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Linda Davis, President
 Aspen View Property Owners' Association, Inc.
 62 White Pine Drive
 Schumbura, IL 60193

**RE: ASPEN VIEW PROPERTY OWNERS' ASSOCIATION, INC.
 SB 100 AND 89 DOCUMENT REVIEW AND COMPLIANCE ISSUES**

Dear Ms. Davis:

You have requested that we review the documents governing the common interest community generally known as Aspen View Subdivision and for the association governing that community, the Aspen View Property Owners' Association, Inc. a Colorado nonprofit corporation (the "Association"), to determine whether such documents comply with the amendments to the Colorado Common Interest Ownership Act, § 38-33.3-202, et seq., C.R.S. ("CCIOA"), that were enacted in 2005 and recently became effective. Those amendments will be collectively referred to as "SB 100". We have also included an analysis of SB 06-89, which was passed by the Colorado House and Senate and signed in May 2006.

In undertaking this project, we reviewed the following governing documents for the Association:

Type of Document:	Title of Document:	Recording/Filing Date of Document:
Common Interest Community Declaration	Declaration for Aspen View Subdivision recorded at Reception Number 511533 of the records of the Summit County, Colorado Clerk and Recorder	March 22, 1996

	First Amendment to Declaration of Protective Covenants for Aspen View Subdivision recorded at Reception Number 519388 of the records of the Summit County, Colorado Clerk and Recorder	July 19, 1996
Articles of Incorporation for Association	Articles of Incorporation of Aspen View Property Owners' Association, Inc. filed in the records of the Colorado Secretary State at filing number 941113650	October 10, 1994
Bylaws for Association	Bylaws of Aspen View Property Owners' Association, Inc. (not signed or dated)	1994 (unsigned and undated)
Plat	Aspen View Subdivision recorded at Reception Number 511532 of the records of the Summit County Clerk & Recorder	March 22, 1996

Please note that the Declaration makes reference to Aspen View Rules and Architectural Standards. It is our understanding that these documents do not exist.

To our knowledge, these are all of the Association's governing documents, in their most current version, and we will hereinafter collectively refer to them as the "Governing Documents". If other documents, or more recent versions exist, please let us know immediately.

Recently, we completed our review of the above documents, and this letter is written to present the results of that review. Additionally, in order to supply you with a fuller understanding of the scope of the changes SB 100 and 89 imposed upon owners' associations throughout the State of Colorado and to ensure that you are aware of the current state of Colorado's law in this area, this letter will summarize all of the changes that SB 100 and 89 made. Following each summary, we will present an analysis of whether the Governing Documents comply with CCIOA, or whether any corrective action is necessary to bring the Governing Documents into compliance.

Please keep in mind that the summaries presented in this letter are our best attempt to

encapsulate the changes made by SB 100 and 89, and should not be relied upon as “gospel”. Rather, we have included the individual statutory references for each amendment for your convenience, and we would be happy to discuss any specific questions that you may have.

SB 100 and 89 specific changes are as follows:

1. **XERISCAPING** (C.R.S. § 37-60-126): Generally, SB 100 rendered covenants or rules that prohibit or limit xeriscape or require primarily or exclusive use of turf grass unenforceable.

Review of Association Documents: The Aspen View Subdivision Governing Documents do not restrict xeriscaping. Note that any future Board policy to limit xeriscaping would be unenforceable.

2. **FLAGS AND POLITICAL SIGNS** (C.R.S. § 38-33.3-106.5)

Under SB 100, associations cannot prohibit American flags on the owner's property, in a window or balcony. Associations cannot prohibit military service stars or service flags displayed in windows or doors during time of conflict. Associations must allow political signs on the owner's property or in the window (but not on the balcony) within 45 days before and 7 days after an election. However, an association may adopt reasonable rules regarding size and manner of display of flags and signs, with a minimum flag size restriction of 9x16 inches and the minimum sign restriction of 36x48 inches.

Review of Association Documents: Section 11.5 of the Declaration appears to conflict with SB 100 and the prepared compliance policy in the Resolution will remedy the conflict.

3. **EMERGENCY VEHICLES** (C.R.S. § 38-33.3-106.5)

Under SB 89, an occupant of a unit is allowed to park certain emergency vehicles within the Association if the following criteria are met: the resident is a member of a volunteer fire department or employed by law enforcement or as an emergency service provider; parking the emergency vehicle at times at the residence is a condition of employment; and the parking of the emergency vehicle does not obstruct emergency access or unreasonably interfere with use of streets, driveways or guest parking.

Review of Association Documents: Section 11.6 of the Declaration appears to conflict with SB 100 and the prepared compliance policy in the Resolution will remedy the conflict.

4. **FIRE PREVENTION** (C.R.S. § 38-33.3-106.5)

An association cannot prohibit removal of trees, shrubs or vegetation to create defensible space if the removal complies with a legitimate and proper written defensible space plan. An association cannot prohibit replacement of cedar shakes/other flammable roofing material with nonflammable roofing materials. Associations can specify standards for color, appearance and

general type of nonflammable roofing material, but cannot require the use of nonflammable materials that exceed the replacement costs of the flammable materials.

Review of Association Documents: The Declaration does not appear to conflict with this provision of SB 100. However, provisions have been included in the Resolution addressing these new requirements.

5. **ENFORCEMENT - ATTORNEY'S FEES** (C.R.S. § 38-33.3-123)

The somewhat complex rules of SB 100 have been replaced by a simple rule in SB 89: in a civil action, the court is to award reasonable attorney fees to the prevailing party on any claim or defense in an enforcement action. If the owner is the prevailing party, he/she will be awarded attorney fees and the association cannot allocate any portion of its attorney fees and costs to that owner.

Review of Association Documents: Article III, Section 3.8 could conflict with this provision of SB 100. A provision on the requirements set forth above has been included in the Dispute Resolution Policy of the attached Resolution included herewith.

6. **ALTERNATIVE DISPUTE RESOLUTION** (C.R.S. § 38-33.3-124)

SB 100 encourages, but does not require, associations to adopt policies that use mediation and/or arbitration as an alternative to lawsuits to resolved disputes between the association and an owner. After January 1, 2007 SB 89 requires associations to adopt a dispute resolution policy for disputes between the Association and unit owners.

Review of Association Documents: a proposed Dispute Resolution Policy has been included in Section IX of the attached Resolution.

7. **ASSOCIATION DISCLOSURES REQUIRED** (C.R.S. § 38-33.3-209.4)

SB 100, as modified by SB 89, requires the Association to provide the following information to unit owners: The name of association; the name of association's designated agent or management company; the physical address and telephone number for both the association and the designated agent or management company, if any; the name of common interest community; and the initial recording date of the declaration and recording information.

SB 100 also requires that the following information be made available to unit owners within 90 days after end of each fiscal year: The date on which the fiscal year commences; the operating budget; a list, by unit type, of current assessments, including regular and special assessments; annual financial statements, including amounts in reserve for preceding fiscal year; results of the most recent financial audit or review; list of association insurance policies; bylaws, articles and rules and regulations; minutes of board and member meetings for the fiscal year preceding current disclosure; and responsible governance policies.

Review of Association Documents: These requirements are completely new under SB 100, and, as such, are not addressed or required anywhere in the Governing Documents. Provisions bringing the Association into compliance with these issues are included in the attached Resolution. The Association has wide latitude in the means of disclosure, so long as the information is readily available at no cost to the Owners. Posting on a web site and maintenance of a binder at the Association's principal office are specifically permitted.

8. **RESPONSIBLE GOVERNANCE POLICIES** (C.R.S. § 38-33.3-209.5)

A. Association must maintain complete and accurate accounting records using generally accepted accounting principles (See also Section 16).

Review of Association Documents: This requirement is completely new under SB 89; The Bylaws at Section 4.7 regarding the Treasurer's duties and Section 7.1 regarding audits and financial records and should be supplemented. Under separate cover we will forward a letter from Stuhr and Associates summarizing applicable GAAP accounting principles. We suggest that you contact your accountant to discuss how this new requirement impacts the accounting records for the Association.

B. SB 100 requires that associations must have policies, procedures, rules, or regulations regarding the following: collection of unpaid assessments; handling of conflicts of interest involving board members; conduct of meetings; enforcement of covenants and rules, including notice and hearing procedures and schedule of fines; inspection and copying of association records by owners; investment of reserve funds; procedures for adoption and amendment of policies, procedures and rules and procedures to address disputes between the Association and unit owners.

Review of Association Documents: Again, the policies set forth above are completely new under SB 100 and SB 89. The Governing Documents contain minimal policies regarding enforcement of rules, notice and hearing and fines. We have included alternative policies in the draft Resolution, as well as the policies also required by SB 100. We are also enclosing a significant amount of information on issues to be considered in determining "Responsible Governance" policies. Included with this letter are proposed policies for the Association to consider and adopt. Obviously, a large amount of discretion is left to the Board in coming up with these policies, and if you desire any changes to the draft policies, or have any questions, please let us know.

9. **BOARD MEMBER EDUCATION** (C.R.S. § 38-33.3-209.6)

SB 100 encourages Associations to provide regular education for Board members, and allows Board members to be reimbursed for actual expenses for educational meetings and seminars on responsible association governance.

Review of Association Documents: The provisions relating to board member education

are not mandatory, so no action is required.

10. **OWNER EDUCATION** (C.R.S. § 38-33.3-209.7)

SB 100 requires associations to provide education to owners, at no cost, on at least an annual basis regarding the general operations of the association and the rights and responsibilities of owners, association, and board. SB 100, however, does not define “education”, and specifically states that the Board shall determine the “criteria for compliance” with this education requirement.

Review of Association Documents: Again, this is a totally new requirement, and no existing provisions of the Governing Documents conflict with or address this requirement. Education alternatives are completely up to the board, and could include educating owners through newsletters or articles (perhaps included with the annual required disclosures), offering an annual class, posting information on a website or a presentation at annual meeting. A proposed education policy that will satisfy the owner education requirement is included in the attached Resolution. However, if the Board desires to adopt an alternative education criteria, please let us know.

11. **AMENDMENTS TO DECLARATION** (C.R.S. § 38-33.3-217)

A. SB 100 set a maximum percentage for owner approval of amendments to a common interest community declaration to 67%. Under SB 100, any requirement for amendment of a declaration over 67% is automatically reduced to 67%.

Review of Association Documents: Section 14.1 of the Declaration states that a vote of owners holding at least 75% of the votes in the Association is needed to amend the Declaration or the Plat. Unanimous consent of all Owners is needed to create or increase any special Declarant’s rights, increase the number of Units in the Real Estate, or change the boundaries of any Unit or the Allocated Interests of a Unit, or the uses to which any Unit is restricted. These percentages exceeds the 67% required by SB 100. No action is required by the Board because SB 100 automatically reduces the above percentage to 67% by operation of law.

B. SB 100 states that if first mortgagee consent is required for amendments, the association may send a dated written notice and copy of proposed amendment by certified mail to each first mortgagee at its most recent address as shown on the recorded deed of trust or assignment. Additionally, the association must publish a notice of the amendment at least twice, one week apart, in newspaper of general circulation in the county where the property is located. If any first mortgagee does not respond negatively in 60 days, the mortgagee is deemed to have approved the amendment.

Review of Association Documents: The Declaration at Article XIV, Section 14.4 requires “the requisite percentage of First Mortgagees” consents to amend the Declaration or the Plat. However, the Governing Documents do not state what this percentage is and therefore it is

presumed that First Mortgagees consents are not necessary. No action by the Board is necessary.

12. **WITHDRAWAL OF MERGED COMMUNITY** (C.R.S. § 38-33.3-221.5)

SB 100 sets forth specific legal criteria that must be followed for an association that desires to withdraw from one or more other common interest communities with which it has previously merged.

Review of Association Documents: The legal criteria for withdrawing from a merged common interest are separate and independent from the Governing Documents. As such, no action by the Board is required.

13. **SELLER DISCLOSURES TO BUYER** (C.R.S. § 38-33.3-223)

SB 100 requires that every seller of a unit in a common interest community must provide copies of the following most current documents to the potential buyer: The bylaws and rules; the declaration; the covenants; the minutes of the most recent annual unit owners' meeting and of any executive board meetings that occurred within the six months immediately preceding the title deadline; the operating budget, the income and expenditures statement; and annual balance sheet. A buyer is deemed to have accepted terms of documents if buyer fails to object by objection deadline.

SB 100 requires associations to use their best efforts to accommodate a request by the seller for documents that are within the association's control in accordance with the books and records section of CCIOA, which is discussed below.

Review of Association Documents: The Governing Documents contain very little information on the document retention policies required by CCIOA, or the rights of owners to access those documents. Based upon this fact, a provision satisfying the Association's requirements under this section of SB 100 along with the other requirement of CCIOA is included in the attached Resolution and in the Responsible Governance Policies. Adoption of these documents will satisfy those requirements.

14. **SELLER DISCLOSURE** (C.R.S. § 38-35.7-102)

SB 89 repeals and re-enacts an SB 100 required disclosure effective January 1, 2007. Sellers of any unit in a common interest community must provide the buyer with a standard disclosure statement in the sales contract. The seller may request the Association to furnish the Governing Documents and Financial Documents to the buyer.

Review of Association Documents: A provision for this new requirement to provide buyer with a standard disclosure statement in the sale contract is included in the attached Resolution. Adoption of that document will satisfy these requirements.

15. **ORGANIZATION OF UNIT OWNERS' ASSOCIATION** (C.R.S. § 38-33.3-301)

Under SB 100, an association may be organized as nonprofit, not-for-profit, for-profit, or limited liability company and the form of organizational structure does not affect substantive rights under CCIOA.

Review of Association Documents: The Association is organized as a Colorado nonprofit corporation. No action by the Board is required.

16. **POWERS OF UNIT OWNERS ASSOCIATION COMPLIANCE WITH CCIOA AND MANAGEMENT CONTROLS** (C.R.S. § 38-33.3-302)

A. SB 100 states that any managing agent, employee, independent contractor or other person acting on behalf of an association is subject to CCIOA to the same extent as the association.

Review of Association Documents: No action by the Board is required.

B. SB 100 requires that applications for architectural changes or landscaping changes must be made in accordance with standards and procedures set forth in the declaration, bylaws or rules and regulations and shall not be made arbitrarily or capriciously.

Review of Association Documents: The Declaration at Article III sets forth basic criteria for architectural control and maintenance of lots and improvements. However, Section 3.6 of this Article specifically referenced rules and regulations (“Architectural Standards”) which to our knowledge do not exist. We recommend that the Board adopt specific architectural standards which should be based on Article III and upon clear standards addressing permitted construction. The Association should prepare a new rule or policy in conformance with Section VII of the Resolution.

C. Under SB 100, an association's contract with a managing agent “shall be terminable” for cause without penalty. Such contracts will also be subject to renegotiation.

Review of Association Documents: We have not reviewed any management contracts, but this termination provision applies whether or not specifically included in a management contract.

17. **AUDITS/REVIEWS** (C.R.S. § 38-33.3-303(4))

Under SB 89, at the discretion of the Board, the association books and records may be audited or reviewed by a CPA or other qualified person selected by the board. An audit performed by a CPA is required only if the association has annual revenues or expenditures of at least \$250,000 or is requested by at least 1/3 of the units owners.

The association must make copies of the audit or review available upon the request of a unit owner no later than thirty days after its completion.

Review of Association Documents: This is another totally new requirement imposed by SB 100. While Section 7.1 of the Bylaws contains the requirements that the Association maintain financial records and provides for the payment of audits, the Governing Documents do not fully comply with this SB 100 new requirement. A proposed policy on this issue is included in the attached Resolution, and adoption of that document will satisfy the requirements of this section.

18. **MEETINGS OF OWNERS AND OWNER PARTICIPATION AT BOARD MEETINGS** (C.R.S. § 38-33.3-308)

A. In addition to the existing notice requirements set forth in CCIOA, SB 100 adds the requirement that notices of owner meetings must be physically posted in a conspicuous place to the extent feasible and practicable.

Review of Association Documents: This is a new requirement proposed by SB 100. A policy satisfying this section is included in the attached Resolution.

B. SB 100 encourages associations to provide notices and agendas of meetings in electronic form by posting on a web site or other form, in addition to a printed form. If an owner requests notices of unit owner meetings by electronic mail and provides an e-mail address, the Association must provide notice electronically. Electronic notice of special owner meetings must be given at least 24 hours before the meeting.

Review of Association Documents: This is a new requirement proposed by SB 100. A policy satisfying this section is included in the attached Resolution.

C. SB 100 clarifies that all meetings of the Board of Managers are open to members; empowers members to speak at appropriate times determined by the Board at those meetings; authorizes the Board to place reasonable limitations upon member's statements at a Board meeting; and authorizes the Board to go into executive session to discuss certain confidential matters.

Review of Association Documents: This is a new requirement proposed by SB 100. A policy satisfying this section is included in the attached Resolution.

The proposed policy relating to each of the above matters will substantially modify Articles II and III of the Bylaws.

19. **VOTING - PROXIES** (C.R.S. § 38-33.3-310)

A. Contested Elections of directors must be by secret ballot.

Review of Association Documents: The Bylaws do not require secret ballots for board elections; the attached Resolution requires contested elections of directors by secret ballot. This provision satisfies the requirements of SB 100.

B. Votes on matters other than board elections must be by secret written ballot upon the request of 20% or more members.

Review of Association Documents: The Bylaws currently make no provision for a secret ballot vote on issues other than board elections. As such, provisions to bring the Association into compliance with this section of SB 89 have been included in the attached Resolution.

C. In any secret ballot vote, the ballots must be counted by a neutral third party or by unit owners who are not board members or a candidate and are selected by the meeting chair in a fair manner. Votes must be reported without reference to names, addresses or other identifying information.

Review of Association Documents: The Bylaws currently make no provision for the vote-counting procedure to be used in secret ballot votes, and provisions to bring the Association into compliance with this section of SB 100 have been included in the attached Resolution.

D. SB 100 enacted detailed regulations on the use of proxies in association votes. Those regulations included when and what type of proxies are valid, when an association can reject a proxy, that the association has a reasonable basis to question the validity of the signature on the proxy or the signatory's authority to execute a proxy, and sets standards for when an association's decision to accept or reject a proxy is valid.

Review of Association Documents: Section 3.9 of the Bylaws currently addresses proxies. While that section complies with CCIOA's existing proxy regulations, it does not address the new issues enacted by SB 100 detailed above. As such, a new proxy provision is included in the attached Resolution included with this letter.

20. **BOARD MEMBER CONFLICTS OF INTEREST** (SB 89 - C.R.S. § 38-33.3-310.5)

The Colorado Non-Profit Corporation Act requires any transaction that would financially benefit any board member, or an entity in which the board member has a financial interest, or a related party of a board member, to be declared by such board member as a conflict of interest in an open meeting prior to any discussion or action on that issue. After the declaration, the member may participate in the discussion but may not vote. Any contract entered in violation of this provision is voidable. An association can create more strict conflict of interest provisions in its Governing Documents, if it so desires.

Review of Association Documents: The conflict of interest statute has been included in the attached Resolution to implement SB 89.

21. **ESCROW AGREEMENTS** (C.R.S. § 38-33.3-315)

Unless prohibited in its governing documents, an association may enter into an escrow agreement with the holder of a unit owner's mortgage so that assessments may be added to owner's mortgage payments and paid in the same manner. Any such agreements must comply with applicable rules of the FHA, HUD, VA and other federal agencies.

Review of Association Documents: This is a discretionary section, and no action by the Board is necessary.

22. **ASSOCIATION RECORDS** (C.R.S. § 38-33.3-317)

SB 100 substantially revised the record keeping requirements for associations throughout Colorado.

A. Under SB 100, an association must keep the following items as permanent records: minutes of all member and board meetings; a record of all actions taken by written ballot or consent in lieu of a meeting; record of actions taken by a committee or board (including any architectural control committee or board) in place of the executive board on behalf of the association; and record of waivers of notices of meeting of owners and board or any committee of the board.

B. An association must keep a record of unit owners in a form that permits preparation of a list of names and addresses of all unit owners, showing the number of votes each unit owner is entitled to vote. This unit owners list may not be used for purposes unrelated to the Association.

C. An association must also keep the following records at the association's principal office: articles of incorporation or other organizational documents; declaration; covenants; bylaws; resolutions of board related to characteristics, qualifications, rights, limitations, and obligations of owners or any class or category of owners; minutes of all owners' meetings and records of actions taken by owners without a meeting for the past three years; all written communications within the past three years to unit owners generally as owners; list of names and business or home addresses of current directors and officers; most recent annual report, if any; and all financial audits or reviews conducted in compliance with CCIOA audit/review requirement.

D. Under SB 100, all financial and other records shall be made "reasonably available" for examination and copying by any owner and their agents. The association may charge a fee not to exceed the association's actual cost per page for copies. "Reasonably available" means available during normal business hours upon notice of five business days or at the next scheduled meeting if within thirty (30) days of the request. The request must be made in good faith for a proper purpose; the request must describe with reasonable particularity the records sought and the purpose of the request; and the records must be relevant to the purpose of

the request.

Review of Association Documents: The Bylaws at Article VII contain some of the record keeping obligations required by SB 100. However, to assist the Association with full compliance under this SB 100 section, a provision updating the bylaws to fully comply with SB 100 has been included in the attached Resolution, and is also included in the Responsible Governance Policies.

23. **HOMEOWNERS INSURANCE** (C.R.S. § 10-4-110.8)

Under SB 89, a unit owner may file a claim against the association's insurance policy to the same extent, and with the same effect, as if the unit owner was a named insured. After notifying the Managing Agent or Board of the claim and complying with any policies for owner-initiated claims. The owner must give the Association at least 15 days to respond and inspect the damage.

Review of Association Documents: This is another totally new provision enacted by SB 100 and 89. The Association is required to obtain public liability insurance on the Common Elements and fidelity and directors' coverage, to the extent available. Any Homeowner may file claims against such policies after providing the Association with Notice.

Hopefully, this review of all of SB 100 and 89 changes to the state of Colorado owners' association laws has been helpful. Please review the draft Responsible Governance Policies and attached Resolution and let us know if you have any questions or concerns, or if you desire any modifications.

Thank you very much. Please call with any questions.

Sincerely,

/s/ Seth Murphy

Seth Murphy

Enc.