

EASEMENT AGREEMENT

This Easement Agreement is made and entered into this 25 day of September, 1996 by and between THE CITY OF ASPEN, a Colorado Home Rule municipality ("Aspen") and 1000 EAST HOPKINS CONDOMINIUM OWNERS ASSOCIATION, INC. (the "Association").

R E C I T A L S:

- A. The Association is the entity created by the Declaration of Grants, Covenants, Conditions and Restrictions Establishing A Plan For Condominium Ownership of 1000 East Hopkins Condominiums, a Condominium Common Interest Community, recorded May 29, 1996, in the real property records of Pitkin County, Colorado at Reception No. 393091 (the "Declaration"), and is authorized by the Declarations to grant easements through or over the common elements within said Community, including, without limitation, the parcel of real property described in Exhibit "A" hereto.
- B. Aspen is the owner of a certain trail easement across the Association Parcel recorded in Book 568 at Page 930 and desires to expand that easement to include a portion of the Association Parcel, as more particularly set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. The Association hereby grants to Aspen, its successors and assigns, a non-exclusive perpetual easement and right-of-way for the construction, use, operation and maintenance of a public trail, for non-motorized use only, upon and across a portion of the Association property generally depicted on Exhibit "B", attached hereto and incorporated herein by this reference. The parties agree to execute and record an amendment to this Easement Agreement following construction of the public trail and such retaining walls and bank stabilization structures as may be required, which amendment shall reduce the area of the easement to include only that portion of the Association Parcel on which the trail and retaining structures are constructed. Aspen shall prepare an as-built survey which shall serve to describe the revised easement area and shall be attached to the amendment.

2. Restoration/Construction and Maintenance Costs. Following the completion of trail and retaining structure construction, any disturbed areas both inside and outside the boundaries of the easement shall be promptly restored, to the fullest extent reasonably possible, to natural conditions existing prior to such construction. All costs of design, construction and maintenance of the public trail shall be the responsibility of and paid by Aspen.

3. Indemnity. To the fullest extent permitted by law, Aspen does hereby covenant and agree to hold harmless and indemnify the Association from any and all liability, claims, costs, damages, expenses, and causes of action, including court costs and attorney's fees (whether or not litigation is commenced) of whatever type or nature arising from or out of the use of the easement by Aspen or any person. Nothing herein shall constitute a waiver of Grantee's rights as provided in §24-10-101, et seq., C.R.S.

4. Reserved Rights. The Association hereby reserves, for itself and its successors and assigns, the right to construct, maintain and utilize a stairway across the easement area for access to and from the Roaring Fork River. The location and design of such stairway shall be subject to the approval of Aspen, which approval shall not be unreasonably withheld.

5. Running of Benefits and Burdens. All provisions of this Easement Agreement, including the benefits and burdens run with title to the Association Parcel, and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

6. Miscellaneous.

- (a) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- (b) Waiver. No waiver, amendment, release or modification or any right or protection of the Association as set forth herein shall be established by conduct, course of dealing or any delay of failure to act, or by any oral agreement, but solely by an instrument in writing duly executed by the parties hereto.
- (c) Attorney's Fees. Should any party hereunder be required to resort to legal or equitable process for the enforcement of any of the provisions of this license agreement, the prevailing party shall be entitled to collect reasonable attorney's fees, expenses and costs.

Executed the day and year set forth below.

THE CITY OF ASPEN

[Attest]

Kandice J. Trubland
Clerk *Chief Deputy Clerk*

By: *John Bennett*
John Bennett, Mayor

EXHIBIT "A"

LEGAL DESCRIPTION:

Lot H, Block 26, East Aspen Addition, together with the north one-half of the platted alley between Lots H and R, Block 26, East Aspen Addition, County of Pitkin, State of Colorado.

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MAP OF PROPOSED VACATION

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