

# CONSTRUCTION COMPLIANCE AGREEMENT

BY AND BETWEEN

\_\_\_\_\_ (“OWNER”)

AND

**FROST CREEK MASTER ASSOCIATION**

This Compliance Agreement (“**Agreement**”) is made by and between the Frost Creek Master Association, a Colorado nonprofit corporation, acting through its designated agent, the Frost Creek Design Review Committee (“**DRC**”) and \_\_\_\_\_ (“**Owner**”).

## **RECITALS**

WHEREAS, Owner is the record owner of real property located in Eagle County, Colorado described as Lot \_\_\_\_\_, Filing \_\_\_\_\_, Frost Creek, also known by street address as \_\_\_\_\_ (“**Property**”); and,

WHEREAS, Owner acknowledges that such Property is subject to certain protective covenants, conditions and restrictions (“**CC&Rs**”) administered by the Frost Creek Master Association (“**Association**”), as set forth in that certain Amended and Restated Master Declaration of Protective Covenants, Conditions, and Restrictions for Frost Creek, recorded on August 14, 2015, in the records of the Clerk and Recorder for Eagle County, Colorado as Reception No. 2001515560, and as such CC&Rs may be amended and/or supplemented from time to time; and,

WHEREAS, Owner acknowledges that such CC&Rs authorize the promulgation of certain Design Guidelines (which includes the Construction Rules and Regulations, and all references hereafter to the Design Guidelines shall include the Construction Rules and Regulations), heretofore adopted by the DRC and approved by the Executive Board of the Association, and that all further references in this Agreement to CC&Rs shall be deemed to include all such Design Guidelines; and

WHEREAS, the DRC is a committee duly authorized by such resolution of the Executive Board of the Association to implement certain areas of the Board’s administration and enforcement authority for the CC&Rs, including but not limited to CC&Rs specifically applicable to the planning, design, construction and completion of improvements (and alterations thereof) and landscaping on real property subject to the Association’s jurisdiction, and issues incidental thereto; and,

WHEREAS, the DRC requires of all Owners, as a condition prior to commencing construction activity on any property (including landscaping) within the Association’s jurisdiction, both an executed Construction Management Plan with Proposed Construction Schedule (“**Construction Management Plan**”) and an executed Construction Compliance Agreement by which the Owner agrees to comply with the CC&Rs and to furnish a monetary deposit to secure Owner’s compliance with same.

## **AGREEMENT**

NOW THEREFORE, in consideration of the following mutual promises and agreements and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Association (through its authorized agent, the DRC and the DRC Administrator) and Owner agree as follows:

### **I. Proposed Construction Activity and Construction Management Plan.**

- (a) The term “**Construction Activity**” as used in this Agreement shall mean all phases and aspects of the construction of improvements, alterations and landscaping proposed by the Owner and its Construction Management Plan and all materials submitted therewith to the DRC (see subparagraph 1b). Owner’s signature below on this Agreement and provision of the compliance deposit described below in paragraph 5 are preconditions of DRC approval for Owner’s commencement of Construction Activity on the Property.
- (b) The term “**Construction Management Plan**” as used in this Agreement shall include all materials required to be submitted to the DRC under the design review process described in the Design Guidelines, including but not limited to a topographic survey of the Property, site plans, floor plans, roof plans, landscape plans, drawings of exterior elevations, drawings of building sections, building height calculations, exterior finish details, scale models, erosion control and revegetation plan, perspective sketches, blueprints, the construction schedule and any other documents or materials required by the DRC.

**2. Compliance by Owner.**

- (a) Owner acknowledges and agrees its Property is subject to the jurisdiction of the DRC as described in the CC&Rs. Owner agrees to fully and timely comply with the CC&Rs, its Construction Management Plan approved by the DRC, and all terms and conditions of this Agreement.
- (b) Owner has retained or intends to retain \_\_\_\_\_ as its general contractor for the Construction Activity proposed. Owners shall provide a copy of this Agreement to such general contractor and Owner agrees that the terms and conditions of this Agreement shall be incorporated by specific reference into Owner’s contract(s) with its general contractor.
- (c) Owner acknowledges and agrees that upon the DRC’s approval of Owner’s Construction Management Plan, the Technical Plans to be submitted for a building permit to Eagle County, and receipt from Owner of the Compliance Deposit described in paragraph 5, that the Owner, then and only then, may apply to Eagle County for a Building Permit or related permits such as a grading permit.

**3. Enforcement of Compliance by the DRC.**

- (a) Authority to enforce compliance. Owner acknowledges that the DRC, including its employees and agents (such as, but not limited to, the Public Safety Officers of Frost Creek), is the authorized agent of the Executive Board of the Association to administer and enforce the CC&Rs, all Construction Management Plans, this Agreement and any and all other agreements in connection with Owner’s Construction Activity.
- (b) Determination of noncompliance. The DRC, on its own initiative or in response to complaint or report filed by any person, is authorized to determine whether Owner’s Construction Activity is in violation of, or not compliant with, the CC&Rs, the Construction Management Plan or this Agreement.
- (c) Remedies and Fines for noncompliance. The DRC is authorized to enforce Owner’s compliance with the CC&Rs, the Construction Management Plan or this Agreement by imposing one or more monetary fines upon Owner for violations of noncompliance (including deduction of unpaid fine, as well as associated DRC administrative and legal costs, from Owner’s Compliance Deposit), by exercising a reserved right of entry on the Property to remove nonconforming improvements, by excluding Owner’s agents from entry to the Frost Creek community under the Association’s jurisdiction, or by pursuing all other available legal and/or equitable remedies. Such remedies are cumulative, not exclusive. The DRC may, in its discretion and after notice to Owner, declare each day after a violation or noncompliance continues as a separate violation or event of noncompliance.
- (d) Notice of noncompliance. If the DRC determines that a violation of, or noncompliance with, the CC&Rs and/or the Construction Management Plan and/or this Agreement has occurred in connection with Owner’s Construction Activity, the DRC (or its authorized employee or agent) may provide Owner with notice (“**Notice**”) of the violation (delivered to Owner as provided in this Agreement

for “Notices”) under the procedure set forth in the Design Guidelines, identifying the sanction to be imposed or remedy to be pursued by the DRC. Owner shall have ten (10) days (or such other time period as specified in the Notice) after receipt of the Notice to either (i) commence the cure or remedy as specified in the Notice, including payment of fines, if any or (ii) appeal the sanction and request in writing a hearing before the DRC under the procedure set forth in the Design Guidelines.

(e) Recorded Notice of Noncompliance. Owner acknowledges and agrees that if the DRC imposes a fine or other sanction against the Owner as described above in subparagraph (d) of this paragraph 3, and such fine remains unpaid and/or the violation or noncompliance giving rise to such fine and/or sanction remains unresolved by Owner, then after the Owner’s right to a hearing has expired or no further appeal is available, whichever comes first, the DRC may record in the records of the Clerk and Recorder for Eagle County, Colorado, with reference to the Property, a public notice of such violation or noncompliance.

4. **Timely Completion of Improvements**. Owner shall timely complete all Construction Activity approved by the DRC, including landscaping. All improvements, alterations and landscaping shall be constructed and performed in a workmanlike manner in accordance with

(a) the CC&Rs;

(b) The Construction Management Plan, Construction Schedule and this Agreement;

(c) All applicable local, county, state and federal ordinances, codes, regulations, statutes, etc. “Completion” for the purpose of this Agreement, shall mean all improvements and alterations, including landscaping, are fully ready for final inspection by the DRC in preparation for issuance of a Letter of Compliance (as defined in the Design Guidelines). Any extension of the completion date specified above must be approved in writing by the DRC.

Each day that Construction Activity remains incomplete after the completion date specified above (or an authorized extension thereof) shall constitute a separate violation of the CC&Rs, Construction Management Plan, Construction Schedule and this Agreement, and subject the Owner to fines therefore.

## 5. Compliance Deposit

(a) Payment. Owner agrees to deposit with the DRC, concurrently with the Owner’s signature below, a Compliance Deposit in the amount of \$20,000.00 (“**Compliance Deposit**”). The purpose of the Compliance Deposit is to secure and assure Owner’s compliance with the CC&Rs, the Construction Management Plan and this Agreement throughout the duration of the Owner’s Construction Activity until completion, including completion of landscaping. The Compliance Deposit shall be made payable to the “BCP ARR Homes and Lots LLC” in the form of a personal or cashier’s check, and shall be maintained by the DRC or the Association in an account at an insured depository institution.

(b) Use of deposit. Owner agrees that if Owner (and/or its employees, agents, or other representatives, including contractors and subcontractors) fail to cure any violation of, or noncompliance with, the CC&Rs or the Construction Management Plan or this Agreement after notice and the opportunity to cure and be heard as provided herein and in the CC&Rs), or to pay any fine levied by the DRC in connection violation or noncompliance, the DRC may, without further notice to Owner, deduct from the Compliance Deposit all unpaid fines and all costs and expenses, including but not limited to administrative costs, court costs and attorneys’ fees, incurred by the DRC in connection with the enforcement of compliance, or, if Owner fails to timely correct any violation or noncompliance, the DRC may draw upon the Compliance Deposit to pay the costs incurred by the Association to remedy the circumstances creating the violation or noncompliance. Owner is not entitled to reimbursement for any costs incurred by the DRC in enforcing compliance with this Agreement. To the extent the Owner’s Compliance Deposit is insufficient to reimburse the DRC for such expenses, Owner agrees to timely replenish the deposit in the amount reasonably required by the DRC after written demand therefore.

- (c) Return of deposit. Upon the DRC's issuance of a Certificate of Compliance to the Owner (as defined in the Design Guidelines), **one-half** of the Compliance Deposit (or such unused portion of the Compliance Deposit, if any, as remains upon the issuance of such Certificate) shall be returned to Owner upon Owner's written request. The remaining half of the Compliance Deposit may be retained by the DRC, in its discretion, for one year from the date of issuance of the Letter of Compliance, to secure Owner's obligation to make reasonable efforts to maintain the new landscaping improvements. The Compliance Deposit, or such portion as remains on deposit with the DRC two years after issuance of the Letter of Compliance, shall be deemed forfeited to the DRC if not requested in writing by the Owner prior to expiration of such two years.
- (d) Dispute over deposit. In the event of a controversy or dispute regarding the Compliance Deposit, or any portion thereof, unless the parties mutually agree in writing as to the disposition of the disputed funds, the DRC shall not be required to take specific action with respect to the funds on deposit without an order of a court of competent jurisdiction, or the DRC may, in its sole discretion, interplead all affected parties and deposit any funds held by it into a court of competent jurisdiction.
6. **Duration of Agreement.** This Agreement shall remain in effect until all improvements, alterations, and landscaping proposed by Owner for the Property and approved by the DRC are completed and the DRC has issued a Certificate of Compliance together with a written accounting for disposition of the Compliance Deposit. Time is of the essence in the performance of this Contract. If the DRC, in its discretion, retains one-half of the Compliance Deposit to secure the first year's proper maintenance of landscaping improvements, then this Agreement shall terminate only after expiration of the one (1) year waiting period for the maintenance of new landscaping and final accounting of the remainder of the Compliance Deposit.
7. **Indemnification.** Owner hereby indemnifies and holds harmless the Association, the DRC, and all officers, consultants, employees and agents thereof, from all liability for any and all losses, claims and demands whatsoever, made by any person or entity, for damage or injury to person or property, arising from the connected Owner's Construction Activity on the Property and/ or the DRC's approval thereof and/or enforcement of compliance with this Agreement. Owner shall reimburse the Association for all costs and expenses incurred by the Association, the DRC and any officer, agent and employee thereof, in defending against any such claim or demand alleged to arise out of Owner's Construction Activity. Such indemnification and reimbursement shall include reasonable attorneys' fees and court costs, regardless of whether court proceedings are commenced or concluded.
8. **Insurance.** Owner shall at all times carry all liability and hazard insurance necessary to fully insure the Property and all Construction Activity conducted thereon as required under the Design Guidelines. Owner shall name the Association as an additional insured on all such policies of insurance and shall submit proof thereof to the DRC in the form of one or more certificates of issuance at the time the Compliance Deposit is made.
9. **Waiver of statutes of limitations.** Owner, individually and on behalf of its employees, assigns, agents, descendants and other representatives, expressly agrees that for the duration of this Agreement, any and all statutes of limitation or similar bar(s) against legal or equitable relief that may become available to the Owner in connection with any efforts by the DRC to enforce compliance with this Agreement and/or the CC&Rs and/or the Construction Management Plan, as a partial or complete defense or bar of any kind (including an affirmative defense) against any cause of action or claim for relief available or that may become available to the Association and/or the DRC regarding subject matter in this Agreement, are hereby waived. Any and all such statutes of limitation or similar bar(s) against relief, including but not limited to those under Colorado Revised Statutes, and including but not limited to all provisions of the Association's CC&Rs, shall not be invoked, raised, asserted or otherwise relied upon by Owner as a defense or bar against any relief, legal or equitable, claimed by the DRC and/or the Association. Owner acknowledges that it has had the opportunity to review this Agreement and the CC&Rs with legal counsel of its choice.
10. **DRC Right of entry.** Owner hereby grants to the DRC and its employees, agents and other representatives the right to enter upon the Property at such reasonable times and upon such reasonable

notice to Owner or Owner's authorized agent for the purpose of inspecting Construction Activity to confirm compliance with the CCR&E 's, the Construction Management Plan and this Agreement. In the event of an emergency, the DRC and its authorized agents are authorized to take such measures as they may deem necessary to prevent an unreasonable risk of harm to person and/or property that arises out of the Construction Activity or condition of the Property.

- 11. **Joint and Several Liability.** If Owner consists of more than one Person or entity, each such person and/or entity shall be fully responsible for all obligations imposed by this Agreement. All references herein to "Owner" in the singular shall include the plural, and shall apply to all owners regardless of gender and regardless of whether an owner is a natural person or entity.
- 12. **Notices.** All communications and notices required or permitted by this Agreement shall be in writing and deemed effective when received by either Owner, contractor, or owner's representative, or the DRC (as applicable) via personal delivery, email, United States mail, in all cases addressed to the address and/or email address set forth below or to such other address as a party shall have designated by notice in writing to the other party:

If to Owner (include email address):

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Phone Number: \_\_\_\_\_

Email address: \_\_\_\_\_

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If to the DRC: DRC Administrator  
Frost Creek Design Review Committee  
Mauriello Planning Group, LLC  
PO Box 4777  
Eagle, CO 81631  
Email address: [dominic@mpgvail.com](mailto:dominic@mpgvail.com)  
Phone: 970-376-3318

- 13. **Modification/ Amendment.** This Agreement may be modified or amended only in writing signed by Owner and authorized Agent of the DRC.
- 14. **Counterparts and Facsimile Signatures.** This Agreement may be signed in counterparts, in which case all counterparts together shall constitute one and the same instrument binding upon all of the parts hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart. Facsimile or PDF signatures shall be treated as original signatures hereon and on any notices given hereunder.
- 15. **Severability.** If any provision of this Agreement shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, it shall not affect or impair the validity, legality or enforceability of this Agreement itself or of any other provision hereof, and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.
- 16. **Choice of Law.** Any and all disputes arising out of or in connection with this Agreement shall be governed by the laws of the state of Colorado. Both parties agree venue shall be in the City and County of Denver, Colorado.
- 17. **Attorneys' Fees and Costs.** In the event of litigation arising out of this Agreement, the Court shall award to the prevailing party reasonable costs and expenses, including attorneys' fees.

- 18. **Binding on Agents, etc.** This Agreement is binding upon Owner, its agents, employees, contractors, subcontractors, assigns, descendants and other representatives. All consents given under this Agreement by Owner are deemed given also by Owner's agents, employees, contractors, subcontractors, assigns, descendants and other representatives.
- 19. **Incorporation by Reference.** The CC&Rs (as may be amended and/or supplemented from time to time), are hereby incorporated by reference in to this Agreement and made a part hereof, and together with the Construction Management Plan shall be interpreted as a whole to further the objectives of the community governed by the Association.
- 20. **Authorization to Bind & Guaranty.** If Owner is an entity and not a natural person, the undersigned signatory on Owner's behalf warrants that he / she is authorized to sign on behalf of Owner and furthermore personally and unconditionally guarantees Owner's performance under this Agreement.

OWNER

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Print Name

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Signature

Date

DESIGN REVIEW COMMITTEE or ADMINISTRATOR

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Print Name

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Signature

Date