association" means The Peaks at Aspen Glen Homeowners Association; a Colorado nonprofit corporation, and its successors and assigns
- (f) "Association Documents" means this Declaration, the Articles of Incorporation, and the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted under such documents by the Association.
- (g) "Board of Directors" means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.
- (h) "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.
- (i) "Common Expenses" means (i) all expenses declared to be common expenses by this Declaration or the Bylaws of the Association, (ii) insurance premiums for the insurance carried under Article 8, and (iii) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.
- (j) "Declarant" means Aspen Glen Golf Company, a Colorado limited partnership, and its successors and assigns.
- (k) "Declaration" means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements of The Peaks at Aspen Glen.
- (l) "Default Assessment" means the Assessments levied by the Association pursuant to 10.7 below.
- (m) "Expansion Property" means additional unspecified real estate as set forth and defined at Section 38-33.3-222 of the Act.

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(n) "*First Mortgage*" means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute and liens for assessments pursuant to the Master Declaration.

(o) "*First Mortgagee*" means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

(p) "*General Common Elements*" or "*Common Elements*" shall mean those Common Elements reserved for use by all the Owners by virtue of not being Limited Common Elements. The General Common Elements shall include all tangible physical properties of this Property including, but not limited to, the land described in Exhibit A, except to the extent such land constitutes a portion of the Residential Unit; the air above such land; the buildings' structural components including, but not limited to, the foundations, girders, beams, supports, roofs and bearing and structural walls; to the extent not designated on the Plat as Limited Common Elements, the yards, gardens, uncovered parking areas, chimneys, electrical, mechanical and plumbing service installations such as gas lines, pipes, wires, conduits or systems; roads which are not dedicated to the public; and any improvements or areas of the Property provided for the community use, recreation or common use of all of the Owners. General Common Elements also include all other parts of and improvements upon the Property necessary or convenient to its existence, maintenance and safety, except the Residential Units. Unless the context otherwise clearly requires, Common Elements shall include "Association Property," which shall mean all real and personal property, other than a Residential Unit, owned or leased by the Association for the use, enjoyment or benefit of the Owners or other occupants of the Property or any part hereof; no recreational or athletic facilities are included as any part of the Common Elements.

(q) "*Limited Common Elements*" means those parts of the General Common Elements which are either limited to, or reserved for, the exclusive use of the Owners of one or more, but less than all, of the Residential Units and as may otherwise be depicted on the Plat or described herein. All garages, front entry areas, parking spaces or areas, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, decks, courtyard areas, outside jacuzzis or spas, if any, and all exterior doors and windows or other fixtures designed to serve a single Residential Unit, but located outside the Residential Unit's boundaries, are Limited Common Elements allocated exclusively to that Residential Unit. Any part of the General Common Elements designated on the Plat as "Limited Common Elements" or "LCE" shall be deemed a Limited Common Element.

(r) "*Lot*" means a plot of land subject to this Declaration and designated as a "Lot" on any subdivision plat of the Property recorded by Declarant in the office of the Clerk and Recorder of Garfield County, Colorado.

(s) "*Manager*" shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Board of Directors may authorize from time to time.

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- (t) "*Master Association*" means The Homeowners Association at Aspen Glen, a Colorado nonprofit corporation, and its successors and assigns.
- (u) "*Master Declaration*" means the Master Declaration of Covenants, Conditions and Restrictions for Aspen Glen recorded in the Office of the Clerk and Recorder of Garfield County, Colorado on April 6, 1995, in Book 936 at Page 350.
- (v) "*Member*" shall mean every person or entity who holds membership in the Association.
- (w) "*Mortgage*" shall mean any mortgage, deed of trust, or other document pledging any Residential Unit or interest therein as security for payment of a debt or obligation.
- (x) "*Mortgagee*" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.
- (y) "*Owner*" means the owner of record, whether one or more persons or entities, of fee simple title to any Residential Unit, and "Owner" also includes the purchaser under a contract for deed covering a Residential Unit with a current right of possession and interest in the Residential Unit, but excludes those having such interest in a Residential Unit merely as security for the performance of an obligation, including a Mortgagee, unless and until such person has acquired fee simple title to the Residential Unit pursuant to foreclosure or other proceedings.
- (z) "*Plat*" means the subdivision plat of The Peaks at Aspen Glen recorded _____, 1998, as Reception No. _____ in the records of the Clerk and Recorder of Garfield County, Colorado and all supplements and amendments thereto.
- (aa) "*Property*" means and refers to that certain real property described on Exhibit A attached to this Declaration.
- (bb) "*Residential Unit*" means a Lot together with all improvements thereon, including the individual townhome, together with an undivided percentage interest in the Common Elements appurtenant to such Residential Unit and all other rights and burdens hereunder. Residential Unit is also referred to as a Unit under the Act.
- (cc) "*Sharing Ratio*" means the percentage allocation of Assessments to which an Owner's Residential Unit is subject as set forth in Exhibit C attached hereto and made a part hereof.
- (dd) "*Special Assessment*" means an assessment levied pursuant to Section 10.6 below on an irregular basis.
- (ee) "*Successor Declarant*" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and

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recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

(ff) "*Supplemental Declaration*" means an instrument which subjects any part of the Expansion Property to this Declaration, as more fully provided in Article 13 below.

(gg) "*The Peaks at Aspen Glen*" shall mean the townhome project created by this Declaration, consisting of the Property, the Residential Units, and any other improvements constructed on the Property and as shown on the Plat.

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

ARTICLE 3 NAME, DIVISION INTO RESIDENTIAL UNITS

3.1 **Name.** The name of the townhome project is The Peaks at Aspen Glen. The townhome project is a Planned Community pursuant to the Act.

3.2 **Association.** The name of the Association is The Association of The Peaks at Aspen Glen. Declarant has caused to be incorporated under the laws of the State of Colorado the Association as a nonprofit corporation with the purpose of exercising the functions as herein set forth.

3.3 **Number of Residential Units.** The number of Residential Units in Phase I of the townhome project is fifteen (15). Declarant reserves the right for itself and any Successor Declarant to develop Phases II and III of the project, which are currently projected to include an additional 15 and 12 townhome units, respectively. Further, Declarant reserves the right to expand the Property to include a total of up to eighty (80) Residential Units.

The Plat for Phase I of the Project has been filed, establishing five building lots, designated Lots A, B, C, D, and E. Each of said building lots has been approved for the construction of a triplex townhome structure. Upon the completion of a building on each of said Lots, Declarant is entitled to file a Supplemental Final Plat, subdividing each building lot into three separate Townhome Lots. Each such individual Townhome Lot when subdivided by Supplemental Final Plat, shall be given an individual numeric designation from 1 through 15. It is currently contemplated that Phases II and III of the Project shall be developed in similar fashion, however, Declarant reserves to itself the right to modify the development plan for future Phases.

3.4 **Identification of Residential Units.** The identification number of each Residential Unit shall be shown on the separate Supplemental Final Plats as filed.

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3.5 **Division of Property Into Residential Units and Allocation of Interests.** The Property shall, upon the filing of separate Supplemental Final Plats indicating individual Townhome Lots, be divided into fee simple estates, each such estate consisting of the separately designated Residential Units as shown on the Plat, as may be supplemented or amended from time to time. The Allocated Interest in and to the General Common Elements appurtenant to each Unit and in the Common Expenses shall be a fractional interest with the numerator being one (1) and the denominator being the total number of Residential Units depicted on the Plat and all supplements and amendments thereto. Each Residential Unit shall be allocated one (1) vote in the Association.

In the event any Residential Unit or Property is added to the Project, pursuant to reserved Declarant development rights, the resulting Allocated Interest of the Residential Unit(s) in the Common Elements, Common Expenses, and votes in the Association shall be adjusted so that each Residential Unit has an identical fractional interest with the numerator being one and the denominator being the total number of Units created and shown on the Plat as may be supplemented and amended from time to time.

3.6. **Ownership of Common Elements.** Such undivided fee interests shall not be amended without the prior written consent of all Owners having a fee ownership in the Common Elements and all first priority Mortgagees, except as provided herein with respect to Declarant's reservation of rights and the reallocation of Limited Common Elements.

3.7 **Limited Common Elements.** A portion of the General Common Elements is reserved for the exclusive use of the individual Owners of the respective Residential Units, and such areas are referred to as "Limited Common Elements." The Limited Common Elements so reserved shall be identified on the Plat specifying to which Residential Unit or Units each Limited Common Element is allocated and are further identified in the definitions above. Any garage, decks, patios, balcony or balconies which are accessible only from within, associated only with and which adjoin a single Residential Unit shall, without further reference thereto, be used in connection with such Residential Unit to the exclusion of the use thereof by the other Owners of the General Common Elements, except by invitation. No reference thereto, whether such Limited Common Elements are exclusive or nonexclusive, need be made in any deed, instrument of conveyance, or other instrument. An exclusive easement consisting of the right to use and occupy the Limited Common Elements appurtenant to a particular Residential Unit is hereby declared and established for the benefit of each such Residential Unit. The driveway appurtenant to each Residential Unit and shown on the Plat shall constitute a Limited Common Element appurtenant to such Residential Unit, regardless of whether designated as such on the Plat, and the Owner of such Residential Unit shall have the exclusive right to park on same.

3.8 **Reallocation of Limited Common Elements.** The allocation of Limited Common Elements may not be altered without the consent of the Owners whose Residential Units are affected. Subject to the provisions of this Declaration, a Limited Common Element may be reallocated between or among Residential Units after compliance with the following procedure as set forth in the Act.

(a) The Owners of those Residential Units, as the applicants, must submit an application for approval of the proposed reallocation to the Board of Directors, which application shall be executed by those Owners and shall include:

(1) the proposed form for an amendment to the Declaration as may be necessary to show the reallocation of Limited Common Elements between or among Residential Units;

(2) a deposit against attorneys' fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board of Directors; and

(3) such other information as may be reasonably requested by the Board of Directors. No reallocation shall be effective without the approval of the Board of Directors. The reallocation shall be effectuated by an amendment signed by the Association and by those Owners between or among whose Residential Units the reallocation is made, which amendment shall be recorded in the Office of the Clerk and Recorder of Garfield County, Colorado and indexed in the grantee's index in the name of the Association and in the grantor's index in the name of each person executing the amendment. All costs and attorneys' fees incurred by the Association as a result of the application shall be the sole obligation of the applicants.

(b) A Common Element not previously allocated as a Limited Common Element may be subsequently allocated by the Declarant pursuant to its reserved development and Declarant rights. These allocations must be made by amendments to the Declaration prepared, executed and recorded by the Declarant.

3.9 **Non-Partitionability of General Common Elements.** The General Common Elements shall be owned in common by all of the Owners of the Residential Units and shall remain undivided, and no Owner shall bring any action for partition or division of the General Common Elements. However, an Owner of a Residential Unit consisting of two or more Units combined pursuant to this Declaration may partition or subdivide each Residential Unit into Units conforming to the dimensions of the original Residential Units described in the Plat. An Owner shall also have the right, upon obtaining written approval of the Board of Directors and of the first priority Mortgagee of each Residential Unit affected, to create a doorway between the Residential Units in any common wall if such Owner owns two adjacent Residential Units. This Section is not intended, however, to prohibit joint or common ownership of a Residential Unit by two or more persons or entities.

3.10 **The Use of Common Elements.** Each Owner shall be entitled to exclusive ownership and possession of his Residential Unit. Each Owner may use the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners, subject to such reasonable rules and regulations as may, from time to time, be established pursuant to the Bylaws of the Association.

3.11 **Description of Residential Units.**

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(a) Each Residential Unit, the Lot on which the Unit sits, the appurtenant undivided interest in the General Common Elements, and the appurtenant Limited Common Elements, shall together comprise one (1) Residential Unit. shall be inseparable and may be leased, devised or encumbered only as a Residential Unit.

(b) Title to a Residential Unit may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Residential Unit in which he owns an interest. For all purposes herein, there shall be deemed to be only one (1) Owner for each Residential Unit. The parties, if more than one, having the ownership of a Residential Unit shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Residential Unit in which they own an interest.

(c) Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Residential Unit may describe it by its Residential Unit number, The Peaks at Aspen Glen, County of Garfield, State of Colorado, according to the Plat thereof recorded _____, 1998 as Reception No. _____, and any recorded amendment and supplement thereto, and this Declaration, which will be recorded in the records of the Clerk and Recorder of Garfield County, Colorado, and any recorded amendment and supplement hereto.

(d) Each Residential Unit and the undivided interest in the General Common Elements appurtenant thereto shall be considered a separate parcel of real property and shall be separately assessed and taxed.

(e) Each Residential Unit shall be used and occupied solely for dwelling or lodging purposes. All of the above stated uses and occupancies shall be only as permitted by and subject to the appropriate and applicable governmental zoning and use ordinances, rules and regulations from time to time in effect. Notwithstanding the foregoing, Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Residential Unit or Units as sales offices, management offices or model residences so long as Declarant, or its successor or assigns, continues to be an Owner of a Residential Unit. The use by Declarant of any Residential Unit as a model residence, office or other use shall not affect the Unit's designation on the Plat as a separate Residential Unit.

(f) An Owner shall have the right to lease his Residential Unit upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) any such lease shall be in writing and shall provide that the lease is subject to the terms of this Declaration, (ii) a Residential Unit may be leased only for the uses provided hereinabove, and (iii) any failure of a lessee to comply with the terms of this Declaration, Articles of Incorporation, Bylaws or rules of the Association shall be a default under the lease enforceable by the Association.

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ARTICLE 4
MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

4.1 **The Association.** Every Owner of a Residential Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Residential Unit.

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

4.3 **Membership.** The Association shall have one (1) class of membership consisting of all Owners including the Declarant so long as Declarant continues to own an interest in a Residential Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one (1) vote for each Residential Unit owned. When more than one (1) person holds an interest in any Residential Unit, all such persons shall be Members. The vote for such Residential Unit shall be exercised by one (1) person or an alternative person (who may be a tenant of the Owners) appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Residential Unit shall be suspended in the event more than one (1) person or entity seeks to exercise the right to vote on any one (1) matter. Any Owner of a Residential Unit which is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right. In no event shall more than one (1) vote be cast with respect to any one (1) Residential Unit.

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

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

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4.6 Books and Records. The Association shall make available to Owners and to Mortgagees for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act.

4.7 Manager. The Association may employ or contract for the services of a Manager to whom the Board of Directors may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Board of Directors. The Board of Directors shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board of Directors.

4.8 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

ARTICLE 5 POWERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

The Board of Directors shall have power to take the following actions:

(1) suspend the voting rights of a Member during any period in which such Member is in default on payment of any Assessment levied by the Association, as provided in Section 10.7; and

(2) exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members or Declarant by other provisions of this Declaration or the Articles or Bylaws of the Association or as provided by law.

ARTICLE 6 MECHANIC'S LIENS

If any Owner shall cause any material to be furnished to his Residential Unit or any labor to be performed therein or thereon, no Owner of any other Residential Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be

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done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Residential Unit.

ARTICLE 7 PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY DECLARANT

7.1 **Recorded Easements.** The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements and licenses of record or of use as of the date of recordation of this Declaration. In addition, the Property is subject to those easements set forth in this Article 7.

7.2 **Other Easements.**

(a) **Easements for Encroachments.** If any portion of the General Common Elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the Maintenance of same, so long as it stands, shall and does exist. If any portion of a Unit, as shown on the Plat, encroaches upon the General Common Elements, or upon an adjoining Unit or Units, a valid easement for the encroachment and for the Maintenance of same, so long as it stands, shall and does exist. In the event that any one or more of the Units or other improvements comprising part of the General Common Elements are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location and as a result of such rebuilding any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the General Common Elements or on the Units.

(b) **Easement for Benefit of Owners.** Appurtenant to each Residential Unit shall be a nonexclusive easement to all General Common Elements, except the Limited Common Elements as provided otherwise herein. All of the Owners of Residential Units shall have a nonexclusive right in common with all of the other Owners to use of sidewalks, pathways, roads and streets located within the entire Property, if any. This easement is subject to the following rights of the Association:

(i) the right to reasonably limit the number of guests (not including lessees or members of the Owner's or lessee's family residing in a Residential Unit) using any facilities on the Property;

(ii) the right to establish uniform rules as to the use of any facilities on the Property, including without limitation the right to establish and enforce parking restrictions;

(iii) the right to charge uniform and reasonable admission and any other fees to persons other than Owners, their families and guests and guests residing with Owners for the use of any limited capacity facilities on the Property; and

(iv) the right to suspend the right of an Owner, his lessees and their families or guests to use any facilities on the Property for any period of time during which any assessment against a Residential Unit remains unpaid and delinquent and also for a period of time not exceeding thirty (30) days for any single infraction of the rules of the Association.

(c) Each Residential Unit is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or improvements presently situated, or to be built in the future, on the Lots.

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

(e) The Declarant under the Master Declaration and the officers, agents, employees and independent contractors of the Master Association shall have a nonexclusive easement to enter upon the Property for the purpose of performing or satisfying their respective obligations as set forth in the Master Declaration, Master Association bylaws and rules and regulations.

7.3 **Reservation for Expansion.** Declarant hereby reserves to itself and the Association and/or for Owners in all future phases of The Peaks at Aspen Glen an easement and right-of-way over, upon and across the Property for construction, utilities, drainage, and ingress to and egress from the Expansion Property, and other properties abutting and contiguous to the Property and the Expansion Property, as may be reasonably necessary or incident to the construction of improvements on the Lots or other improvements on the Property or the Expansion Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to The Peaks at Aspen Glen by the Owners. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in the Office of the Clerk and Recorder, Garfield County, Colorado.

7.4 **General Maintenance Easement.** An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Board of Directors or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs, to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, or to exercise its rights under Article 8 below, including the right to enter upon any Residential Unit for the purpose of

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performing maintenance, including but not limited to work involving drainage, irrigation and other water features, as set forth in Article 8 below.

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

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

7.7 **Model Unit Reservation.** Declarant reserves for itself and for any Successor Declarant or assign the right to construct and maintain a model unit for the purpose of Townhome sales efforts upon any Lot in the Project.

ARTICLE 8 MAINTENANCE, LANDSCAPING AND SPECIAL EASEMENT

8.1 **Maintenance.** In order to maintain a uniform appearance and a high standard of maintenance within The Peaks at Aspen Glen, the Association shall maintain:

(a) **General Common Elements**, including but not limited to the exterior of all Residential Units, which shall include and be limited to, painting of the exterior (including decks and porches), and roof repair, unless any of the foregoing are covered by an Owner's insurance. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain the Residential Units. The Owner shall be responsible for repair or replacement of broken window panes and all other exterior maintenance and repairs. In the event insurance proceeds under Article 9 are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost;

(b) **Limited Common Elements**, including but not limited to landscaping of the Lots surrounding the perimeter of the Residential Units, including lawns, trees and shrubs, parking spaces, and the Association shall also maintain all exterior walls, windows and doors, balconies, decks, gates, sidewalks and driveways (and the maintenance provided under this Section shall include snowplow services) and excluding the courtyard areas, interior spaces, walls and ceilings, and garages. The maintenance provided under this Section shall be performed at such time and in such a manner as the Association shall determine:

(c) **Drainage, Irrigation and Other Water Features** contained within the Property and General Common Elements; provided, however, that the Association's right to the use of the water and water rights contained in any such drainage, irrigation or other Water Features shall be subject to that certain License Agreement Regarding Certain Irrigation Water Rights between the Declarant and the Master Association, and provided further that in the event the Declarant or its successors are ever compelled to make use of such water and water rights the Association's obligations to maintain the same shall be abated for the period of time the Declarant or its successors are so using such water and water rights; and

(d) **Association's Right to Grant Owner's Maintenance Area.** The Association reserves the right to grant the maintenance responsibility of certain areas on each Residential Unit to the Residential Unit Owner, and the Residential Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner. Furthermore, the Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by the Owner.

8.2 **Special Easement.** The Association and the Board of Directors and their respective representatives are hereby granted a nonexclusive easement to enter the Residential Units and Common Elements as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article 8.

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

8.4 **Maintenance Responsibilities of Owners.** Each Owner is responsible for providing all maintenance within their Residential Unit at their own expense, unless modified by Section 8.1(d). Such responsibility shall include, without limitation, maintenance of the interior surfaces of the walls, ceilings, doors, windows and floors which define the Residential Unit and any finished or additional surfaces, decoration or materials installed by Declarant, the Owner, or their predecessors-in-interest such as carpets, wallpaper, counter tops, painting or staining, plug-in appliances and personalty of any kind in the Residential Unit. The Owner shall also be responsible for the maintenance of the courtyard area of his Residential Unit. Each Owner is also responsible, at his own expense, for all machines, attachments, installations and fixtures within the Residential Unit, the interior surfaces of the walls, ceilings, doors, windows and floors of the garages. The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Residential Unit.

8.5 Additions, Alterations, and Improvements. Subject to the reservation of rights of Declarant hereof, no improvement to the Property (other than for maintenance) which results in a Common Expense shall be constructed except with the prior approval of the members of the Association having at least sixty-seven percent (67%) of the total number of votes outstanding and entitled to be cast at a membership meeting as provided in the Bylaws. Dissenting Owners shall not be relieved of their obligation to pay their proportionate share of any Common Expenses. An individual Owner shall do no alterations, additions, or improvements (for his individual benefit or for the benefit of his Residential Unit) to the General Common Elements or the Limited Common Elements without prior written approval of the Board of Directors. No Owner shall decorate or fence any of the Limited Common Elements without the prior written approval of the Board of Directors. Utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board. All repairs, alterations or remodels are coupled with the obligation to replace materials removed with similar or better quality materials. An Owner shall do no act nor any work that will or may impair any easement without the written consent of the Board of Directors, after first proving to the satisfaction of the Executive Board that such structural soundness or integrity will be maintained during and after any such act or work shall be done or performed. Any expense to the Board of Directors for investigation under this paragraph shall be borne by the Owner. However, nothing herein contained shall be construed to permit structural modification, and any decision relating thereto shall be in the absolute discretion of the Board of Directors, including, but not limited to, the engagement of a structural engineer at the Owner's expense for the purpose of obtaining an opinion. The Board of Directors may also require, as a condition of approval, the posting of security for the completion of any approved alterations, and costs attendant thereto with respect to recording and effecting the approval. Further, any augmentation or increase in the landscaping of the landscaped garden areas or Limited Common Elements shall include a plan for the maintenance thereof. Such approved additional landscaping shall be maintained at the sole cost and expense of the Owner whose Limited Common Elements are affected in accordance with the approved plan of maintenance.

8.6 Owner's Failure to Maintain or Repair. In the event that a Residential Unit and the additions, alterations, or improvements thereupon are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Residential Unit lies with the Owner of the Residential Unit, or in the event that the improvements on the Residential Unit are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Board of Directors, shall have the right to enter upon the Residential Unit to perform such work as is reasonably required to restore the Residential Unit and the buildings and other improvements thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Residential Unit upon demand. All unreimbursed costs shall be a lien upon the Residential Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

8.7 **Right to Combine Units.** Subject to any approvals and permits which may be required by the Town of Carbondale, an Owner has the right to combine a Residential Unit with one or more adjoining Units after obtaining written approval from the Board of Directors and from each first priority Mortgagee of the Residential Units affected. A combination of Residential Units shall become effective only when the Owner of the Units which are to be combined and an officer of the Association execute and record in the office of the Clerk and Recorder of Garfield County, Colorado, a written statement describing such Residential Units and declaring that the same are to be combined. Such combination, however, shall not affect the designation or prevent the separate ownership of the Residential Units in the future. Upon the combination of Residential Units, the undivided interest in Common Elements appurtenant thereto shall be the total of such interest prior to combination, with no change in the undivided interest in the Common Elements appurtenant to the other Residential Units. For such time as the combination remains effective, any part of the building within the new perimeter boundaries of the combined Residential Units which was a General Common Element shall automatically become a Limited Common Element appurtenant to the combined Residential Unit if such part of the building would not have constituted Common Elements had the combined Residential Units been originally designated on the Plat as a single Residential Unit. The Owners of the Residential Units requesting the relocation of boundaries must submit a signed application to the Board of Directors including the following:

- (a) evidence sufficient to the Board of Directors that the applicant has complied with all local rules and ordinances and that the proposed relocation of boundaries does not violate the terms of any document evidencing a security interest;
- (b) the proposed form for amendments to the Declaration, including the plats or maps, as may be necessary to show the change in altered boundaries of the combined Residential Units, and their dimensions and identifying numbers;
- (c) a deposit against attorney's fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board of Directors; and
- (d) such other information as may be reasonably requested by the Board of Directors.

All costs and attorney's fees incurred by the Association as a result of such an application shall be the sole obligation of the applicant.

8.8 In the event that any property, whether pertaining to a Residential Unit (as described in Paragraph 8.6 hereof) or to Common Elements located anywhere within the Peaks at Aspen Glen are not properly maintained or are damaged or destroyed by an event of casualty and neither the Owner thereof or the Association takes reasonable measures to diligently pursue the repair and reconstruction of the damage or destruction, then the Master Association, after notice to the Owner, if applicable, and to the Association, shall have the right to enter the affected property and perform such work as is reasonably required to restore the property and any improvement thereon to a condition of good order and repair. All costs incurred by the Master

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Association in connection with the restoration shall be reimbursed to the Master Association by the Owners of the affected Residential Unit(s), or by the Association upon demand. All unreimbursed costs shall be a lien upon the affected Residential Unit or Units and the property of the Association until reimbursement is made. This lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

ARTICLE 9 INSURANCE AND FIDELITY BONDS

9.1 **General Insurance Provisions.** The Association shall maintain, to the extent reasonably available, such insurance as the Board of Directors considers appropriate, including insurance on Residential Units that the Association is not obligated to insure to protect the Association or the Owners.

9.2 **Cancellation.** If the insurance described in Section 9.1 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

9.3 **Policy Provisions.** Insurance policies carried pursuant to Section 9.1 must provide that:

(a) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association;

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

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

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

9.4 **Insurance Proceeds.** Any loss covered by the property insurance policy described in Section 9.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

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

9.6 **Insurer Obligation.** An insurer that has issued an insurance policy for the insurance described in Section 9.1 shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

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

9.8 **Fidelity Insurance.** To the extent reasonably available, fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two (2) months' current Assessments plus reserves as calculated from the current budget of the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bond may be obtained for the Manager and its officers, employees, and agents, as applicable. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

9.9 **Workers' Compensation Insurance.** The Board of Directors shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

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

9.11 **Insurance Obtained by Owners.** Each Owner shall obtain and at all times maintain physical damage and liability insurance for such Owner's benefits at such Owner's expense, covering the full replacement value of the Owner's Residential Unit and personal property and personal liability insurance in a limit of not less than Three Hundred Thousand Dollars (\$300,000.00) in respect to bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to property, and, if higher limits shall at any time be

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customary to protect against tort liability, such higher limits shall be carried. In addition, an Owner may obtain such other and additional insurance coverage on the Residential Unit as such Owner, in the Owner's sole discretion, shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board of Directors or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Residential Unit. All Owners are required to maintain on file copies of all such current policies with the Association to evidence their obligations hereunder and to facilitate recovery of all appropriate rewards or proceeds by the Association.

ARTICLE 10 ASSESSMENTS

10.1 **Obligation.** Each Owner, including Declarant, by accepting a deed for a Residential Unit, is deemed to covenant to pay to the Association (i) the Annual Assessments imposed by the Board of Directors as necessary to meet the common expenses necessary to perform the functions of the Association, (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted under the Act, and (iii) Default Assessments which may be assessed against a Residential Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

10.2 **Purpose of Assessments.** The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of The Peaks at Aspen Glen, and for the improvement and maintenance of the Property, the Common Elements, and other areas of Association responsibility referred to herein, as more fully set for the in this Article below.

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

10.4 **Annual Assessments.** Annual Assessments made shall be based upon the estimated cash requirements as the Board of Directors shall from time to time determine to be paid by all of the Owners, subject to Section 10.3 above. Estimated Common Expenses shall

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Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Residential Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

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

(a) assess a late charge for each delinquency in such amount as the Association deems appropriate;

(b) assess an interest charge from the date of delinquency at the yearly rate of two (2) points above the prime rate charged by the Association's bank, or such other rate as the Board of Directors may establish, not to exceed twenty-one percent (21%) per annum;

(c) suspend the voting rights of the Owner during any period of delinquency;

(d) accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

(e) bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

(f) proceed with foreclosure as set forth in more detail below.

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

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

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10.10 **Successor's Liability for Assessments; Subordination of Lien.** The provisions of the Act shall govern and control (i) the obligations of successors to the fee simple title of a Residential Unit on which Assessments are delinquent, and (ii) the subordination by the lien of the Assessments provided for in this Declaration

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

10.12 **Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Board of Directors and upon fourteen (14) days' written request to the Manager or the Association's registered agent, any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Residential Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Residential Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which even the date of posting shall be deemed the date of delivery) within fourteen (14) days, the Association shall have no right to assert a lien upon the Residential Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

10.13 **Capitalization of the Association.** Upon acquisition of record title to a Residential Unit from Declarant or any seller after Declarant, each Owner shall contribute to the working capital and reserves of the Association an amount equal to twenty-five percent (25%) of the Annual Assessment determined by the Board of Directors for that Residential Unit for the year in which the Owner acquired title. Such payments shall not be considered advance payments of Annual Assessments. The unused portion of the working capital deposit shall be returned to each Owner upon the sale of his Residential Unit, provided that the new purchaser of the Residential Unit has deposited the required working capital deposit with the Association.

ARTICLE 11 ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in Article 12. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 12 DAMAGE OR DESTRUCTION

12.1 **Roll of the Board of Directors.** In the event of damage or destruction to any property covered by insurance written in the name of the Association, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged property insured by the Association.

12.2 **Estimate of Damages or Destruction.** As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Board of Directors shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in Article 12 shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Board of Directors or the Insurance Trustee, if any, determines to be necessary.

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

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

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 10.6, if permitted under the Act, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

12.5 **Disbursement of Funds for Repair and Reconstruction.** The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and

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reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Residential Unit, first to the Mortgagees and then to the Owners, as their interests appear.

ARTICLE 13 EXPANSION AND WITHDRAWAL

13.1 Reservation of Expansion and Withdrawal Rights.

(a) Declarant reserves the right for itself and any Successor Declarant to subject all or any part of the Expansion Property to the provisions of this Declaration and thereby expand the Property to include up to sixty-five (65) additional Residential Units. Notwithstanding the expansion rights set forth in this Article 13, no property shall hereafter be made subject to this Declaration unless at the time it is made subject hereto it is subject to the Master Declaration.

(b) Subject to those restrictions set forth in Section 38-^{33.3}~~33~~-222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject unspecified real property to The Peaks at Aspen Glen and the provisions of this Declaration.

(c) Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from The Peaks at Aspen Glen and from the provisions of this Declaration any real property subjected to this Declaration by a duly recorded Supplemental Declaration and, if necessary, Supplemental Plat prior to the time of a sale of a Residential Unit comprising a portion of the real property described in said Supplemental Declaration and, if necessary, Supplemental Plat.

13.2 **Supplemental Declaration and Supplemental Plats.** Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder for Garfield County, Colorado, of one or more Supplemental Declarations and, if the real property being subject to this Declaration by such Supplemental Declaration has not been previously platted in a plat recorded in the office of other Clerk and Recorder for Garfield County, Colorado, of a Supplemental Plat depicting such Expansion Property recorded concurrently with the applicable Supplemental Declaration. The Supplemental Declaration shall set forth the Lots and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion, which shall contain no more than sixty-five (65) additional Residential Units, as may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant, in its sole discretion, determines. Declarant shall not be obligated to expand The Peaks at Aspen Glen beyond the number of Residential Units initially submitted to this Declaration.

13.3 **Expansion of Definitions.** In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Residential Unit" shall mean the Residential

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Units comprising part of the Property plus any additional Residential Units added by a Supplemental Declaration or Declarations and, if necessary, Supplemental Plat or Plats, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Residential Units shall be effective to transfer rights in the Property as expanded.

13.4 Declaration Operative on New Lots.

(a) The new Residential Units shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon placing the Supplemental Declaration(s) describing the Expansion Property and, if necessary, Supplemental Plat(s) of public record in the real estate records of Garfield County, Colorado.

(b) It is contemplated that additional Residential Units on the Property will be added to this Declaration, but Declarant and any Successor Declarant shall have no affirmative obligation to construct any additional Residential Units. In the event that a portion of the Expansion Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall be obligated to, submit any additional portion of the Expansion Property to the provisions of this Declaration. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all Residential Units which are added to this Declaration in accordance with these provisions relating to enlargement thereof.

(c) No rights of any character of any Owner in units in the Expansion Property shall attach until a Supplemental Declaration and, if necessary, Supplemental Plat is filed of record annexing the units constructed in such area to The Peaks at Aspen Glen. Upon the recording of such Supplemental Declaration and, if necessary, Supplemental Plat, the units constructed in the area shall be deemed to be governed in all respects by the provisions of this Declaration.

13.5 Effect of Expansion.

(a) Upon the construction of additional Residential Units and their inclusion under this Declaration and the filing of the Supplemental Declaration(s) and, if necessary, Supplemental Plat(s) thereof, the Sharing Ratio applicable to a Residential Unit shall automatically be reduced to a fraction, the numerator of which shall be one (1) and the denominator of which shall be equal to the aggregate number of Residential Units then subject to this Declaration. Such reduction in the Sharing Ratio appurtenant to a Residential Unit shall be reflected and set forth in the Supplemental Declaration.

(b) Notwithstanding any inclusion of additional Residential Units under this Declaration, each Owner (regardless of whether such Owner is the owner of a Residential Unit shown on the original plat or is the owner of a Residential Unit constructed in the Expansion Property) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses of the Association, including the expenses for costs and fees, if any.

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13.6 Termination of Expansion and Development Rights. The rights reserved to the Declarant for itself, its successors and assigns for the expansion and development of the Expansion Property ("Expansion and Development Rights") shall expire ten (10) years from the date of recording this Declaration, unless the Expansion and Development Rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board of Directors may impose on the subsequent exercise of the Expansion and Development Rights by Declarant.

ARTICLE 14 DESIGN REVIEW

No alteration of the exterior of a Residential Unit or other structure located on a Lot, including repainting of the structure, shall be made unless first approved in writing by the Board of Directors. The Board of Directors shall exercise its best judgment to the end that all modifications to structures and on land within the Property conform to and harmonize with existing surroundings and structures. The Board of Directors has the absolute right to deny any requested changes which the Board of Directors reasonably determines do not conform to and harmonize with existing surroundings and structures. The provisions for architectural control contained in this Declaration shall be in addition to, and not in lieu of, the architectural control provisions contained in the Master Declaration. The granting of approval for proposed work hereunder shall not dispense with the need also to comply with the approval procedures set forth in the Master Declaration. All proposed construction, modifications, alterations and improvements shall be approved pursuant to this Declaration before being submitted for approval pursuant to the Master Declaration.

ARTICLE 15 DURATION OF COVENANTS AND AMENDMENT

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

15.2 Amendment by Declarant. Until the first Lot subject to this Declaration has been conveyed by Declarant by a recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument executed by Declarant setting forth such amendment or termination.

15.3 Amendment of Declaration by Members. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by members of the Association holding at least seventy-five percent (75%) of the votes of members. The approval of any such amendment or repeal shall be evidenced by the certification by the members to the Board of Directors of the Association of the votes of members. The amendment or repeal shall be effective upon recordation of a certificate executed by the president or a vice-president and the secretary or an assistant secretary of the

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Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the members. Any amendment to the Declaration made hereunder shall be effective only when recorded. All amendments hereto shall be indexed in the grantee's index in the name of Declarant and the Association and in the grantor's index in the name of each person executing the amendment.

ARTICLE 16 LIMIT ON TIMESHARING

No Owner of any Residential Unit shall offer or sell any interest in such Residential Unit under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior written approval of the Association and the Master Association.

ARTICLE 17 COVENANTS RELATING TO THE MASTER DECLARATION

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

17.2 Enforcement of Master Declaration.

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

(b) This Declaration is intended to supplement the Master Declaration as it applies to the Property. In addition to all of the obligations which are conferred or imposed upon the Association pursuant to this Declaration, the Bylaws or the Articles of Incorporation, the Association shall be subject to all of the obligations imposed upon it pursuant to the Master Declaration and the Bylaws of the Master Association. The Association and all committees thereof shall also be subject to all superior rights and powers which have been conferred upon the Master Association pursuant to the Master Declaration and the Bylaws of the Master Association. The Association shall take no action in derogation of the rights of, or contrary to the interests of, the Master Association.

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ARTICLE 18 GENERAL PROVISIONS

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

18.2 **Enforcement.**

(a) Except as otherwise provided in this Declaration, the Board of Directors, Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board of Directors of the Association, Declarant, or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

(b) The Master Association shall be entitled to enforce the provisions of this Declaration to the same extent as the Association or any Owner. The failure of the Master Association to enforce any of the limitations, restrictions, conditions or covenants contained herein shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed on, or incurred by, the Master Association as a result of such failure. The prevailing party in any action at law or in equity instituted by the Master Association or the Association to enforce or interpret said limitations, restrictions, conditions or covenants, shall be entitled to all costs incurred in connection therewith, including without limitation reasonable attorney's fees.

18.3 **Special Rights of First Mortgagees.** First Mortgagees shall have all rights granted to First Mortgagees under the Master Declaration, specifically Sections 11.6, 11.7, 11.8 and 11.9.

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

18.5 **Conflicts Between Documents.**

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

(b) The covenants, restrictions and provisions of this Declaration shall be cumulative with those of the Master Declaration; provided, however, in the event of conflict between or among the provisions of this Declaration, the Bylaws, Articles of Incorporation or rules and regulations pursuant thereto and the Master Declaration, its bylaws, articles of incorporation or rules and regulations, those of the Master Association shall be superior to those

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of the Association. The foregoing priorities shall not prevent enforcement by the Association of provisions or rules which are stricter than those of the Master Association.

ASPEN GLEN GOLF COMPANY, a Colorado limited partnership

By: MANAGEMENT COMPANY FOR ASPEN GLEN, a Colorado corporation, its General Partner

By: Donald L. Parris (Title)

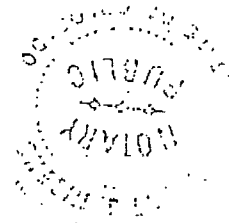
STATE OF COLORADO)
)ss.
COUNTY OF GARFIELD)

The above and foregoing instrument was acknowledged before me this 1st day of MAY, 1998, by Donald L. Parris, VICE PRES of Management Company for Aspen Glen, a Colorado corporation, the General Partner of Aspen Glen Golf Company, a Colorado limited partnership.

Witness my hand and seal.

My commission expires: 11/22/99

William J. [Signature]
Notary Public



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EXHIBIT A

A parcel of land being a portion of the Aspen Glen Planned Unit Development located in Section 19, Township 7 South, Range 88 West of the Sixth Principal Meridian, Garfield County, Colorado. Said parcel being more particularly described as follows:

Beginning at a point on the Southerly right of way of Bald Eagle Way from whence the East one quarter corner of Section 19, a 1986 BLM aluminium cap found in place, bears S 49°48'18" E 1511.71 feet distant; thence N 87°10'44" W a distance of 803.07 feet; thence S 75°14'46" W a distance of 450.25 feet; thence S 63°01'14" W a distance of 251.13 feet; thence N 59°51'19" W a distance of 175.70 feet; thence N 11°41'54" E a distance of 271.06 feet to a point on the Southerly right of way of Bald Eagle Way; thence continuing along Bald Eagle Way the following courses and distances:

1). 299.97 feet along the arc of a curve to the left having a radius of 382.17 feet, a delta angle of 44°58'17" and a chord bearing N 84°03'44" E, 292.33 feet;

2). N 61°34'36" E a distance of 199.50 feet;

3). 334.63 feet along the arc of a curve to the right having a radius of 545.50 feet, a delta angle of 35°08'51", a chord bearing N 79°09'01" E 329.41 feet;

4). S 83°16'33" E a distance of 458.68 feet;

5). 95.78 feet along the arc of a curve to the right having a radius of 585.50 feet, a delta angle of 09°22'23", a chord bearing S 78°35'22" E 95.68 feet;

6). 156.37 feet along the arc of a curve to the right having a radius of 185.50 feet, a delta angle of 48°17'53", a chord bearing S 49°45'14" E 151.78 feet;

7). S 25°36'17" E a distance of 129.25 feet;

8). 80.64 feet along the arc of a curve to the left having a radius of 214.50 feet, a delta angle of 21°32'22", a chord bearing S 36°22'28" E, 80.16 feet to the point of beginning.