

ALDASORO RANCH SUBDIVISION
OPEN SPACE USE POLICY
Adopted 1-27-09

I. DEFINITIONS.

(a) **"Aldasoro Lot"** means any lot designated for residential use and development that has been platted and included in the Aldasoro Ranch subdivision.

(b) **"Authorized User"** means the following persons: (i) an Owner; (ii) a Tenant; or (iii) a Guest.

(c) **"Guest"** means a person or persons who are present in the Aldasoro Ranch subdivision at the specific invitation of an Owner or Tenant and who are accompanied by the Owner or Tenant when in the Aldasoro Ranch.

(d) **"HOC"** means the Aldasoro Ranch Homeowners Company.

(e) **"Open Space Parcels"** means any of the parcels of land included in Aldasoro Ranch that have been platted and designated as "open space" and are owned by the Association. For purposes of these policies, the term Open Space Parcel does not include those parcels included in the Aldasoro Ranch and designated for uses other than open space, such as parcels designated for roads, ponds and other purposes.

(f) **"Owner"** means a person or persons who are the current fee simple owner of an Aldasoro Lot, as reflected in the records maintained by the HOC. Family members related to an Owner are deemed to be an "Owner" for purposes of this Policy.

(g) **"Tenant"** means a person or persons duly authorized to lease a residence from an Owner that has been constructed on a an Aldasoro Lot, provided that the Owner and Tenant have complied with all terms and conditions of the Aldasoro Ranch Governing Documents that control the renting of residences located on an Aldasoro Lot. A Tenant shall not include a person or persons leasing an Aldasoro Lot that is not improved with a residence. Family members related to a Tenant are deemed to be a "Tenant" for purposes of this Policy.

2. PERMISSION TO USE OPEN SPACE PARCELS.

(a) An Authorized User is authorized to access and use an Open Space Parcel, subject to the right of the HOC to impose more stringent rules that could restrict use of areas of an Open Space Parcel for good cause, such as revegetation, work on roads and ponds, wildlife restrictions, and the like, as determined by the HOC.

(b) An Authorized User may only access and use an Open Space Parcel for such uses and activities authorized by the Aldasoro Ranch Governing Documents, including the Declaration and Rules and Regulation, the land use approvals granted by San Miguel County for the Aldasoro Ranch and the San Miguel County Land Use Code.

(c) An Authorized User shall not access and use any Open Space Parcels in any manner that would be deemed to be a violation of the Aldasoro Ranch Governing Documents, including the Declaration and Rules and Regulation, the land use approvals granted by San Miguel County for the Aldasoro Ranch and the San Miguel County Land Use Code as determined by the HOC in its sole discretion.

(d) A Guest may access and use any Open Space Parcels only during such periods of time when the Guest is specifically accompanied by such Owner or Tenant that invited the Guest to use the Open Space Parcel. The Owner or Tenant inviting the Guest shall be deemed to be the "Responsible Party" for purposes of this Policy.

(e) These Policies are intended to be narrowly construed and interpreted by the HOC in a manner that most strongly allows for the management or control of the Open Space Parcels both active and passive as private holdings of the HOC available for the limited use of the Authorized Users. The HOC may reject any arrangements that it believes to be an artifice to allow persons not legitimately intended to be an Authorized User from using the Open Space Parcels.

(f) Nothing herein shall preclude the HOC from allowing access to the Open Space Parcels by persons who have rights of access under any perfected easement over the Open Space Parcels (such as utility providers). In addition, the HOC shall allow access for law enforcement, emergency response and other similar persons who require access over the Open Space Parcels in the performance of their official duties.

(g) The HOC may use all lawful methods to cause any person or persons who are not an Authorized User from using any Open Space Parcel and may pursue all lawful means to have them removed from the Aldasoro Ranch and prosecuted as trespassers.

(h) An Authorized User using the Open Space Parcels: (i) shall be solely responsible for their own personal conduct and safety, (ii) shall be deemed to be familiar with the condition of the Open Space Parcels and acknowledges all such conditions; and (iii) expressly assumes all risks of every kind and nature whatsoever that he/she may encounter on the property, including, with limitation, the risks associated with the foregoing hazards. The absence of hazard notices, warning signs, or other notices shall not limit in any way Authorized User's assumption of risk in its activities while using the Open Space Parcels.

(i) The HOC intends to avail itself to the maximum immunities, benefits and protections which may be available to the HOC and each Owner pursuant to the public recreational use statute, CRS, 33-41-101, et seq., the Colorado landowner liability statute, CRS, 13-21-115 (1.5) and the conservation easement provisions of CRS, 38-30.5-101, et seq.

3. ENFORCEMENT.

(a) The Board of the HOC and/or its designee, including staff of the HOC, shall have the duty and the power to implement and enforce this Open Space Use Policy.

(b) Upon the occurrence of a violation by a Responsible Party, the Board or designee shall give written notice ("**Notice of Violation**") to the Responsible Party (and a copy to the Owner of the Lot if the Owner is not the Responsible Party) of the occurrence of such violation, stating with reasonably detailed information concerning the violation, noting, among other things, the facts and circumstances surrounding the violation as well as the day, approximate time and approximate location of the violation. Copies need not be sent to other Owners, unless the notice of violation was brought to the attention of the HOC by another Owner. The Board or designee is authorized and empowered to impose the following fines and enforcement measures as determined by the HOC:

(i) Upon the occurrence of the first violation, a warning letter shall be sent to the Responsible Party;

(ii) Upon the occurrence of the second violation, a fine in the amount of \$250.00 shall be imposed; and

(iii) Upon the occurrence of the third violation, a fine in the amount of \$250.00 shall be imposed and, in addition, the HOC may suspend the right of the Authorized User to use any Open Space Parcel and if the violating party is a guest, then the suspension shall apply to the Responsible Party in addition to the Guest

(c) An Owner of an Aldasoro Lot is ultimately responsible for the conduct of a Tenant or Guest using an Open Space Parcel, including the payment of all fines and penalties that may be assessed by the HOC hereunder. All fine assessments shall be due and payable immediately upon notice of such fine or assessment, as described below. All unpaid fines are subject to the imposition of association liens on the Lot as provided by the Aldasoro Governing Documents. If any fine assessment is not paid within ten days after the due date, a late charge in the amount of \$100 shall be assessed to compensate the Policies for the expenses, costs and fees, including attorney fees, involved in handling such delinquency. Responsible Party's shall be personally, jointly, and severally liable for all fines/penalty assessments.

(d) Notwithstanding anything to the contrary in these Policies, the HOC shall be entitled to take such action and perform such work as specified in these Policies or as otherwise permitted or required by law, the Declaration or the Bylaws, prior to, in the absence of, or during the pendency of any hearing. At any time following the non-payment of a fine or penalty or failure to abide by a suspension order as provided for herein, the HOC may commence an action at Law, or in equity, or both, against any Responsible Party personally obligated to pay the same, for recovery of said assessment plus late charges, as aforesaid. The prevailing party shall be entitled to recover its reasonable attorneys' fees and associated costs and expenses incurred in connection with such legal proceedings.

4. PROCEDURES CONCERNING THE ENFORCEMENT OF THE POLICIES.

(a) **Request for Hearing.** In the event any person desires to challenge or contest any alleged violation and possible fine stated in the Notice of Violation, said Responsible Party must, within five days from receipt of the Notice of Violation, request such hearing by notifying the HOC, in writing, of such hearing request. In the event a proper and timely request for a hearing is not made as provided herein, the right to a hearing shall be deemed forever waived. If a hearing is requested within the aforementioned 5 day period, the Board shall convene a hearing as provided for below. In requesting a hearing before the HOC, a Responsible Party shall state and describe the grounds and basis for challenging or denying the alleged violation as well as such other information the Responsible Party deems pertinent.

(b) **Board to Conduct Hearing.** If a hearing is timely requested by a Responsible Party, the Board shall hear and decide cases set for hearing pursuant to these Policies. The Board shall send a notice of hearing ("**Notice of Hearing**") to the Responsible Party indicating the time, place and location of the hearing. The Board may appoint an officer or other Responsible Party to act as the presiding officer (the "**Presiding Officer**") at any of the hearings.

(c) **Conflicts.** It shall be incumbent upon each Board member to make a determination as to whether he/she is able to function in a disinterested and objective manner in consideration of each hearing before the Board. Any Board member incapable of objective and disinterested consideration on any hearing before the HOC shall disclose in writing to the President of the HOC prior to the hearing on the case, if possible, or, if advance notice is not possible, then such disclosure shall be made at the hearing, and said Board member shall be disqualified from all proceedings with regard to the hearing. If disqualification of any Board member(s) results in an even number of

remaining Board members eligible to hear a case, the Presiding Officer shall appoint an HOC member, in good standing, to serve as a voting member of the hearing board.

(d) **Hearing.** Each hearing shall be held at the scheduled time, place and date stated in the Notice of Hearing, provided that the Presiding Officer may grant continuances for good cause. At the beginning of each hearing, the Presiding Officer shall explain the Policies, procedures and guidelines by which the hearing shall be conducted and shall introduce the case before the Board by reading the Notice of Hearing. The general procedure for hearing shall consist of opening statements by each party; presentation of testimony and evidence, including cross-examination of witnesses by each party; and closing statements by each party. Notwithstanding the foregoing, the Board may exercise its discretion as to the specific manner in which a hearing shall be conducted and shall be authorized to question witnesses, review evidence and other take such reasonable action during the course a hearing of which it may deem appropriate or desirable to permit the Board to reach a just decision in the case. Neither the complaining parties, nor the Responsible Party, must be in attendance at the hearing in order for the hearing to proceed. However, the decision of the Board at each hearing shall be based on the matters set forth in the Notice of Violation, request for hearing, and such evidence as may be presented at the hearing. Unless otherwise determined by the Board of Directors, all hearings shall be open to attendance by all members of the HOC. The Board and the Responsible Party may participate by phone. The hearing shall be open to all Lot Owner's in the Aldasoro Ranch.

(e) **Decision.** After all testimony and other evidence have been presented to the Board at a hearing, the Board shall render its written decision thereon within twenty days after the hearing. A decision, either a finding for or against the Responsible Party, shall be by a majority of the Board. The Board shall issue written findings of fact and conclusions, and, if applicable, shall impose a reasonable fine as provided in these Policies and assess costs, expenses and fees, including attorney fees incurred by the HOC in conducting the hearing and issuing the fines. The Board may also issue and present for recording with the Clerk and Recorder of San Miguel County, Colorado, a Notice of Finding of Violation. Upon satisfactory compliance with the HOC's governing documents, the Notice of Violations may be released by the HOC issuing and recording a Release of Notice of Findings of Violations.

5. MISCELLANEOUS.

(a) In the event of a specific conflict between the Declaration and these Policies, the Declaration shall prevail.

(b) Notwithstanding anything to the contrary contained in these Policies, the HOC hereby reserves the right, at any time and from time to time hereafter, to modify, amend, repeal and/or re-enact these Policies in accordance with the Declaration, Bylaws, and applicable law.

(c) Failure by the HOC, the Board or any person to enforce any provision of these Policies shall in no event be deemed to be a waiver of the right to do so thereafter.

(d) The provisions of these Policies shall be deemed to be independent and several, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or decree of any court of competent jurisdiction, shall in no way affect the validity or enforceability of the remaining provisions, which provisions shall remain in full force and effect.

(e) Nothing herein shall preempt or diminish any other right by any other person, if any, to use any Open Space Parcel that may have been established and granted by other documents of record.