



18 Truscott Place • Aspen, CO 81611
970-920-5050 • www.apcha.org

Strengthening Community Through Workforce Housing

Hearing AGENDA

April 19, 2021

10 AM, IN PERSON AND ONLINE Zoom Meeting (see instructions below)

For Public Comment, please see below to schedule

IN PERSON LOCATION: 18 Truscott Place, Aspen, Colorado

ONLINE Zoom Meeting:

START TIME: 10:00 AM

Time: Apr 19, 2022 10:00 AM Mountain Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/89226405663?pwd=R2tYWml3THYwRnh4dDc4T0NFeWlYQT09>

Meeting ID: 892 2640 5663

Passcode: 123

One tap mobile

+13462487799,,89226405663#,,,,*123# US (Houston)

+14086380968,,89226405663#,,,,*123# US (San Jose)

Dial by your location

+1 346 248 7799 US (Houston)

+1 408 638 0968 US (San Jose)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 646 876 9923 US (New York)

Meeting ID: 892 2640 5663

Passcode: 123

Find your local number: <https://us02web.zoom.us/j/89226405663?pwd=R2tYWml3THYwRnh4dDc4T0NFeWlYQT09>

Hearing Officer: Mick Ireland

10:00 AM Time McIntyre

Petition for appeal of ruling by APCHA

Hearing date

Petitioner's name

Petitioner's signature

Address of affected property

Petitioner is: Applicant

Tenant

Owner

APCHA Representative and title

Petitioner's Attorney and contact information if any.

Petitioner's statement of factual basis and desired disposition including recommended sanctions if any. Attach additional pages as needed.

APCHA Regulations and Deed Restriction Provisions viewed by Petitioner as controlling. Attach additional pages as needed.

Petitioner witnesses and Exhibits, if any. Attach additional pages as needed.

Return completed form to mick@sopris.net

LAW OFFICES OF
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225 NORTH MILL STREET, SUITE 208
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April 15, 2022

Michael C. Ireland, Esq., Hearing Officer
Ms. Bethany Spitz, Compliance Manager
Aspen Pitkin County Housing Authority
18 Truscott Place
Aspen, Colorado 81611

Re: Response of Cameron and Patricia McIntyre to Notice of Violation dated March 11, 2022
(the “NOV”).

Dear Mr. Ireland and Ms. Spitz:

I represent Cameron McIntyre and Patricia Redfield-McIntyre in connection the matters raised in Ms. Spitz’s NOV.

1. The McIntyres Are Active, Participating Members of the Aspen Community.

Mr. and Mrs. McIntyre first moved to the upper Roaring Fork Valley in 1992 and have been active members of the community since that time. Mr. McIntyre has coached the Junior Gents of the Aspen Rugby Foundation for over 20 years. Mrs. McIntyre has donated her time to drug and alcohol counselling services to people in need for many of those same years. The McIntyres have been actively involved in the Aspen and Pitkin County hospitality and construction business and social communities since they first arrived in the valley.

Their son Keenan was born on July 25, 1997. At that time, they lived in a deed restricted unit in the Aspen Village Mobile Home Park. The McIntyres moved to Lot 72, Block 3 of the North Forty P.U.D. Subdivision in May of 2000 (the “**North Forty Property**”)¹ – two months after the birth of their second son, Laughlin.

Keenan and Laughlin attended the Aspen schools from kindergarten through high school graduation. Keenan was active in the Aspen Valley Ski Club. He finished first at Junior Nationals in freestyle skiing at the age of 17. Rather than pursue an Olympic dream, Keenan elected to go to college. He

¹ See Exhibit 1, Warranty Deed from Bidgle, LLC to Mr. and Mrs. McIntyre recorded on May 9, 2000, as Reception No. 443126.

Michael C. Ireland, Esq., Hearing Officer
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recently graduated from Colorado State University (CSU) in Fort Collins. Keenan now coaches age group skiers at AVSC and lives at home with his parents.²

Laughlin was a baseball and track athlete at Aspen High School. He is currently enrolled at the University of Colorado – Boulder and will graduate in August with degrees in marketing and economics.

2. Mr. and Mrs. McIntyre’s Wish to Provide Their Children an Opportunity to Remain Members of the Aspen Community.

As is true with probably every parent living in a deed-restricted housing unit under the auspices of the Aspen/Pitkin County Housing Authority, Mr. and Mrs. McIntyre wish to provide their children the opportunity to live and work and remain integral members of the community in which they grew up.

While Keenan was at CSU and Laughlin was finishing at Aspen High School, Mrs. McIntyre found a sales listing for Condominium Unit 3, 165 Park Circle Condominiums in Aspen (the “**Park Circle Unit**”). Mrs. McIntyre is a licensed real estate broker at Compass Colorado, LLC and principal of The Aspen Agency, Inc., which provides residential rental services to visitors of Aspen and the Roaring Fork Valley. Because she regularly reviews offerings in the Aspen market for her clients, Mrs. McIntyre identified the Park Circle Unit as a potential “good fit” for her two sons after they returned from college. She and her sister, Sharon Pollock, formed CMTR, LLC (the “**LLC**”) as a Colorado limited liability company to be the purchaser of the Park Circle Unit.³ The LLC closed on its purchase of the Park Circle Unit on May 31, 2017,⁴ and has owned and operated it since that time.⁵ The Park Circle Unit has been rented to local employees at below market rents since it was purchased by the LLC.⁶

3. Only the North Forty Deed Restriction and the 1996/1997 APCHA Guidelines Apply.

Mr. and Mrs. McIntyre’s purchase of the North Forty Property was subject to the Master Deed Restriction for the Occupancy and Resale of North Forty Resident Occupied Lots (the “**Deed Restriction**”).⁷ A copy of the Deed Restriction is attached hereto as Exhibit 2. The McIntyres and the APCHA agree that the provision of the Deed Restriction which restricts owners of Resident-Occupied

² Keenan suffers from a medical condition which limits his activities. For that reason, he continues to reside with his parents. See paragraph 5 of Mrs. McIntyre’s letter to Bethany Spitz dated April 15, 2022, attached hereto as Exhibit 3 (“**Mrs. McIntyre’s Letter**”).

³ See Articles of Organization for CMTR, LLC, attached hereto as Exhibit 4.

⁴ See Special Warranty Deed dated May 31, 2017 attached hereto as Exhibit 5.

⁵ See Mrs. McIntyre’s letter, ¶ 3.

⁶ See Mrs. McIntyre’s letter, ¶ 4.

⁷ See Item # 17 on Exhibit A of the deed to the McIntyres for the North Forty Property, which is Exhibit 1 of this letter.

Michael C. Ireland, Esq., Hearing Officer
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employee housing units in the North Forty PUD Subdivision from owning other real property in the Roaring Fork Drainage is found in Section 2.b. of the Deed Restriction:

A person or persons, who as a "Qualified Buyer" purchases a Unit ("**Owner**"), covenant and agree by acceptance of a deed or other instrument of conveyance, whether or not it shall be so expressed in any such deed or other instrument of conveyance shall be deemed to covenant and agree during the period of ownership interest in the Unit to:

b. Not own, alone or in conjunction with others, any other developed residential property in those portions of Eagle, Garfield, Gunnison or Pitkin Counties which are part of the Roaring Fork Drainage or list at competitive market prices (comparable to like units or properties in the area in which the property or dwelling unit is located), the residential real estate or mobile home in which Owner has an interest prior to or simultaneously with closing on the Unit.

Section 32 of the Deed Restriction defines the

term "Owner" [as] the person or persons who shall acquire an ownership interest in a Unit in compliance with the terms and provisions of this Agreement; it being understood that such person or persons shall be deemed an "Owner" hereunder only during the period of his, her or their ownership interest in the Property or Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.

In addition, the fifth "Whereas" clause on the first page of the Deed Restriction has relevance to the Notice of Violation: "WHEREAS, the Units are not subject to Aspen/Pitkin County Affordable Housing Guidelines adopted subsequent to 1996/1997."

A copy of City of Aspen Ordinance No. 22 (Series of 1996), including the APCHA's 1996 Affordable Housing Guidelines (the "**1996 Guidelines**"), is attached hereto as Exhibit 6. Part I, Section 2 of the 1996 Guidelines is relevant to the Notice of Violation. Subsection H of that section provides that "The owner [of a Resident Occupied Unit] cannot own any other developed property in those portions of Eagle, Garfield, Gunnison or Pitkin Counties which are part of the Roaring Fork River drainage, or must list, at competitive market prices, the residential real estate or mobile home prior to or simultaneously with closing on the RO unit." (Emphasis supplied.)

Every recitation of the prohibition against owning other real property in the Roaring Fork River watershed found in the Deed Restriction and the 1996 Guidelines applies to Owners of the deed restricted unit, not to members of their household or family. Under these documents, Keenan and Laughlin are permitted to own real property in Aspen free of the constraints which bind their parents.

4. Piercing the Corporate Veil Is Not Warranted Under The Current Facts.

The NOV alleges that “CMTR, LLC’s acquisition of the Park Circle Property was undertaken for the purpose of avoiding the prohibition referred to in paragraph 4 above. You control CMTR, LLC and its sole asset, and the corporation acts as your *alter ego*.”⁸ Based on this conclusion, the NOV asserts that “APCHA is legally entitled to pierce the corporate veil of the corporation and to require the sale by you of either the Riverdown Property or the Park Circle Property.”⁹

In law, the concept of “piercing the corporate veil” is generally used to determine whether a principal of a corporation or other legal entity should be stripped of the liability protections afforded to corporations and similar entities so that the principal of the corporation is personally liable for the debts of the corporation. In the current matter, the APCHA seeks to deny the corporate-like existence of CMTR, LLC, and to treat it as if it were Mr. and Mrs. McIntyre, or just Mrs. McIntyre.

“A legal entity, such as an LLC, is separate from the members that own the entity.”¹⁰ “Insulation from individual liability is an inherent purpose of incorporation; only extraordinary circumstances justify disregarding the corporate entity to impose personal liability.”¹¹ Piercing the corporate veil “is ‘an extraordinary remedy’ and only limited circumstances justify disregarding the entity’s form to impose liability on LLC members”¹²

Colorado's LLC statutes instruct that courts should ‘apply the case law which interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under Colorado law.’ § 7-80-107. Thus, a court may disregard the shield that the LLC form would normally provide for its members when (1) the entity is “merely the alter ego” of the member, (2) the LLC form is used to perpetuate a wrong, and (3) disregarding the legal entity would achieve an equitable result.¹³

In other words, the question of whether CMTR, LLC is the “alter ego” of Mrs. McIntyre is just the first of several questions hearing officer must consider when determining if “piercing the corporate veil” is appropriate in this case. As discussed in Section 4.B. of this letter, piercing is not appropriate here. More immediately, however, the facts of this case do not support a finding that CMTR, LLC is Mrs. McIntyre’s “alter ego.”

⁸ § 6. Because the “wrongful acts” alleged by the APCHA in the NOV were conducted by Mrs. McIntyre, the discussion in this letter of whether those acts can be used to “pierce the corporate veil” will focus exclusively on her actions.

⁹ § 7.

¹⁰ *In re Griffith v. SSC Pueblo Belmont Operation Co. LLC*, 2016 CO 60M, ¶ 11.

¹¹ *Id.* (Emphasis supplied.)

¹² *Id.* (citing *Connolly v. Englewood Post No. 322 VFW of the United States, Inc. (In re Phillips)*, 139 P.3d 639, 647 (Colo. 2006).

¹³ *Id.* ¶ 12.

A. The LLC is Not Mrs. McIntyre’s “Alter Ego.”

“A corporation is the alter ego of its shareholder or shareholders when it is a ‘mere instrumentality for the transaction of the shareholders' own affairs, and there is such unity of interest in ownership that the separate personalities of the corporation and the owners no longer exist.’”¹⁴

To determine whether a corporation is an alter ego, a court should consider a number of factors, including whether

- (1) the corporation is operated as a distinct business entity,
- (2) funds and assets are commingled,
- (3) adequate corporate records are maintained,
- (4) the nature and form of the entity's ownership and control facilitate misuse by an insider,
- (5) the business is thinly capitalized,
- (6) the corporation is used as a 'mere shell,'
- (7) shareholders disregard legal formalities, and
- (8) corporate funds or assets are used for noncorporate purposes.¹⁵

These factors are examined here.

(1) CMTR, LLC is operated as a distinct business entity. It has LLC existence, it was lawfully organized in Colorado as a limited liability company on March 17, 2017.¹⁶ It has its own EIN.¹⁷ The LLC is governed by a written Operating Agreement, which identifies Laughlin McIntyre and Keenan McIntyre as the only members of the company.¹⁸ The Park Circle Property was purchased in the name of CMTR, LLC.¹⁹ A Statement of Authority was filed for the company at the time it purchased the Property.²⁰

In regard to its ongoing operations, CMTR, LLC is recognized as the owner of the Park Circle Property and deals with third parties in its own name. Leases for the property reflect that CMTR, LLC is the Landlord of the property²¹ and vendors carry out work and bill CMTR for their services.²²

¹⁴ *Stockdale v. Ellsworth*, 2017 CO 109, ¶ 20.

¹⁵ *Id.*, quoting *In re Phillips*, 139 P.3d at 644.

¹⁶ See Exhibit 4, Articles of Organization.

¹⁷ See Exhibit 7, Federal Form SS-4.

¹⁸ See copy of the Operating Agreement attached hereto as Exhibit 8.

¹⁹ See Exhibit 1, the deed to the Park Circle Property, and Exhibit 9, the Settlement Statement for the purchase transaction.

²⁰ See Exhibit 10.

²¹ See, for example, the copy of the Unit 3 A attached hereto as Exhibit 11.

²² See copy of an invoice to “Domogroup, LLC c/o CMTR, LLC and work order attached hereto as Exhibit 12.

(2) The funds and assets of CMTR, LLC and those of Mr. and Mrs. McIntyre are kept separate and not co-mingled. Rents from tenants in the Park Circle Property are deposited into the LLC's checking account and property expenses are paid from that account.²³ Although the McIntyres initially purchased the Park Circle Property with the proceeds of an advance against their home equity line of credit, the debt was retired by a conventional loan from FirstBank to CMTR, LLC in September of 2016.²⁴ That loan is being serviced by rent from tenants in the Park Circle Property.²⁵

(3) CMTR, LLC maintains corporate records which are appropriate for its purpose – to own and manage the Park Circle Property. It reports its profits and losses to the Internal Revenue Service and each year provides its members a Schedule K-1 so that those profits and losses can flow through to their individual tax returns.²⁶

(7) Corporate Formalities. The NOV identified the absence of minutes from any annual or special meetings of CMTR, LLC as a significant reason the APCHA should be able to pierce the corporate veil. No importance should be ascribed to the lack of meeting minutes here. As described above, the LLC adheres to those formalities which are appropriate for its purpose. Its purpose is simple at this time. It manages the Park Circle Property. Colorado law does not require an LLC to hold meetings. The section of the Limited Liability Company Act which dealt with member meetings was repealed in 2004.

There is no evidence that Mrs. McIntyre or her sister have misused CMTR, LLC or its assets, treated the LLC as a “mere shell,” moving personal or other property in or out at will, or have used the company's assets for non-LLC purposes.

The essential complaint of the APCHA's NOV appears to be that Mrs. McIntyre did not properly document her role as the agent for CMTR, LLC. According to its Operating Agreement, the LLC is member managed. Keenan McIntyre is the Managing Member and Laughlin is the only other member. Despite these facts, Mrs. McIntyre identified herself as the manager of the LLC when it purchased the Park Circle Property in 2017. She made the same representation when she executed the Deed of Trust on behalf of the company in 2018. In both cases, she could have identified herself as an authorized agent for the LLC, which would have been a true statement from a legal perspective.

Mrs. McIntyre has not sought to hide her involvement in managing the Park Circle Property on behalf of the LLC. The principal address of the LLC is the address of Mrs. McIntyre's company, and that company's Chief Financial Officer, Ms. Pollock, manages the financial details of the LLC's operations. There is nothing fraudulent or inappropriate in those arrangements. In fact, these issues are important to

²³ See sample checking account statement attached hereto as Exhibit 13.

²⁴ See Deed of Trust to FirstBank attached hereto as Exhibit 14.

²⁵ See ¶ 4 of Mrs. McIntyre's letter.

²⁶ See Exhibits 15, 16, and 17, attached hereto, which are the K-1 forms submitted to Keenan and Laughlin for the years 2018, 2019 and 2020.

Michael C. Ireland, Esq., Hearing Officer
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April 15, 2022
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the hearing officer's consideration of the final two elements of "piercing the corporate veil" as found in *In re Griffith*, quoted above with citation provided in footnote 13, above.

B. Purchase of the Park Circle Property Did Not Effect a "Wrong." Penalizing the McIntyres for That Purchase Would Be Inequitable .

"Piercing the corporate veil" may be permitted when "(1) the entity is "merely the alter ego" of the member, (2) the LLC form is used to perpetuate a wrong, and (3) disregarding the legal entity would achieve an equitable result."²⁷ As discussed above, Mrs. McIntyre has not treated CMTR, LLC as her "alter ego." Of at least equal importance is the fact that the LLC's ownership of the Park Circle Property does not represent a violation of the North Forty Deed Restriction. The Deed Restriction prohibits owners of property in the North Forty PUD Subdivision from owning other real property in the Roaring Fork River watershed. It also clearly states that APCHA Guidelines "adopted subsequent to 1996/1997" will not apply to owners in the subdivision. The 1996/1997 APCHA Guidelines prohibited only owners of deed restricted units from holding other real property in the Roaring Fork River watershed.

The Park Circle Property is owned by CMTR, LLC, which is, in turn, owned by Keenan and Laughlin McIntyre. The LLC's ownership of the Park Circle Property does not violate the Deed Restriction.

Under these circumstances it would be inequitable to require the LLC to sell the Park Circle Property and to fine the McIntyres for its ownership of the property.

Thank you for your consideration.

Sincerely,



Michael Hoffman

²⁷ *In re Griffith*, ¶ 12.

Petition for appeal of ruling by APCHA

Hearing date

Petitioner's name

Address of affected property

Petitioner is: Applicant Tenant Owner

APCHA Representative and title

Respondent's statement of factual basis and desired disposition including recommended sanctions if any. Attach additional pages as needed.

APCHA Regulations and Deed Restriction Provisions viewed by Respondent as controlling. Attach additional pages as needed.

Respondent witnesses and Exhibits, if any. Attach additional pages as needed.

Redfield-McIntyre Appeal of March 11, 2022 Notice of Violation

Attachment A

1. Summary of APCHA staff position

This is an appeal of a Notice of Violation which was issued by APCHA staff to Cameron McIntyre and Patricia Redfield-McIntyre for the violation of section 2.b of the North Forty Deed Restriction that prohibits the ownership of other residential property within the ownership exclusion zone as defined in that paragraph.

The appellants acquired the 0005 Riverdown Drive, Aspen, Colorado, which is located in the North Forth PUD, as joint tenants. The County Assessor's records indicate that Cameron McIntyre is now the sole owner. This conveyance occurred without APCHA's approval, and it does not relieve Patricia Redfield-McIntyre from the obligation to comply with the deed restriction as an approved qualified buyer, a resident of the property, and the fact that Colorado is a community property state. The North Forty Deed Restriction applies to their ownership of the property.

CMTR, LLC, a Colorado limited liability corporation, is the record owner of property located at 409 Park Circle, Aspen, Colorado. CMTR is a single asset corporation. The use of that property is for short-term rentals.

CMTR, LLC was formed in 2017. The two Managers of the corporation are identified as the Redfield -McIntyre's two children, Lauren McIntyre and Keenan McIntyre, who were minors at the time of the acquisition of the property by the LLC. The record shows that from the outset, the corporation and its residential property have been managed in fact by Patricia Redfield-McIntyre. There is no evidence of the children having any responsibility in any way for the management of the corporation or the property, as shown by the documents that are part of the record. Patricia McIntyre established CMTR, LLC, with record ownership and management by her children, solely for the purpose of owning other residential property in Aspen in an effort to avoid the prohibition of the North Forty Deed Restriction.

In order to establish that the ownership of the Park Circle property violates the North Forty Deed Restriction, it necessary to "pierce the corporate veil" of CMTR, LLC. A leading case in Colorado on this issue is *Stockdale v. Ellsworth*, 407 P. 3d 571 (Colo 2017). Consistent with that decision, it is the position of APCHA staff that CMTR, LLC acts as the *alter ego* of Patricia Redfield McIntyre, and that the corporate structure formally in place for the ownership and management of the Park Circle property has been used to perpetuate a wrong, namely, the violation of the North Forty Deed Restriction. It is necessary to pierce the corporate veil in order to achieve an equitable result in this case, namely, the sale of the 0005 Riverdown property to a qualified buyer who meets the requirements of the North Forty Deed Restriction.

The specific facts which support the issuance of the Notice of Violation in this case are outlined in the Notice of Violation itself, which will be basis for the staff presentation. Staff request that the Hearing Officer deny the appeal.



210 E. Hyman, Suite 202 • Aspen, CO 81611

970-920-5050 • www.apcha.org

Strengthening Community Through Workforce Housing

NOTICE OF INVESTIGATION

10/15/2020

Cameron McIntyre & Patricia Redfield-McIntyre

PO Box 7631

Aspen, CO 81612

RE: Employee Housing Compliance – 5 Riverdown Drive

Dear Mr. and Mrs. McIntyre:

On August 30, 2019, APCHA forwarded to you a Notice of Investigation for the purpose of determining if you are in compliance with the Master Deed Restriction Agreement for North Forty Resident Occupied Lots (“the Deed Restriction”), in connection with your joint ownership of the property located at 0005 Riverdown Drive, Aspen. In particular, APCHA is concerned as to whether your interests in properties located at 409 Park Circle and 30 Maroon Court constitute violations of paragraph 2.b of the Deed Restriction and Part III, Sections 1 and 5, and Part VI, Section 3.B.1 and 5, of the APCHA Regulations, which prohibit the ownership of other developed residential property, as described therein.

By letter dated September 12, 2019, Sharon Pollock of the Aspen Agency, responded on your behalf. A copy of her letter is attached.

Based on this information and other information we have obtained from public records, APCHA remains concerned about this compliance issue. Accordingly, we hereby request that you provide us with the following additional information in an effort to resolve this matter:

1. The Operating Agreements for CMTR, LLC and 30 Maroon Court, LLC, identify Keenan McIntyre and Laughlin McIntyre as the Members. Please identify your relationships with each of these individuals, their ages, their occupations, their business and residence addresses, and whether either or both of them are identified as dependents and/or members of your household for any purpose.
2. Please explain why Keenan McIntyre and Laughlin McIntyre are the Members of these two corporations, and why neither of you are Members of either corporation.

3. Please provide copies of any power of attorney executed by or on behalf of Keenan McIntyre and/or Laughlin McIntyre.
4. Please provide bank records for CMTR, LLC and 30 Maroon Court, identifying the business accounts of these corporations established in accordance with paragraph 7.3 of the Operating Agreements, and the authorized signatories on these accounts. Please provide copies of the most recent bank statements for the accounts of the two corporations.
5. Please provide copies of the minutes of the annual meetings and special meetings of each of these corporations from 2017 to the present.
6. Please provide copies of the contracts for the management of the properties owned by each of these corporations whereby they are leased to third parties for short-term occupancy.
7. Please identify, and provide evidence of, the business and residence addresses of Sharon Pollock.
8. By deed recorded at Reception No. 638794, on May 31, 2017, CMTR, LLC, acquired property located at 409 Park Circle, Aspen. In connection with that transaction, Patricia Redfield executed a Statement of Authority identifying herself as Manager of the corporation. In addition, Patricia executed a Deed of Trust on behalf the corporation as borrower, in favor of First Bank in the amount of \$472,100.00. The March 17, 2017, Operating Agreement of CMTR, LLC, which you provided to us, states that the management of the corporation is vested in the Members, who at that time were Keenan McIntyre and Laughlin McIntyre. Please explain why Patricia signed these documents on behalf of the corporation identifying herself as Manager. If it is your position that Patricia was authorized to do so by the Members, please provide documentation of this appointment as Manager with authorization to execute these documents.
9. By deed recorded at Reception No. 648017, on June 11, 2018, 30 Maroon Court, LLC, acquired property located at 30 Maroon Court, Aspen. In connection with that transaction, Patricia Redfield executed a Statement of Authority identifying herself as Managing Member of the corporation. In addition, Patricia executed a Deed of Trust on behalf of the corporation as borrower, in favor of First Bank in the amount of \$1,709,625.00, which also identifies her as Managing Member. The April 30, 2018, Operating Agreement of 30 Maroon Court LLC states that the management of the corporation is vested in the Members, who at that time were Keenan McIntyre and Laughlin McIntyre. Please explain why Patricia signed these documents on behalf of the corporation identifying herself as Managing Member. If it is your position that Patricia was authorized to do so by the Members, please provide documentation of this position as a Member and the appointment as Managing Member with authorization to execute these documents.

In accordance with paragraphs 11 through 14 of the Deed Restriction, and Part VI, Section 5.B.2.b.iii and Part VI, Section 5.B.2.d of the APCA Regulations, a violation of the Deed Restriction may result in a requirement that you sell the property. In addition, the APCA Board of Directors adopted a fine

schedule in the APCA Regulations that took effect March 1, 2020. Therefore, a violation may also result in the assessment of one or both of the following fines:

- Purchasing other developed residential property in OEZ while owning an APCA deed restricted property. \$5,000 - \$6,000
- Owning other developed residential property in OEZ in violation of Deed Restriction and/or Regulations. \$2,500 - \$3,000

Please provide the information requested above by **5:00 pm on November 2, 2020**. If you fail to do so, or if the information that is provided does not demonstrate compliance with the Deed Restriction or the APCA Regulations, APCA may issue a Notice of Violation which could result in the enforcement remedies identified above.

If you have any questions regarding the information required by this notice, you may reach me by phone at 970-920-5137 or email at Bethany.spitz@cityofaspen.com.

Sincerely,

Bethany Spitz

Compliance Manager



March 11, 2022

Cameron McIntyre
Patricia Redfield-McIntyre
P.O. Box 7631
Aspen, CO 81612
Camaroonmci11@gmail.com
aluhaaspen@comcast.net

Re: 5 Riverdown Drive – Notice of Violation

Via email, certified mail and mail

Dear Mr. and Ms. McIntyre:

This is to notify you that you are in violation of paragraph 2.b of the Master Deed Restriction Agreement for the Occupancy and Resale of North Forty Resident Occupied Lots, recorded at Reception No. 432259 of the records of Pitkin County, Colorado (“the Deed Restriction”). This notice is based upon the following:

1. By deed recorded at Reception No. 443126 of the records of Pitkin County, you purchased property at 0005 Riverdown Drive, Aspen, CO 81611 (“the Riverdown Property”). The Property is located in the North Forty P.U.D., and it is subject to the requirements of the Deed Restriction.
2. CMTR, LLC is the record owner of a single-family residence located at 409 Park Circle (“the Park Circle Property”).
3. CMTR, LLC is a single asset limited liability company, formed for the purpose of owning and operating the Park Circle Property.
4. Paragraph 2.b. of the Deed Restriction provides that the owners of the North Forty RO lots covenant and agree to:

Not own, alone or in conjunction with others, any other developed residential property in those portions of Eagle, Garfield, Gunnison or Pitkin Counties which are part of the Roaring Fork Drainage or list at competitive market prices (comparable to like units or properties in the area in which the property or dwelling unit is located), the residential real estate or mobile home in which Owner has an interest prior to or simultaneously with closing on the Unit.

5. The Park Circle Property is located within the Roaring Fork Drainage, it is an income producing property, and it is not the primary residence of you or your children.
6. CMTR, LLC's acquisition of the Park Circle Property was undertaken for the purpose of avoiding the prohibition referred to in paragraph 4 above. You control CMTR, LLC and its sole asset, and the corporation acts as your *alter ego*.
7. APCHA is legally entitled to pierce the corporate veil of the corporation and to require the sale by you of either the Riverdown Property or the Park Circle Property, for the following reasons:
 - a. The Operating Agreement of CMTR, LLC was adopted on March 17, 2017. The Park Circle Property was purchased on May 31, 2017.
 - b. By the terms of the Operating Agreement, your children, Laughlin McIntyre and Keenan McIntyre, who at that time were your minor dependents and members of your household, were identified as the Members and Managing Members of the corporation.
 - c. Patricia Redfield's sister, Sharon Pollock, is the registered agent of CMTR, LLC. The principal office of the corporation is 428 Spring Street, Aspen, Colorado. This is Ms. Pollock's business address, and it is also the address of The Aspen Agency, of which Patricia Redfield is the President. The mailing address of both CMTR, LLC and The Aspen Agency is PO Box 7631, Aspen, CO 81612.
 - d. At the time of the purchase of the Park Circle Property on May 31, 2017, Patricia Redfield executed a Statement of Authority on behalf of CMTR, LLC identifying herself as the Manager of the corporation. This representation was inconsistent with the Operating Agreement, although it may have been true in fact.
 - e. On or about June 7, 2018, Patricia Redfield executed a \$472,000 Deed of Trust secured by the Park Circle Property on behalf of CMTR, LLC, again identify herself as the Manager of the corporation in conflict with the Operating Agreement.
 - f. Patricia Redfield is the president of The Aspen Agency, which has listed the Park Circle Property for rent.
 - g. The Articles of Organization and the Operating Agreement of CMTR, LLC were filed on March 17, 2017, two and one-half months after your children executed powers of attorney in favor of Patricia Redfield, their mother, on December 31, 2016.
8. In your response to APCHA's October 15, 2020, Notice of Investigation, you did not respond to requests for the following information:
 - a. The ages, occupations, business addresses, and residence addresses of Laughlin and Keenan McIntyre;
 - b. Whether either or both of your children are identified as dependents and/or members of your household for any purpose;
 - c. Why Keenan and Laughlin, and neither of you, are members of CMTR, LLC;
 - d. Identification of the authorized signatories on the CMTR, LLC account with Vectra Bank, account no. 5794498724;

- e. Minutes of the annual and special meetings of CMTR, LLC;
- f. Copies of contracts for the management of the Park Circle Property between CMTR and third parties; and
- g. An explanation for Patricia Redfield's signature as Manager of CMTR, LLC on the documents referred to above.

APCHA concludes from your failure to provide this information that accurate responses would lead to the conclusion that CMTR, LLC, acts as your *alter ego*.

Based on the foregoing, and in accordance with paragraph 11 of the Deed Restriction, you are hereby notified that you are required to list the Park Circle Property for sale in order to comply with the prohibition referred to in paragraph 4 above, and to secure the authorization of CMTR, LLC for this purpose, within 15 days of the date of this Notice of Violation. In the alternative, you may list your Riverdown Property for sale within the same 15-day period.

Please be advised that in accordance with paragraph 11 of the Deed Restriction, you may request a hearing before APCHA within 15 days of the date of this Notice of Violation to determine the merits of this Notice. The APCHA Board has delegated its authority to conduct such a hearing to the APCHA hearing officer.

Sincerely,

Bethany Spitz

Bethany Spitz
Compliance Manager

Cc: Tom Smith, Attorney
Mathew Gillen, Executive Director

Petition for appeal of ruling by APCHA

Hearing date

Petitioner's name

Address of affected property

Petitioner is: Applicant ve Tenant Owner

APCHA Representative and title

Hearing officers findings of fact and conclusions of applicable regulations.