

THIRD AMENDMENT TO THE DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ASPEN HOLLOW SUBDIVISIONS I, II AND III

JULY, 2010

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ARTICLE I

Introduction

THIS THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs) FOR ASPEN HOLLOW SUBDIVISIONS I, II AND III is a replacement for and completely supersedes the existing Declaration of Restrictions of Aspen Hollow Subdivisions I, II and III, which was originally filed of record with the Blaine County Recorder's Office on March 8, 1977, as Instruments No. 172142 and 172143, as amended by the First and Second Amendment to the Declaration of Restrictions of Aspen Hollow Subdivisions I, II and III, filed of record with the Blaine County Recorder's Office on October 12, 1994, as Instrument 371674. This Third Amendment shall hereinafter be referred to as the "Third Amendment".

This Third Amendment shall be binding upon every Owner of, and every Lot within Aspen Hollow Subdivisions I, II and III in Blaine County, Idaho, whether the burdens there are increased or decreased by this Third Amendment. **This Third Amendment has been approved by at least fifty-one percent (51%) of the Owners** of the Aspen Hollow Homeowners Association, Inc. (hereinafter referred to as the "Association"), as defined herein. This Third Amendment is intended to preserve the value, desirability and attractiveness of Aspen Hollow Subdivisions I, II and III; to create and protect the highest quality development of the property within Aspen Hollow Subdivisions I, II and III, and to insure proper maintenance thereof.

It is not the intent of the Board of Directors and Officers to police or control the activities of the Owners within the Aspen Hollow Subdivisions I, II and III. The Aspen Hollow Subdivisions Owners are encouraged to have open communication and interaction with other Owners within the Aspen Hollow Subdivisions and their immediate neighbors. Owners are encouraged to listen to the suggestions and complaints of other Owners, attempt to not be "defensive" in listening to such suggestions and complaints, and attempt to resolve disputes between Owners without the use of these Declarations. The enforcement mechanisms in these Declarations are available as a last resort in the event that disputes cannot be resolved between the concerned owners themselves.

ARTICLE 2

Declaration

2.01 Scope of Declaration. This Third Amendment declares that all of the property within the Aspen Hollow Subdivisions I, II and III, and each Lot therein, is and shall be held, sold, and conveyed, encumbered, hypothecated, used, occupied, and improved subject to the following covenants, conditions, restrictions, easements, and equitable servitudes which are for the purpose of protecting the value and desirability of, and which shall run with the property. The covenants, conditions and restrictions contained in this Third Amendment shall:

A. Be binding upon all persons having or acquiring any right, title, or interest in or to the property or any Lot, and their successors or assigns;

B. Inure to the benefit of every portion of the property any Lot or any interest therein;

C. Inure to the benefit of and be binding upon the Association, its successors, and assigns, and each grantee and his respective successor in interest; and

D. Be enforced by any Owner or grantee or his successor in interest, or by the Association.

2.02 Other Restrictions. The covenants, conditions and restrictions contained in this **Third Amendment are in addition to** any other land use restrictions, zoning ordinances, laws, rules, and decisions of other governmental authorities and governmental and judicial authorities including **Blaine County and the South Central Health Department of Idaho**. This Third Amendment does not supplant any such land use restrictions which are enforced, and must be satisfied, independent of this Third Amendment.

ARTICLE 3

Definitions

Unless the context requires otherwise, the following words and phrases when used in this Third Amendment shall have the meanings hereinafter specified:

3.01 ARTICLES shall mean the Articles of Incorporation of the Association which will be filed in the office of the Secretary of the State of Idaho, as amended from time to time.

3.02 ASSESSMENTS shall mean those payments required of the Association members, including regular and special assessments as further defined in this Third Amendment.

3.03 ASSOCIATION shall mean the Aspen Hollow Homeowners Association, Inc., the Association described in this Third Amendment, its successors and assigns.

3.04 ASSOCIATION EASEMENTS shall mean easements granted to Owners and the Association for the benefit of its members.

3.05 ASSOCIATION RULES shall mean the rules and regulations of the Association as amended from time to time.

3.06 EASEMENT shall mean and refer to an easement for the community water line which lies within the sixty foot (60') right-of-way known as Canyon Drive and Aspen Hollow Road.

3.07 BENEFICIARY shall mean a mortgagee under a mortgage or a beneficiary or holder, which mortgage or deed of trust encumbers parcels of real property on the property.

3.08 BOARD shall mean the Board of Directors of the Association.

3.09 BYLAWS shall mean the ByLaws of the Association which have been or shall be adopted by the Board, as such ByLaws may be amended from time to time.

3.10 COMMON AREA shall mean and refer to the common area of Aspen Hollow Subdivisions I, II and III which consists of the roads and the community water system (well, pump, pump house, water lines and hydrants).

3.11 DECLARATION shall mean the original Declaration, as first amended on March 8, 1977, and as further amended by the Second and Third Amendment.

3.12 DEED OF TRUST shall mean a mortgage or a deed of trust, as the case may be.

3.13 DESIGN REVIEW COMMITTEE RULES shall mean the rules adopted by the Design Review Committee pursuant to hereto.

3.14 DESIGN REVIEW COMMITTEE shall mean one (1) Board member and two (2) at large members to be appointed by the Board of Directors from the membership of the Aspen Hollow Homeowners Association. The Design Review Committee shall review and approve all structures and appurtenances thereof of every type and kind, including, but not limited to, new construction and remodeling of buildings, outbuildings, garages, carports, fences, screening walls, retaining walls.

3.15 IMPROVEMENT shall mean all things contracted upon, above, or below the property and appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, swimming pools, poles, signs, exterior air conditioning, irrigation systems above ground, antennae, sport courts and satellite dishes, whether temporary or permanent, fixed or

removable. Improvement shall also mean any excavation or fill for any purpose, ditch, fill, or other device which affects or alters the natural or existing flow of water.

3.16 LOT shall mean one or more Lots contained in the Aspen Hollow Subdivisions I, II and III.

3.17 MEMBER shall mean any person who is an Aspen Hollow lot owner, is thereby a Member of the Association. The term "Member" and "Owner" are used synonymously in this document.

3.18 MORTGAGE shall mean any mortgage or deed of trust or other conveyance of a Lot to secure the performance of an obligation which will be void and reconveyed upon the completion of such performance.

3.19 NOTICE AND HEARING shall mean thirty (30) days written notice and public hearing before the Board at which time the owner concerned shall have an opportunity to be heard in person or by counsel at owner's expense.

3.20 OWNER shall mean the person or persons or other legal entity or entities holding a fee simple interest in a Lot or, as the case may be, the purchaser of a Lot under an executory contract of sale (but excluding those having such interest merely as security for the performance of an obligation). Fractional ownership interests of more than two owners shall not be allowed. For the purposes of Articles 4 and 5 only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and lessees of any Owner.

3.21 PERSON shall mean a natural individual or any other entity with the legal right to hold title to real property.

3.22 RESTRICTIONS shall mean the original Declaration, as first amended on March 8, 1977, and as further amended by the Second and Third Amendment, as said original Declaration and amendments thereto may be amended from time to time, and the Rules from time to time as may be put in effect by actions of the Board of Directors.

ARTICLE 4

General and Specific Restrictions

Except upon prior written approval of the Design Review Committee, the property shall be held, used and enjoyed subject to the following limitations and restrictions:

4.01 Design Review Committee. **There shall be no improvements of any kind**, including excavation, construction, or alteration on any Lot, no action to construct, place or erect any improvement on any Lot (or which in any way alters the exterior appearance of any improvement of Lot or removal of any improvement), and no other structure of any kind shall be built, erected, placed, or altered on any Lot **without the prior written approval of the Design Review Committee** in accordance with this Third Amendment and the Design Review Committee rules and regulations as set forth in Article 8 herein.

4.02 Insurance Rates. Nothing shall be done or kept on the property or any Lot which will increase the rate, or result in the cancellation of insurance payable by any other Owner or the Association.

4.03 No Further Subdivision. **No Lot may be further subdivided**, nor may any easement or other interest therein less than the whole be conveyed by the owner thereof; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Design Review Committee for the transfer or sale of any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property.

4.04 Animals. In accordance with Blaine County regulations, no more than one (1) horse (mules, donkeys, llamas or the like) per one-third (1/3) of an acre of land is permissible. This assumes that each home and garden occupies one-third (1/3) of an acre. **Therefore, on one (1) acre of property, no more than two (2) large animals are allowed** (i.e. horses, mules, donkeys, llamas or the like). The allowed animals may be raised and kept on a Lot so long as they are maintained in a manner which does not adversely affect neighbors, and not for commercial purposes.

No animals of any kind shall be raised, bred or kept on any Lot for commercial business.

Domestic cats and dogs may be kept on any Lot, provided that no cat or dog is a nuisance to the neighbors; they are not allowed to run at large, chase wild animals or bark/meow excessively. Dogs and cats shall be kept on their owner's property at all times except when they are under the control of the owner or on a leash.

4.05 Nuisances. **No rubbish or debris of any kind shall be placed or permitted to accumulate** upon the property and no odors shall be permitted to arise therefrom so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to any other Lot in the vicinity thereof or to its occupants. No noise, including but not limited to, noise created by people, animals, equipment, electronic device, audio receiver, television, stereo, musical instrument and/or machinery, or any other audible nuisance shall be permitted which is offensive or detrimental to any other Lot in the vicinity thereof or to its occupants.

4.06 Maintenance of Buildings and Landscaping. **No improvement upon any Lot shall be permitted to fall into disrepair**, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof.

4.07 Unsightly Articles. No temporary building, trailer, garage, building in the course of construction, prefabricated trailer or other structure shall be used, temporarily or permanently, as a residence on any Lot. **No unsightly articles shall** be permitted to remain so as to **be visible from adjoining properties**. Without limiting the generality of the foregoing, trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than cars, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept, except in actual use, in an enclosed structure or screened from view. Except for trash pickup day, garbage and trash shall be kept at all times in a covered container and any such

container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view; and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or appropriately screened from view.

4.08 Signs. Any lot Owner, for the purpose of renting or selling his or her property or to permit a contractor to advertise his work of construction on the property, may place only one sign, a maximum of twenty-four inches by thirty-six inches (24" x 36") on the property. Other signs as may be petitioned by the Member shall be subject to the approval of the Design Review Committee.

4.09 No Mining or Drilling. No property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except that the Association may, by appropriate permit, grant, license or easement, allowing the drilling of wells for the extraction of water for domestic use and landscape irrigation.

4.10 Vehicles. All vehicular use shall be restricted to subdivision roadways. Except for electric golf carts, all use of snowmobiles, ATVs, "dirt bikes", and other motorized "off-road" type recreational vehicles shall be prohibited from use within the subdivision except for ingress and egress to the subdivision.

4.11 Landscaping. Within one (1) year after completion of an Owner's residence, (unless such time is extended by the Design Review committee for good cause), such Owner shall install the landscaping provided for in the plans and specifications approved by the Design Review Committee.

4.12 Violation of Property Restrictions. There shall be no allowed violation of the Association Rules or the Design Review Committee Rules. If any Owner, his family, or any licensee, lessee, or invitee is in violation thereof, the Board may, in addition to any other legal remedies it may have, impose a special assessment upon such person of not more than **one hundred dollars (\$100.00) for each violation**. Before invoking any such assessment, the Board shall give such person **reasonable notice** of the violation **and a reasonable opportunity to cure** the violation and to be heard regarding the violation and any assessment. Any assessment imposed on any violation which remains un-remedied for an additional **thirty (30) days** shall incur an additional **twenty-five dollar (\$25.00) per-day charge** until such assessment becomes paid in full, and **any accumulated charges, with an interest rate of 1 ½% per month, shall become a lien upon the Owner's Lot**, upon its inclusion in a Notice of Assessment as hereinafter set forth.

4.13 Fractional Ownership. The ownership of each residence shall not be divided by more than two undivided interests. The intent is to not allow fractional ownership beyond two fifty percent (50%) ownership interests.

ARTICLE 5

Permitted Uses and Restrictions

5.01 Residential Use. **No Lot shall be used for any purpose other than for residential purposes,** except for non-retail business which do not require non-family employees and do not create a significant increase in traffic or parking, and do not create a nuisance for property Owners.

5.02 Improvements. **All new residences, new outbuildings, new additions or structural changes of any kind shall require written approval** of the Design Review Committee in accordance with the terms hereof and the Design Review Committee Rules.

Unless specifically approved in writing by the Design Review Committee and the Board of Directors:

A. Single-Family Residence. No structure may be erected or maintained on any Lot except one (1) single family dwelling house and no more than two (2) detached outbuildings for use as garages/hobby shops, servants' quarters or quest houses or horse barns in conjunction with said single family dwelling house. The interior living floor area, exclusive of accessory buildings, (easements, garages and uncovered patios or porches) shall be a minimum of 2000 square feet. **The maximum size of all enclosed buildings shall not exceed 7500 square feet,** subject to the Blaine County building codes and the rules of the South Central District Health. Each such outbuilding shall conform in appearance with said dwelling house and no such outbuilding or other structure may be erected prior to the erection of the main dwelling house.

B. Fences, Walls, etc. **No fence or boundary wall of any kind shall be constructed on any Lot without the prior approval** of the Design Review Committee and next-door neighbors.

C. Initiation of Construction. Unless the time is extended in writing by the Design Review Committee, failure to commence the work under a plan within one (1) year from the date of approval shall constitute an automatic revocation of the approval. Once construction is commenced, it must be pursued with diligence to completion within a reasonable time.

ARTICLE 6

Aspen Hollow Homeowners Association, Inc.

6.01 Association. **The Association is a non-profit incorporated organization operating under the laws of the State of Idaho** and charged with the duties and vested with the powers prescribed by law and set forth in its Articles, ByLaws and this Third Amendment. Neither the Articles nor the ByLaws shall, for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Third Amendment.

6.02 Membership

A. Qualifications. Each Owner, by virtue of being such an Owner and for so long as he is such an Owner, shall be deemed a member of the Association.

B. Transfer of Membership. The Association membership of each Owner shall be appurtenant to said Lot and shall not be transferred, pledged, or alienated in any way except upon the transfer of legal and equitable title to said Lot, and then only to the transferee of such title. Any attempt to make a prohibited transfer shall be void. Any transfer of legal and equitable title to said Lot shall operate automatically to transfer said membership to the new owner thereof.

6.03 Voting

A. Number of Votes. The voting members of the Association shall be all Owners. **Each member shall be entitled to one (1) vote for each Lot owned.** The right to vote may not be severed or separated from ownership of the Lot to which it is appurtenant.

B. Joint Owner Disputes. **The vote for each such Lot shall, if at all, be cast as a unit,** and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or they are acting with the authority and consent of all other Owners of the same Lot.

C. Meetings. **An annual meeting shall be held each year at such time designated in written notice by the Board to the Members.** In addition, the Board may meet from time to time as necessary and call special meeting of Members to respond to issues that may arise between the Annual Meetings. At each meeting the Secretary will record what transpires for the Association's records.

D. Elections:

(1) At each Annual Meeting the **Members shall elect three (3) Owners to the Board of Directors** for the forthcoming year. They shall serve for a term of **one (1) year and until their successors are elected,** or until resignation or removal. If any of the elected Member ceases to be an Owner, his or her membership in the Association shall thereupon terminate. In such cases, the remaining Directors shall elect a replacement to serve until the next Annual Meeting.

(2) At a meeting of the Board of Directors, the **Board shall elect three (3) Owners to the Design Review Committee. One member shall be from the Board, two shall be "at-large" Members.**

E. Authority of Board. **The Board, for the benefit of the Subdivisions and the Members thereof, shall enforce all provisions of this Amendment, and shall have the power and duties allowed under Idaho law.**

6.04 Powers and Duties of the Association

A. Powers. **The Association shall have all the powers of a corporation organized under the general non-profit corporation laws of the State of Idaho** subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the ByLaws and this Third Amendment. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this the Articles, the ByLaws and this Third Amendment, and, and to do and perform any and all acts which may be necessary or proper for, or incidental to the proper management and operation of the Association and the performance of the other responsibilities herein assigned, including without limitation:

(1) Assessments. **The power to levy Assessments on the Owners of Lots and to enforce payment of such Assessments**, all in accordance with the provisions of this Third Amendment.

(2) Right of Enforcement. The power and authority from time to time in its own name, on its own behalf or in behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, the ByLaws, or this Third Amendment including the Association rules adopted pursuant to this Third Amendment, and to enforce by mandatory injunction or otherwise, all provisions hereof.

(3) Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any person, firm or corporation to act as manager.

(4) Association Rules. The power to establish, enforce, amend and repeal such rules as the Association deems proper as provided herein.

(5) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper for the operation of the Association, enforcement of the Restrictions and the Association Rules, or performance of any other duties or rights of the Association.

B. Duties of the Association. In addition to power delegated to it by the Articles, without limiting the generality thereof, the Association or its agent, if any, shall have the obligation to conduct all business affairs of common interest to all Owners, and to perform each of the following duties:

(1) Operation and Maintenance of Association Common Area. Operate, maintain and repair all common areas, including, but not limited to all roads, islands, water systems and water mainlines. This shall also include snow removal from Association roadways and monitoring/testing of community water quality as required.

(2) Insurance. Obtain and maintain in force liability insurance in amounts and providing such coverage as the Association Board shall determine.

Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

(3) Rule-Making. Make, establish promulgate, amend and repeal any Association Rules that may prove to be untenable.

(4) Design Review Committee. Appoint and remove members of the Design Review Committee, subject to the provisions of this Third Amendment.

(5) Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Third Amendment, as may be reasonably necessary to enforce any of the provisions of this Third Amendment and the Association Rules.

6.05 Personal Liability. No member of the Board, or any Committee of the Association, or any officer of the Association, or any member of the Design Review Committee, or the Manager of the Association, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any other representative or employee of the Association or the Design Review Committee, or any other committee, or any Officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith without willful or intentional misconduct.

6.06 Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and shall be presented to the Association at the Annual Meeting.

ARTICLE 7

Assessments

7.01 Covenant to Pay Assessments. Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due, all Regular and Special Assessments or charges made by the Association. Such **Assessments**, together with interest, costs and reasonable attorney's fees which may be incurred in collecting the same, **shall be a charge on the land and shall be a continuing lien upon the property against which each such Assessment is made**. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them.

7.02 Sharing Operation, Maintenance and Necessary Improvement Expenses. **All operation, maintenance and improvement expenses to the common area shall be shared on a pro rata basis**. Each Lot Owner's share shall be computed by dividing the total number of Lots in the subdivision by the number of Lots owned by the Owner. In the event any Lot Owner shall use an unreasonably disproportionate amount of water other than that normally used for domestic use in the subdivision, that Lot Owner shall pay his actual share of

the total maintenance and improvement expense attributed to such use. In the event the Lot Owner refutes his increased actual share of maintenance and improvement expenses, as determined by the Directors, water metering devices may be installed on each pipeline so as to accurately measure the use of the water by each Lot Owner, and respective pro rata shares may be computed by the Directors based thereon.

Except for Lot #19 (which is entirely on the bench and out of the Association's service area), all Owners shall share the costs, on a pro rata basis as defined above, associated with the road system shall include, but not be limited to, periodic maintenance and snow removal when required.

7.03 Annual Assessment. The Directors shall estimate the charges required to be paid by the Association for the maintenance of the common area during the calendar year. The total annual assessments against all Subdivision Lot Owners shall be based upon advanced estimates of cash requirements by the Directors to provide for the payment of all estimated operation of the water and road systems. Said estimated cash requirements shall be assessed to the record owners pro rata, as set forth hereinabove, only after the proposed assessment has been presented to the Owners, and has been approved by the Owners by a majority vote of those present and those voting by proxy at the Annual Meeting. Said assessment shall be levied in December of each year for the following year, as determined by the Directors. **Each Owner shall be obligated, and by accepting a deed to a Subdivision Lot agrees, to pay assessments levied, at the rate determined in the Annual Member Meeting, to the Association in four (4) equal quarterly installments, commencing on the first day of January in the calendar year following the assessment.**

7.04 Special Assessment, Deficiencies. If the above estimated sums prove deficient for any reason, the Directors shall estimate the additional charges necessary to cover said deficiency and assess said additional charges to the Owners. Said additional charges shall be prorated over the number of months remaining in the calendar year in which the assessment arose. The special assessment shall be levied against and paid by the Owners in equal quarterly installments for the remainder of said calendar year.

7.05 Liens. In the event of a default in payment of any assessment herein, and in addition to any other remedies herein or by law provided, the Association may enforce such obligations as follows:

A. The Association shall have the authority to create a lien, with power of sale, on each Subdivision Lot to secure payment of the amount of any assessment, assessed to the Owner thereof, provided that no action shall be brought to foreclose such lien or proceed under power of sale, less than thirty (30) days after a Notice of Assessment is mailed to the record Owner of such Subdivision Lot at his address appearing on the records of the Association. Reasonable attorney's fees and expenses in connection with collection of the debt accrued by such lien or foreclosure thereof shall be paid by the Owner against whom such action is brought and secured by the lien. Such lien and rights to foreclosure and sale shall be in addition to and not in substitution for any other rights and remedies which the Owners and the Board may have hereunder and by law.

7.06 Effect of Non-Payment of Assessments. **Any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at 1 ½% per month.** Should interest not be so paid, it shall thereafter bear like interest as the assessment, but such unpaid interest so computed shall not exceed an amount equal to simple interest on the unpaid assessment at the maximum rate permitted by law. Any assessment not paid within thirty (30) days after the due' date shall result in the immediate suspension of the delinquent Owner's voting rights, until such delinquent assessment is paid.

ARTICLE 8

Design Review Committee

8.01 Members of Committee. **The Design Review Committee, (sometimes referred to as "DRC") shall consist of one (1) Board member and two (2) "at large" members.** Each of said persons shall hold office until such time as he has resigned or has been removed and his successor has been appointed, as provided herein.

8.02 Duties of DRC. **No new construction or improvements in the existing state of any property shall be made or permitted without the prior written approval of the Design Review Committee.** The Design Review Committee shall review the application and have complete discretion to approve or disapprove any new construction or improvement.

8.03 Envelopes, Design and Construction of Buildings and Improvements.

A. **"Structure" means any thing or device upon any Lot** (other than trees, shrubbery and landscaping) the placement of which might affect the architectural appearance of such Lot, including by way of illustration and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered patio, swimming pool, clothes lines, fence, wall or hedge over two feet (2') in height, signboard of any temporary or permanent living quarter, including any house trailer. **"Structure" shall also mean any excavation or fill,** the volume of which exceeds five cubic yards (5 cu. yd.) or any excavation, fill, ditch, diversion dam or other device which affects or alters the natural flow of surface waters upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any lot.

B. **All structures shall be located so that at least 51% of the prescribed building envelope is utilized.** The Design Review Committee shall have discretion to allow building partially outside the prescribed envelope when they believe circumstances warrant. Any proposed variance entailing building completely outside the envelope shall not be allowed except when the Owner demolishes and rebuilds an existing structure that had previously been placed outside the envelope. In this event (an existing building is entirely demolished), the Owner must rebuild within the implied envelope of the previous structure, whether inside or outside the original building envelope. The intent is to preserve the view corridor of the neighbors.

Any and all proposed variances of any kind must be approved by the Design Review Committee and the full Board prior to the beginning of the construction.

No lots in Aspen Hollow Subdivision shall be further subdivided.

C. **No structure shall be erected, placed, moved onto** or permitted to remain upon any Lot, nor shall any existing structure upon any Lot be **altered in any way which materially changes the exterior appearance thereof except in accordance with complete plans** therefore previously submitted to, and **approved in writing by the Design Review Committee**. Said Committee has the reasonable power to reject plans and deny the right to construct any structure which does not meet the architectural, engineering design or aesthetic requirements to be consistent with the character of the homes in the Association and as may be set from time to time by the Design Review Committee.

The minimum scale of the plans shall be one inch equals twenty feet (1" = 20'). A plot shall show the location of the buildings, drives, walks, fences, swimming pools and the existing houses on each side of the Lot. Existing and proposed contours of two (2) feet throughout the Lot and fifty (50) feet beyond the property line on all sides shall be shown. Building plans shall show all exterior elevations, indicate the materials to be used and designate the exterior colors to be used by means of actual color samples.

The Design Review Committee will not approve plans which contemplate visible construction with blocks of cement, cinder, pumice or similar material unless such material is faced on the outside with wood, stone, stucco or similar materials and approved by the Design Review Committee. Tar and gravel shall not be used as a finished roof material except on flat-roofed structures where the surface is not visible from the road or neighboring homes. Non-reflective metal roofs shall be allowed subject to approval of color and finish by the Design Review Committee.

D. All requests for approval shall be accompanied by a fee of Twenty Dollars (\$20.00) and two (2) complete sets of plans for which approval is requested.

E. The Design Review Committee shall retain for its permanent records a copy of each approved plan. In the event the Design Review Committee fails to either approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to it, it shall be conclusively presumed that the Design Review Committee has approved such plans and specifications. Unless the time is extended in writing by the Committee, **failure to commence the work under a plan within one (1) year from the date of approval shall constitute automatic revocation of the approval**. Once construction is commenced, it must be pursued with diligence to completion within a reasonable time.

F. **During construction, the Design Review Committee, through its agent, may at any reasonable time or times, enter upon and inspect** any Lot and structure for the purpose of ascertaining whether the maintenance of such Lots and the maintenance or construction or alteration of structures thereon are in compliance with the provisions hereof. Neither the Design Review Committee nor such agent shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

G. **No construction can commence before the Lot Owner receives written approval from the Design Review Committee.**

8.04 No Waiver of Future Proposals. The approval by the Association of any proposals or plans and specifications or drawings for any work done, proposed or in connection with any other matter requiring the approval and consent of the Association, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings no matter whatever subsequently or additionally submitted for approval or consent.

8.05 Non-Liability of Association. Neither the Association nor any member thereof shall be liable to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Association's duties hereunder unless due to the willful misconduct or bad faith of the Association. The Association shall review and approve or disapprove all plans submitted to it for any proposed improvements, alteration or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the property generally. The Association shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

8.06 Variances. **The Association may authorize a variance** from compliance with any of the architectural or the design requirements of this Declaration when circumstances such as topography, natural obstructions, hardships, aesthetic or environmental considerations may require. **Such variance must be evidenced in writing and signed by all Design Review Committee members and all members of the Board.** The granting of such variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as the particular property and particular provision hereof covered by the variance.

ARTICLE 9

Miscellaneous

9.01 Term. **The covenants, conditions, and restrictions of this Third Amendment shall run for a period of fifty (50) years** after the date of their recordation. After such date, such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by at least fifty-one percent (51%) of the Owners, and such written instrument is recorded with the Office of the Recorder of Blaine County, Idaho.

9.02 Amendment. **The provisions of this document may be amended by an instrument in writing, signed by the Board of Directors acknowledging approval of fifty-one percent (51%) of Owners** of the entire three (3) Subdivisions. Approval to the amended document must be given in an Annual Meeting, Action Without a Meeting, or Action by Mailed Written Ballot, which amendment shall be effective upon recordation in the Office of the Recorder of Blaine County, Idaho.

9.03 Enforcement and Non-Waiver

A. Violation of Law. Any violation of any state, municipal or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any property within the property, is hereby declared to be a violation of the Restrictions and subject to any or all of the enforcement procedures set forth in said Restrictions.

B. Remedies Cumulative. Each remedy provided by the Restrictions is cumulative and not exclusive.

C. Nonwaiver. The failure to enforce any of the provisions of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of said Restrictions.

9.04 Construction

A. Restrictions Severable. Each of the provisions of this Declaration shall be deemed independent and severable, the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

B. Attorney's Fees. In the event that the Association or any Owner or Owners shall bring legal action against any Owner to enforce the terms, covenants, conditions or restrictions of this Declaration, and they shall be the prevailing party in said lawsuit, the court shall award to the prevailing party reasonable attorney's fees and court costs.

*****END OF THIRD AMMENDMENT OF ARTICLES*****

