

**COMPLIANCE AND CONSTRUCTION COMPLETION GUARANTY**  
revised October 2015

This Maroon Creek Club Master Association Compliance and Construction Completion Guaranty ("Guaranty") made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_ ("Owner(s)") for the use and benefit of the Maroon Creek Club Master Association, a Colorado non-profit corporation ("Maroon Creek").

**RECITATIONS**

A. Maroon Creek is the entity formed to administer the affairs of the Maroon Creek Subdivision ("Subdivision") created pursuant to the Plat thereof recorded November 15, 1993, in Plat Book 33 at Pages 4 through 15 of the Pitkin County Real Estate Records and the Master Declaration of Protective Covenants recorded December 2, 1993 in Book 733 at Page 598 of the Pitkin County Real Estate Records.

B. Owner(s) is/are the owner of Lot \_\_\_\_ (the "Lot") located in the Maroon Creek Subdivision and subject to the provisions of the Plat and the Declaration.

C. The governmental approvals for the Subdivision include certain landscape and grading obligations which Owner(s) as owner of the Lot in the Subdivision is obligated to fulfill in connection with the development of their Lot. (Owner) has applied to Maroon Creek's Site and Architectural Review Committee ("SARC") for permission to construct a residence on their Lot (the "Residence"). As part of the approvals granted to Owner(s) in order to construct the Residence are certain landscape and grading requirements which Maroon Creek desires to secure by virtue of Owner(s) execution of this Guaranty.

D. The Owner's compliance with the approvals granted to the Owner by SARC for permission to construct a residence on the Lot are of major importance to Maroon Creek, and therefore Maroon Creek further desires to secure the Owner's compliance with those approvals by virtue of Owner(s)' execution of this Guaranty.

**WITNESSETH**

NOW, THEREFORE, in consideration of the approvals granted to \_\_\_\_\_, Owner(s) agree(s) for the use and benefit of Maroon Creek as follows:

1. Guaranty. As a condition to the effectiveness of the approvals granted by Maroon Creek through SARC to construct the Residence, Owner(s) shall execute this Guaranty and deposit security in the sum of One Hundred Thousand Dollars and No/100 (\$100,000) (the "Security"). The Security shall consist of a deposit in the sum of One Hundred Thousand Dollars and No/100 (\$100,000) which sum shall be placed into an interest-bearing account or by virtue of the delivery of a Letter of Credit in that amount in a form and by a financial institution acceptable to Maroon Creek in the exercise of its reasonable discretion.

2. Security. The Security shall be held by Maroon Creek until Owner(s) has/have satisfied all of the following:

(a) Full compliance with all approvals for the Residence as granted by SARC to the Owner as said compliance is determined by SARC during and subsequent to the construction of the Residence. Upon completion of the Residence as evidenced by the issuance of a Certificate of Occupancy by the City of Aspen ("Certificate of Occupancy"), the Owner shall notify Maroon Creek in writing and shall provide Maroon Creek with a copy of the Certificate of Occupancy. Within forty-five (45) days after delivery to Maroon Creek of the Certificate of Occupancy, SARC shall cause an inspection of the completed Residence to be made. Based on its inspection, SARC shall either confirm in writing that the work on the Residence itself has been completed in accordance with the Plans or shall notify Owner(s) in writing that the work has not been completed in accordance with the Plans, specifying what items are not complete or are not in compliance with the Plans. If SARC fails to inspect the work within forty-five (45) days, then the construction of the Residence shall be deemed to have been approved.

(b) The completion of the landscaping and grading of the Lot in accordance with the plans (the "Plans") approved by Maroon Creek through SARC, which landscape and grading must be accomplished no later than forty-five (45) days from the date of issuance of the Certificate of Occupancy for the Residence unless such Certificate of Occupancy is issued after October 1st in any calendar year. In the event such Certificate of Occupancy is issued after October 1st then the landscaping and grading shall be completed no later than June 1st of the following year.

(c) Upon completion of the landscaping and grading, Owner(s) shall notify SARC in writing who shall inspect same within forty-five (45) days of receipt of said notice, if the request is made between May 15th and September 1st of any given year. If the request is made after September 1st and prior to May 15th, SARC shall complete its inspection by the next July 1st. Based on its inspection, SARC shall either confirm in writing that the work has been completed in accordance with the Plans or shall notify Owner(s) in writing that the work has not been completed in accordance with the Plans, specifying what items are not complete or are not in compliance with the Plans. If SARC fails to inspect the work within forty-five (45) days if the request for inspection is made between May 15th and September 1st of any given year, or by the next July 1st if the request is made between September 1st and May 15th, then the landscaping and grading shall be deemed to have been approved. The Security shall then be held for an additional period of one (1) year from the date of written confirmation by SARC that the work has been completed in accordance with the Plans, which additional period shall insure that the landscaping on the Lot survives the next growing season. In the case of any confirmation of completion received prior to September 1st of any calendar year, the one (1) year period shall be extended to the next September 1st. For example, if the written confirmation of completion is given on July 15th of any calendar year period shall be extended to September 1st of the next calendar year.

3. Return or Default. Upon the satisfaction of all the conditions set forth in Paragraph Two above, the Security with all interest earned thereon shall be returned to Owner(s). In the event of the failure of Owner(s) to satisfy any of the conditions set forth above, Maroon Creek shall deliver written notice outlining such failure and Owner(s) shall have thirty (30) days within which to correct any condition set forth in Maroon Creek's notice. In the event Owner(s) fail(s) to satisfy the conditions set forth in Maroon Creek's notice, Maroon Creek shall then have access to the Security for purposes of satisfying any obligation not fulfilled by Owner(s). Once all conditions have been satisfied any sums then remaining and not used by Maroon Creek, shall be returned to Owner(s). Notwithstanding the posting of the Security or the use of same by Maroon Creek to fulfill an obligation not fulfilled by an Owner(s), the Owner(s) shall still be liable to Maroon Creek for any sums reasonably incurred by Maroon Creek to fulfill the Owner's obligation pursuant to this Guaranty in excess of the Security.

4. Miscellaneous.

a. Binding Agreement. This Guaranty shall be binding upon the parties hereto, their successors and assigns.

b. Applicable Laws. This Guaranty shall be construed in accordance with and governed by the laws of the State of Colorado.

c. Remedies. No remedy herein conferred upon any party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder regardless of whether existing by virtue of law, equity or statute, except as limited by the terms of this Guaranty. No single or partial exercise by any party of any right, power or remedy shall preclude any other or further exercise thereof, except as limited by the terms of this Agreement.

d. Waivers. The failure or delay of any party at any time to require performance by another party of any provision of this Guaranty, even if knowledge thereof exists, shall not affect the right of such party to require the performance of that provision or to exercise any right, power or remedy against any other party and any waiver by any party of any breach of any provision of this Guaranty shall not be construed as a waiver of any continued or succeeding breach of such provision, or a waiver of the provision, or a waiver of any right, power or remedy under this Agreement.

e. Further Assurances. Each of the parties agree to execute, acknowledge, deliver, file, and record, or cause to be executed, acknowledged, delivered, filed and recorded, such further instruments and documents, and such certificates, and to do all things and acts as the other party may reasonably require in order to carry out the intentions of this Guaranty and the transaction contemplated hereby.

f. Construction. No provision of this Guaranty shall be construed against, or interpreted to, the disadvantage of any party by reason of such party having, or requesting that the provision be drafted, required or structured. It is the intention of the parties that the party who employed the scrivener to prepare this Guaranty shall not be prejudiced by virtue of such act, nor shall this Guaranty be construed against such party by virtue of its actions in retaining the scrivener.

g. Attorneys' Fees. In the event of any action for breach of, to enforce the provisions of, or otherwise involving this Guaranty, the court in such action shall award a reasonable sum as attorneys' fees to the party who, in light of the issues litigated and the court's decision on those issues, was the prevailing party in the action. If a party voluntarily dismisses an action, a reasonable sum as attorneys' fees shall be awarded to the other party.

h. Facsimile Transmissions. A telecopied facsimile of a duly executed counterpart of this Guaranty shall be sufficient to evidence the binding agreement of each party to the terms herein. However, the parties each agree to promptly return an original, duly executed counterpart of this Guaranty following the delivery of a telecopied facsimile thereof.

i. Notices. All notices required hereunder shall either be delivered by certified mail, return receipt requested, facsimile transmission or Federal Express or similar method, or hand delivery, as follows:

For Owner(s): \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile No.: (    ) - \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Facsimile No.: (    ) - \_\_\_\_\_  
Email: \_\_\_\_\_

For Maroon Creek: Maroon Creek Club Master Association, Inc.  
c/o Sarah Smith-Korpela  
Luxury Estate Managers of Aspen, LLC.  
620 East Hyman Avenue, Suite 103  
Aspen, Colorado 81611  
Phone: (970) 920-1776  
Facsimile No.: (970) 920-1777  
Email: [sarah@LuxuryEMA.com](mailto:sarah@LuxuryEMA.com)

With a copy to: Hal Dishler, Esq.  
Kaufman, Dishler & McAllister, PC  
315 East Hyman, Suite 305  
Aspen, CO 81611  
Facsimile No.: (970) 925-1090  
Email: [hsd@kdmlaw.net](mailto:hsd@kdmlaw.net)

With a copy to: William Lukes, Architect  
The Lakeside Studio  
801 Lakeside Drive  
Carbondale, CO 81623  
Phone: (970) 963-8025  
Email: [architects@williamlukes.com](mailto:architects@williamlukes.com)

Notice address of either party can be changed by the delivery of notice as called for hereunder. Facsimile transmissions received within the time periods required for notice shall constitute actual notice. Notice shall be deemed effective, in the case of certified mail, upon its deposit with the United States Post Office and in all other cases, upon its delivery to the location intended.

j. Severability. Should any provision of this Guaranty be deemed by a court of competent jurisdiction to be unenforceable, such decision shall not affect any other provision of this Guaranty and such court shall be obligated to attempt to enforce the intentions of the parties herein contained.

IN WITNESS WHEREOF, the Owner(s) have executed this Guaranty.

OWNER(S)

Name: \_\_\_\_\_

Name: \_\_\_\_\_