

**SECOND AMENDED AND RESTATED
DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF
MESA ANTERO FILING 2**

THIS SECOND AMENDED AND RESTATED DECLARATION is made to be effective the 31st day of December, 2009, by and on behalf of all the **Owners of Lots in Mesa Antero Subdivision Filing 2**, Chaffee, County, Colorado, as follows:

WHEREAS, that certain Declaration of Restrictive and Protective Covenants for Mesa Antero Subdivision Filing 2 (herein "Filing 2") was recorded on October 10, 1972 in the office of the Clerk and Recorder of Chaffee County, Colorado at Book 380, Pages 902-906, which was amended by the Addendum to Protective Covenants recorded December 1, 1972, at Book 382, Page 87 (herein the "Original Declaration"); and

WHEREAS, that certain document entitled "Protective Covenants for Mesa Antero Subdivision Filing 2" recorded on December 9, 1999 in the office of the Clerk and Recorder of Chaffee County, Colorado at Reception No. 308149 was intended to be an amended and restated declaration for Filing 2 (herein the "First Amended Declaration"); and

FURTHER, the Owners hereby declare that the Property, more particularly described on the plat of Mesa Antero Subdivision Filing 2, recorded in the records of Chaffee County, shall be held, sold, and conveyed subject to the following restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be binding on all parties having any right, title, or interest in said Property, or any part thereof, and their heirs, successors, and assigns, and shall inure for the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1.1 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.2 "Plat" shall mean and refer to the plat of Mesa Antero Subdivision Filing 2, recorded in the records of Chaffee County, Colorado, as it may be amended or supplemented.

Section 1.3 "Property" shall mean and refer to the property described on the Plat of Mesa Antero Subdivision Filing 2 referenced above.

Section 1.4 "Lot" shall mean and refer to each separate parcel of the Property which is designated with a number on the Plat, title to which shall be held in fee simple.

“Lots” shall refer collectively to Lots 24 through 53 (there is not a Lot Number 29 on the Plat) as shown on the Plat.

ARTICLE II MESA ANTERO ARCHITECTURAL CONTROL COMMITTEE (MAACC)

Section 2.1 Architectural Control by MAACC. No structure shall be erected, placed, or altered nor additions made to any structure on any Lot in Filing 2 until the plans, specifications, and site plan showing the location of such structures have been approved in writing by the Mesa Antero Architectural Control Committee as to: (1) conformity and harmony of external design with existing structures of Filing 2, (2) the location of such structures with respect to topography, easements, and finished grade elevations; and (3) for compliance with all other structural restrictions specified within this Declaration. In the event that said Committee fails to approve or disapprove within thirty (30) days any said plans and specifications that have been submitted to it, or if no timely appeal of the Committee’s decision has been filed by a Lot Owner of Filing 2, approval will not be required and this covenant shall be deemed to have been fully complied with. Approvals by said Committee shall be valid for a period of three (3) years.

Section 2.2 The membership of the Mesa Antero Architectural Control Committee shall be a maximum of six persons and a minimum of four persons, each representing a different Filing, if feasible. Each member shall be a full time resident and duly elected by the owners of the lots of the Filing they wish to represent. The term of membership shall be three years; terms shall be staggered to maintain continuity of the Committee. Members shall not serve consecutive terms, unless there is no volunteer from the Filing to be represented and, in no event, shall a member serve more than three (3) consecutive terms. In the event of the death or resignation of any member of said Committee, the remaining member or members shall have full authority to designate a successor. The members of the Committee shall not be entitled to any compensation for services performed pursuant to this covenant; however, the Committee may charge an appropriate administrative fee. The Committee may define and apply definitions to any architectural terminology used in these covenants. Neither the Committee nor any member shall be liable because of the approval or disapproval of any plans submitted to said Committee. At any time, the owners of a majority of the Lots of Filing 2, one vote per lot, shall have the power through a duly recorded written instrument to change the membership or the Committee’s powers and duties, as applied in Filing 2.

Section 2.3 By the affirmative vote of the Owners of twenty of the twenty-nine Lots, the Owners in Filing 2 shall have the right to accept, reject, or modify, at any time, any provision of the rules and guidelines of the Mesa Antero Architectural Control Committee as applied to the Lots in Filing 2. Notice of any such affirmative vote shall be delivered in writing to the Mesa Antero Architectural Control Committee.

Section 2.4 The owners of Filing 2 hereby specifically authorize the Mesa Antero Architectural Control Committee to minimize the impact of any proposed structure on the views of any existing residence in Filing 2 and in doing so to seek a reasonable balance between the impact on the view and the utility of the proposed structure.

Section 2.5 The owners of Filing 2 hereby specifically authorize the Mesa Antero Architectural Control Committee to adopt, publish and apply the guidelines, procedures, rules and regulations of the MAACC in Filing 2, subject to the provisions of Section 2.3 above.

ARTICLE III COVENANTS AND RESTRICTIONS

Section 3.1 General Restriction. The Property will be used only for the purposes set forth in this Declaration, as permitted by the applicable ordinances of Chaffee County and the laws of the State of Colorado and the United States, or other specific recorded covenants affecting all or any part of the Property. The Plat, recorded in the Chaffee County Clerk and Recorder's Office, comprises a part of this Declaration of Covenants. There are additional Notes, Covenants and Restrictions set forth on the Plat.

Section 3.2 Utilities. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting, or other material shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of utilities, or that may change the direction of flow of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 3.3 Existing Structures. The existing structures on the Lots shall be exempt from the requirements of this Declaration only to the extent that said structures are out of compliance as of the date of this Declaration as to any dimensional or design standard required under Section 3.4. In all other respects, including, assessments, use restrictions, future maintenance, additions, exterior remodeling and modifications, the Lots shall be bound by this Declaration.

Section 3.4 Use Restrictions.

(a) **Residential Use.** No Lot shall be used and no improvements on any Lot shall be hereafter constructed or converted for any use other than residential. Not more than one single-family dwelling and a private garage for not more than three automobiles and other outbuildings incidental to residential use of the Lot shall be permitted on any Lot. Any outbuildings or other structures must be approved by the MAACC prior to the

construction or placement. In no event shall there be constructed more than one single-family dwelling unit per Lot.

(b) Home Business. Permitted residential purposes may include home occupations, so long as such activity does not have any one or more of the following elements: create any vehicular traffic to and from such Lot; employ persons for home occupation purposes at such Lot other than those residing at such Lot; require storage of any significant materials, machinery, inventory or other items at or on such Lot; require processing of materials and the finish of products or the assembly of parts produced offsite; require additional parking at such Lot, whether for customers, delivery or otherwise; or otherwise violate any provision of this Declaration or violate any County regulation governing home occupations. There shall be no exterior signage or advertising on the Lots in conjunction with any use of the Lot. Bed and breakfasts operations are specifically prohibited under this provision.

(c) Leases. An Owner shall have the right to lease that Owner's residence upon such terms and conditions as such 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 residence may be leased only for the above use and occupancy; (iii) the term of any lease shall be at least thirty (30) consecutive days in length; (iv) any failure of a lessee to comply with the terms of the Declaration, shall constitute a default by such Owner under the applicable document; (v) any failure of a lessee to comply with the terms of the Declaration shall be a default under the lease; (vi) notwithstanding any other provision contained herein, it shall be prohibited for residences to be leased for short-term vacation rentals, with terms or occupancy less than thirty (30) consecutive days. Further, no Owner of any Lot shall offer or sell any interest in such Lot under a "timesharing," "interval ownership" plan, or any similar plan.

(d) Building Height. The maximum height for any residence or other permitted structure is calculated as follows: The vertical distance from the high point of the grade at the structure perimeter to the high point of the structure must not exceed twenty-eight (28) feet, and the vertical distance from the low point of the grade at the structure perimeter to the high point of the structure must not exceed thirty-five (35) feet. "Grade at the structure perimeter" means either the natural grade or the finished grade, whichever is lower in elevation. Height shall be reviewed and calculated at the time of plan review and may be reduced by the ACC based upon consideration of site factors including, but not limited to, visual analysis, topography, and proposed height relative to existing vegetation. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of the adjacent Lots.

(e) Square Footage. Any single-family dwelling shall contain a minimum of 1,000 square feet of living area exclusive of porches, decks, and garages.

(f) Utilities and Towers. Building or installing any new aboveground public or private utilities shall be prohibited, including but not limited to electrical transmission lines, wind towers for generating electricity, antennas, cell phone towers, solar collecting facilities, and radio and television telecommunications towers, except if approved in

advance in writing by the MAACC. However, wind towers and solar collecting facilities which are intended to primarily provide electricity for use on the Lot may be allowed if approved in advance in writing by MAACC, provided that the Owner's proposal does not substantially diminish or impair the views, or create any other nuisance, of the Lots in Filing 2, including views from any neighboring Lot or road. Towers, for any purpose, if permitted, shall not exceed 40 feet above pre-construction grade.

(g) Parking and Storage of Vehicles. Recreational vehicles, including, without limitation, boats, trailers, campers, or self-contained motorized recreational vehicles or motor homes, shall be parked, stored and maintained so that the vehicle is as adequately screened as possible from view from adjoining Lots through use of the topography of the Lot, vegetation, and existing and permitted structures, or all such vehicles may be parked, stored or maintained within a garage. The determination of the adequacy of screening from view shall take into account the impact of any such vehicle on the views from the adjoining Lots in Filing 2. It is the intention of this provision to encourage communication between Lot Owners in Filing 2 on this subject of the parking and storage of recreational vehicles prior to their placement. Further, trucks larger than standard full-sized pickups, commercial vehicles, construction equipment or machinery of any kind shall not be stored on any lot either temporarily or permanently other than in connection with current construction or maintenance work for said property. Moreover, no automobile, truck, trailer, recreational vehicle, mobile home, all terrain vehicle, snowmobile, tent, or temporary structure of any nature whatsoever, shall ever be temporarily or permanently parked, located, or otherwise maintained forward of the front building setback or limit line on any Lot, as shown on the recorded Plat of Filing 2. However, it is not the intention of this paragraph to exclude the temporary parking of vehicles on any portion of the driveway. New construction plans shall take into account the ability to park recreational vehicles and other vehicles described above such that the vehicles can be adequately screened from view through the use of proposed structures and topography.

(h) Changes to Watercourses, Topography, and Drainage. Any alteration or impairment of any natural watercourse, including Brown's Creek and side channels of Brown's Creek, irrigation ditch, wetland or other water body is prohibited. Prohibited alteration includes constructing ponds, ditches, or altering the banks of Brown's Creek and side channels of Brown's Creek. Under no circumstances shall the drainage characteristics of any Lot as be altered by any Owner or his agents during the course of landscaping, subsequent construction within the Lot or by erosion that is a direct result of lack of landscaping or maintenance. Drainage swales, channels and easements shall not be altered, obliterated or blocked by an Owner. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of the adjacent Lots. Each Owner shall be responsible for maintaining such grades, swales and easements within his Lot, and to keep any culverts located within a Lot free of debris. Each owner shall be responsible for taking measures to prevent and control erosion on his Lot.

(i) Location of Improvements. No building shall be located on any lot nearer to the front lot line or nearer to the side lot line than the minimum building setback lines

shown on the recorded Plat. In any event, no building shall be located on any Lot nearer than 50 feet to the front lot line. No dwelling shall be located nearer than 25 feet to a side lot line. For the purpose of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot or easement. Structures shall be located to minimize the impact of any proposed structure on the views of any existing residence in Filing 2, and the Owners in Filing 2 and the MAACC shall seek a reasonable balance between the impact on the view and the utility of the proposed structure in accordance with Section 2.4 above. No fences or walls of any type or nature whatsoever shall be constructed, erected, placed, or maintained forward of the front building limit or setback line on any Lot, as shown on the recorded Plat of Filing 2, provided, however, that it is not the intention of this paragraph to exclude the use of evergreens or other shrubbery to landscape front yards.

(j) Architectural Standards. All structures located on a lot shall be of similar design and construction so that their appearance is reasonably uniform within the Lot.

(k) Construction Standards. All homes shall be constructed onsite. No mobile home, portable home, modular home or factory built home shall be permitted to be placed, permanently or temporarily, on any Lot.

(l) Completion of Construction. Any exterior construction of a single-family dwelling, garage, or other structure permitted herein must be completed within eighteen (18) months of the initiation of on-site construction. Completion shall be defined as receipt of a Certificate of Occupancy from the Chaffee County Building Department and the completion of all exterior finishes specified and approved with the MAACC application. If an Owner shows good cause for delays in completion of construction, this time period may be extended upon approval of the MAACC. The construction of any other structures on the Lot shall not be permitted prior to the construction of the residence. No building material may be stored on the Lot except during the period allowed for completion of construction.

(m) Exterior Lighting. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare. All outdoor lighting, including without limitation security lighting, shall be fully shielded and directed so as to minimize glare as seen from other Lots, and to prevent light pollution and light trespass into abutting properties, roads or the open sky. The following types of lighting are prohibited: (i) lights which are mounted on the ground or poles for the purpose of illuminating the building façade; (ii) blinking, flashing or changing intensity lights; (iii) lighted signs; (iv) vapor lights and barnyard lights, and lights mounted on poles in excess of 6 feet in height; and (v) general area flood lights and spotlights. Generally, dusk to dawn lighting is prohibited except for: (i) low intensity, downcast, lighting used to illuminate walkways and stairways; (ii) the lighting of the American flag with a narrowly focused beam, shrouded to limit light pollution into abutting properties and roads, with a bulb not to exceed 60 watts or the equivalent. Other than these exceptions, all exterior lighting should be turned off when not needed for an immediate activity such as parking, or the arrival and departure of individuals to and from the residence. Lamp posts which are 6 feet in

height or less shall be permitted for illuminating walkways and driveways, subject to the general restrictions in this section.

(n) Maintenance. The Owner of each Lot shall keep and maintain all improvements and landscaping in a clean, safe, and attractive condition and in good repair. The exterior of a home must be maintained in an attractive manner. Significant blistering or peeling of exterior painted surfaces shall be repaired as soon as reasonably possible. Any exterior building components (i.e., siding, gutters and downspouts, roof shingles, windows and doors) which are missing, broken or otherwise in a state of disrepair shall be repaired as soon as reasonably possible.

(o) Signs. No sign of any kind shall be displayed to the public view on any lot except one sign of professional quality having an area of not more than two square feet, limited to the name of the property, name of the owner(s), and street number and name; one temporary sign having an area of not more than five square feet advertising the property for sale or rent; and signs used by a builder to advertise the property during the construction and sales period. Notwithstanding the foregoing, Owners may display political campaign signs during campaign season in accordance with state law and local regulations.

(p) Animals. No pigs, livestock, or poultry of any kind shall be raised, kept or bred on or within any of the Lots. Each Lot Owner or other occupant may keep dogs, cats, or other pets which are restrained within the Lot, provided that such pets are not kept, raised or bred for commercial purposes. No dog shall be allowed outside the Lot, or any fenced portion thereof, unless under control and accompanied by a responsible person. Each Lot Owner or resident must promptly remedy or remove any pet which causes undue noise or disturbance so as to constitute a nuisance to other Lot Owners.

(q) Storage of Unsightly Items. No junk vehicle, inoperable vehicle, or vehicle under repair shall be parked, stored or maintained on any Lot unless concealed within a garage. Junk and inoperable are defined as unable to move under its own power, partially or totally dismantled, or missing all or portions of its body work or substantially damaged, or is not registered or licensed, if required under law.

(r) Camping. No structure of a temporary character, trailer, mobile home, recreational vehicle, tent, shack, barn, garage, basement, outbuilding, or structure of a similar nature shall be used as a residence during construction of a dwelling or at any other time, either temporarily or permanently. However, a temporary exception for up to a two week period is made for visiting friends and relatives for situations which can include, staying in their own RV, children and grandchildren having a camp out experience on the Lot.

(s) Trash and Receptacles. No lumber, metals, bulk materials, scrap, refuse, or trash shall be kept, stored, or allowed to accumulate on any Lot, except for firewood and except for building materials during the course of construction, and except for refuse or trash in a suitable container appropriately enclosed or screened from view for such

reasonable time as is necessary prior to collection or disposal thereof. Receptacles shall be promptly retrieved from the roadside. The Owner of each Lot shall arrange for the proper and frequent removal of trash.

(t) Mining and Drilling. No oil or gas drilling, oil or gas development operations, oil refining, exploration activities, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil or gas wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot.

(u) Noise and Odors. No sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be emitted from any Lot which is noxious or unreasonably offensive to other Owners.

(v) Noxious Activities. No noxious, offensive or unsightly activity shall be conducted on any Lot, nor shall anything be done or placed on a Lot which is or may become a nuisance or cause disturbance or annoyance to others, or which may pollute the Property or create an environmental hazard.

(w) No Partition, Subdivision, Combining Lots. No action shall be brought for partition of a Lot between or among the Owners thereof. Each Owner hereby expressly waives any and all such rights of partition and subdivision. This section shall not, however, be interpreted to prevent adjustments to Lot lines agreed to by the Owners of the Lots affected. Combining lots shall not be permitted without written approval of twenty of the twenty-nine Owners of all Lots in Filing 2 and Chaffee County. If an Owner combines two or more Lots with the intent of creating one lot there from, such resulting Lot shall continue to have the full share of common expenses originally assigned to the Lots so combined, if any.

(x) Fires. Owners must check with the county sheriff to determine if there are fire bans in place. Burns must be done in the early morning before winds become a problem. Evening fires for a social function shall be thoroughly extinguished before being left unattended.

ARTICLE IV GENERAL PROVISIONS

Section 4.1 Enforcement.

(a) Any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration.

(b) Failure by any Owner to enforce any provision, covenant, or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(c) In any civil action to enforce any provision, covenant, or restriction, or to seek reimbursement of expenses incurred by a non-violating Owner as provided under this Section, the prevailing party shall be entitled to an award of reasonable costs and attorney fees.

Section 4.2 Remedies. Every violation of these Covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against an Owner will be applicable.

Section 4.3 Mediation. Notwithstanding the provisions above, if a dispute or deadlock arises between Owners concerning any material provision of this Declaration, the Association's Articles of Incorporation or Bylaws, the Association Rules, or any decision of the MAACC, and the parties are unable to resolve the dispute within a reasonable time, the dispute shall be referred to mediation by request made in writing by one party upon the other. Within ten (10) days of the receipt of such request, the parties shall select a panel of 3 full-time residents of Filing 2 to serve as impartial mediators. Unless otherwise agreed upon in writing by all parties to the dispute, the venue shall be in Chaffee County, Colorado. The cost of the mediator shall be borne equally by the parties regardless of outcome. Mediation shall then proceed in accordance with the following guidelines.

(a) The purpose of the mediation is to (1) promote discussion between the parties; (2) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (3) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy.

(b) The mediators may meet with the parties and their counsel jointly or ex parte. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as required by the mediator.

(c) All information presented to the mediators shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceedings or construed as an admission of a party.

(d) Neither party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediators conclude that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

(e) In the event either condition expressed in subparagraph (d) above occurs, and the parties are unable to resolve the dispute through mediation, then the parties

shall be entitled to pursue whatever appropriate legal recourse they have to resolve the dispute.

Section 4.4 Severability. Invalidation of any one or more 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.

Section 4.5 Declaration and Plat Amendments. The covenants, conditions, restrictions and liens of the Declaration shall run with and bind the Property in perpetuity. However, this Declaration may be amended, at any time, by the affirmative vote of the Owners of twenty of the twenty-nine Lots. If authorized by a vote of twenty of the twenty-nine Owners of all Lots, a designated representative of Filing 2 shall be authorized to execute and cause any such amendment to be recorded in the records of the Chaffee County Clerk and Recorder.

Section 4.6 Notices. Any notices, certificates, demands or the like required or permitted hereunder shall be in writing and delivered either in person to the party to which such notice is to be given, or by United States Mail, Certified, Return Receipt Requested, postage fully prepaid, to the addresses designated in writing and delivered as provided herein to the other Owners by each Owner upon transfer of title. If no such notice of address is provided, the other Owners shall have the right to demand an address be designated and, if not so designated, the other Owners may use the address shown on the recorded deed or other instrument by which title to the Lot was taken. Notice shall be deemed as having been given upon personal delivery or three (3) days after deposit in the U.S. Mail.

Section 4.7 Recreation Area. The recreation area as shown on the plat for Filing 2, which is unnamed, has been dedicated to the Mesa Antero Property Owners Association. Blue Spruce Park and the stable areas, both located in Filing 3, have been deeded to the Mesa Antero Property Owners Association.

Filed with Chaffee County Clerk and Recorder on December 15, 2009
Reception #: 385242