

**FIVETREES METROPOLITAN DISTRICT**  
**RULES, REGULATIONS AND BYLAWS**

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## SECTION I - GENERAL REGULATIONS

- 1.1 Purpose. These Rules and Regulations together with the District's Standards and Specifications, which are incorporated herein, provide for the management, maintenance and operation of all District facilities and infrastructure including additions thereto and will serve a public use and promote the health, safety and general welfare of the inhabitants of the District and are enacted pursuant to Colo. Rev. Stat. §32-1-101 et seq. (1973) as amended.

The FiveTrees Metropolitan District is a quasi municipal corporation (local government) which own the roadways, drainage and storm detention systems, traffic systems, and a potable community water system within the boundaries of the district. The FiveTrees Metropolitan District manages, administers, operates and maintains all facilities and services provided to constituents of the district and to extra-territorial users of district services.

- 1.2 Raw Water System. The District irrigation water system provides irrigation water for all open space irrigation and for lawn and garden irrigation at Bus Barn Lane, Siever's Court and Grey Talon Court and is to be conserved from waste. The water supply for the District comes from the City of Aspen through a Raw Water Service Agreement. Water from the District system is only available to constituents of the district and according to the terms of the Raw Water Service Agreement.
- 1.3 Drainage & Storm Sewer System. The District drain and storm sewer system carries storm waters, surface drainage, or discharge of water from above ground or underground sources. The drain and storm sewer system is owned and maintained by the District and may not be tapped into or used without permission and license from the District.
- 1.4 Roads, Streets and Safety Improvements. The District road and street system, together with all safety improvements is owned, operated and maintained by the District and includes both primary and secondary access to residences within the District. With the exception of Moore Drive between Maroon Creek Road and High School Road, all roads within the District are private and public use of District roads is limited to invitation by residents, of the District or specific access easements. That section of Moore Drive described above as public, lies on lands owned by the District.

- 1.5 FiveTrees Lift. The District owns a double chair, fixed-grip Poma surface lift which provides access to the Aspen Highlands ski area for bona fide users of the lift.
- 1.6 Definitions As used herein.

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Board shall mean the Board of Directors of the FiveTrees Metropolitan District.

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Chairlift shall mean the FiveTrees Lift.

City shall mean the City of Aspen.

Connection Charge (tapping fee) shall mean a fee for tapping into and connecting a private water line, drainage or storm sewer service line to the District's facilities.

Constituent, Property Owner, Individual, Customer shall mean a person who pays taxes to the District, owns property within the District, or receives service from the District.

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Cost means all direct and indirect costs attributable to any project or the construction of any new facility, including without limitation the costs of inspections, reviews, surveys, actual construction, preliminary and design engineering, inspection, construction observation, administration and legal service, "as built" drawing, easements and acquisition and all other costs necessary for review, evaluation or completion of such new project or facility.

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County shall mean Pitkin County.

Cross Connection Control Device or back-flow prevention device, shall be installed on all private water service lines between the primary source of supply and any other supply or use that may lead to cross-contamination. This includes but is not limited to private wells, swimming pools, spas, irrigation systems, hot tubs, et cetera. This device is also known as a back-flow preventor.

Customer shall mean any person, partnership, corporation, governmental authority or their lessees and tenants authorized to use District facilities under a license or permit and who is supplied with water, drainage or storm sewer service by the District.

Developer shall mean the persons, firm, joint venture, partnership or corporation which is the owner or agent of the owner of land which is developing or subdividing owner's land and which seeks to have the development or subdivided land served by the District.

District shall mean the FiveTrees Metropolitan District.

District Engineer shall be the person or consultant appointed by the Board or manager to provide professional engineering services to or on behalf of the District. See also District Manager.

District Facilities or Infrastructure means all facilities of any kind owned, operated or otherwise managed by the District. This includes but is not limited to pipelines, pumps, pump station, storage tanks and vessels, irrigation systems, irrigation heads, lines and controls, water system controls, manholes, valves, blow-offs, hydrants, electrical systems, computer and telemetry systems, roads, streets, access ways, drainage ways, storm sewers, signs, signals, warning devices, traffic devices, treatment systems, offices, vehicles, and equipment.

District Manager or Manager shall be the person or management entity appointed by the Board to manage the District and inspect all water, drainage and storm sewer installation, repair, excavations, and connections, the setting of fees, rates and charges, the management of fiscal operations, oversight of maintenance, repair and rehabilitation of district facilities and infrastructure and charged with enforcement of these regulations and the District's standards and specifications.

Extra-territorial Service shall mean the provision of service to any property not within the approved District's boundary but which lies within the District's approved Service Area. Extra-territorial service is only available on a contractual basis.

Inclusion shall mean the expansion of District boundaries of the FiveTrees Metropolitan District for inclusion of property into the District shall be granted only in accordance with these Rules and Regulations.

Inspector shall mean District Manager or his authorized agent, employee or contractor.

Inspection fees shall mean a fee assessed the owner for the inspection of any service line or main to be connected to District facilities and is to ensure that all lines, mains, appurtenances or structures constructed comply fully with these rules and regulations and with the By-laws, Standards and Specifications of the District.

Irrigation Distribution Lines shall be a water main which distributes water to the various service addresses therein for the specific purpose of irrigating lands within the District.

Landscaping shall mean any area planted with grass, trees, bushes, shrubs, flowers or other similar materials including naturally occurring vegetation which is owned,

operated or maintained by the District.

License/Tap Permit shall mean written permission of the Board of Directors to connect to any raw water or storm sewer main of the District pursuant to the Rules and Regulations and standards and specification of the District.

Person shall mean any individual, firm, company, association, society, corporation or group.

Potable Water shall mean water which meets community water standards for drinking water quality.

Premises shall mean a single dwelling unit or structure, including detached structures with a common foundation, such as a garage, caretaker unit, or similar that has common ownership.

Private Storm Sewer Service Line shall mean the sewer line from the wye at the sewer main to the individual building being served.

Private Water Service Line shall mean the water line from the curb valve, or tee, or corporation stop at the water main to the individual building being served. Multiple service lines to an individual building are prohibited without prior express written approval of the District.

Public Storm Sewer shall mean a sewer which carries storm and/or drainage water and to which contaminated water or any hazardous liquid or materials are not intentionally admitted.

Pump Station shall include any facilities owned by the District which may be used for the pumping of water.

Raw Water shall mean water used by the District for irrigation or other purposes which is not potable or of drinking water quality.

Road Cut Permit shall mean any permit issued by the District for the purpose of cutting any District road, street, trail or other means of access.

Road Impact Fee shall mean any fee assessed by the District to cover unusual wear and tear on District roads caused by construction or heavy traffic. Road Impact Fees will be assessed to all properties prior to the granting of building permits by Pitkin County.

Service Area shall mean that area approved by Pitkin County for provision of service

outside of the District's taxing boundaries. This includes only the Meadowood and Aspen Highlands subdivisions.

Stormwater Collection Line shall be a storm sewer main which collects storm or drainage water from the various service addresses therein.

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Storm Sewer shall mean any drainage or storm sewer line owned by the District and installed in a street or utility easement.

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Storm Sewer Extension shall be any storm sewer main, pipeline or other facility required to connect a developer's drainage or storm sewer collection system to District service facilities.

Shall is to be construed as mandatory, may is discretionary.

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Street Light shall mean any public safety or transportation lighting fixture owned, operated or maintained by the District.

Street Sign shall mean any public safety or transportation street sign or signal owned, operated or maintained by the District.

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System Development Charge (Tap Fee) shall mean a fee assessed the owner for the right to access the District roads, water and storm sewer facilities. Tap fees are collected to repay the costs of previously constructed facilities and/or the future rehabilitation or replacement of existing facilities. Tap fees may be used for any purpose authorized by the Board.

Tap Fee - See System Development Charge.

Tapping Fee - See Connection Charge.

Traffic Signal/Control Device shall mean any traffic signal/control device owned, operated or maintained by the District.

Transportation services shall mean any transportation services owned, operated or maintained by the District.

Water Main shall mean any water line 2 inches in diameter or greater which is owned by the District.

Water Main Extension shall be any water main, pipeline or other facility required to connect a developer's irrigation water distribution system to District service facilities.

Water Meter shall mean the mechanical or electronic device used to measure the

quantity of water delivered to a District customer or use.

Water Rates shall mean those rates and fees for which water shall be furnished within the district and/or its Service Area.

Water Service shall mean the provision of water to District Constituents or contract holders for a fee or rate established by the Board.

Water System shall mean the entire system complete with all facilities, infrastructure and appurtenances, rules and regulations, standards and specifications.

- 1.7 Authority of Agents and Inspectors. Inspectors and other duly authorized employees or agents of the District with proper credentials shall be permitted to enter upon all properties within the District at reasonable times as necessary for the purpose of inspection, observation, measurement, sampling, testing, maintenance, repairing, and replacing any culverts, water mains, service lines, water meters, valves, pumps, storage vessels, roads, streets, signs, ditches, or other district facilities.

NOTE: Pursuant to Colo. Rev. Stat. §18-8-106, a person commits a Class 1 petty offense if, knowing that a public servant is legally authorized to inspect property (a) he refuses to produce or make available the property for inspection at a reasonable hour or, (b) if the property is available for inspection, he refuses to permit the inspection at a reasonable hour. Pursuant to C.R.S. §18-8-102 (1973), a person commits obstructing government operations (A class 3 misdemeanor) when he intentionally obstructs, impairs or hinders the performance of a governmental function by a public servant by using or threatening to use violence, force or physical interference or obstruction.

- 1.8 Tampering, By-Passing or Unauthorized Use of District Facilities. No person shall by-pass any meter or in any way tamper with or make any use of any of the facilities of the District or the water supplied by or other services provided by the District or make any connection to its drainage, roads or storm water systems or any other facility (except authorized fire fighting personnel) without advance written permission from the Board. Any tampering with or connection to any District facilities without written permission of the Board shall subject the violator of this section to a minimum penalty of \$500.00 plus a supplemental fee or charge set by the Board, such supplemental fee or charge to be at least as great as the total costs of all water or other products or services taken and all damage or costs caused to the District or its customers by the unauthorized tampering or connection together with all costs and attorneys' fees reasonably incurred in collecting such penalty.

NOTE: Pursuant to C.R.S. §18-4-505, a person commits a Class 1 misdemeanor if he tampers with the property of a utility or institution with intent to cause interruption or impairment of a service rendered to the public by a utility or by an institution with intent to cause interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection.

Pursuant to C.R.S. §18-4-506, a person commits a Class 2 misdemeanor if he tampers with property of another

with intent to cause injury, inconvenience or annoyance to that person or to another or if he knowingly makes an unauthorized connection with property of a utility.

Pursuant to C.R.S. 18-4-506.5, a person commits a class 2 misdemeanor if he connects any contrivance with any main supplying water without the District's permission or if he alters or obstructs or interferes with the operation of the water meter without the District's permission.

Pursuant to Colo. Rev. Stat. §40-7.5-102, 103, and 104, the District shall be entitled to recover as damages, three times the amount of the actual damages, plus all reasonable expenses and costs incurred on account of the by-passing, tampering, or unauthorized use of any district facility.

- 1.9 Damage. No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, open or close any lines, valves, tanks, mains, pumps, structures, appurtenances or equipment of the District's water supply, drainage storm sewer collection system, traffic, or transportation system.
  
- 1.10 Compliance. If any customer violates any of these rules and regulations or fails to pay when due any of the rates, fees, tolls or charges and interest thereon at 1% per month, the District may terminate and/or sever such customer's storm sewer or storm water service lines from the District facilities upon 3 days notice and assess a disconnection charge to be at least as great as the costs and damages to the District or its customers associated with any violations and subsequent disconnection. A disconnection notice may be served upon the occupant or attached to the front door of the premises or mailed by certified mail return receipt requested. Such disconnection charge shall be assessed as an additional charge to the violating customer and, until paid, shall constitute a perpetual lien against the property formerly served to be foreclosed in the same manner as a mechanic's lien.
  
- 1.11 Regulation Changes. These rules and regulations may be altered, amended, repealed or reenacted at any regular meeting of the Board of Directors of said District or at any special meeting of the Board called for that purpose.
  
- 1.12 Invalidity of Rules and Regulations. If any section, subsection, paragraph, clause, or other provision of these rules and regulations shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or other provision shall not affect any of the remaining provisions.
  
- 1.13 Liability. Any person violating any of the provisions of these rules and regulations shall be liable to the board for any expense, loss or damage to the District occasioned by such violation, including the District's reasonable costs and attorney's fees to require adherence to these rules and regulations or to collect the penalties, fees, tolls and charges due hereunder.

- 1.14 District Standards and Specifications. The Standards and Specifications of the FiveTrees Metropolitan District are incorporated herein as an integral part of these Rules and Regulations. In the event any rule, regulation, or standard, adopted by the District conflicts with another rule, regulation, or standard, the District in its sole discretion shall determine which rule, regulation, or standard shall control.
- 1.15 Cooperative Agreement. The District has entered into a cooperative agreement with the FiveTrees Homeowners Association. This agreement calls for the District and HOA to cooperate on matters that affect both entities, such as damage to common facilities, roads, signs, irrigation systems, open space, et cetera, and to withhold deposits or other fees paid to ensure compliance with covenants, guidelines, rules and regulations of both entities.
- 1.16 Constituent Rights. All constituents shall have the right to free and open access to the District's policies, rules and regulations and the activities of the Board. Any constituent may address the Board at any public meeting and may file a request for action by the Board with the Board directly or through the District's Manager. Constituents may also contact the manager about any district business but for reasons of budgetary constraints and best management practices, only the Board shall provide directives to the Manager. Requests for provision of services should be made to the manager or the Board, preferably in writing, and action upon the request will then be considered along with operational, financial and legal considerations.

## SECTION II. SERVICE POLICY

- 2.1 Eligibility of Service. All properties situated inside the corporate boundaries of the District as of its date of incorporation shall be eligible to receive irrigation water service from the District upon compliance with these rules and the payment of all required fees.
- 2.2 Inclusion of Property into the District. Property not eligible for service by the District may petition the District Board for inclusion into the District, however, the decision on whether to include any property lies solely within the discretion of the District's Elected Board of Directors. Landowners wishing to include property into the District must petition the District for inclusion of such property in strict compliance with Colorado Revised Statutes, Sections 32-1-401 and 32-1-402 complete, and all administrative rules of the District as of the date of petition for inclusion. The Petitioner must pay all fees and costs associated with the inclusion and agree to be bound by all District Rules, Regulations, Standards and Specifications.
- 2.3 Exclusion of Property from the District. Fee owners of property within the District may petition the Board for exclusion of such property in accordance with Colorado Revised Statutes, Section 32-1-501.
- 2.4 License/Tap Permit. The right to take and use water distributed through or have collected by District facilities shall exist only under license and before any tap or connection is made to the District's water or sewer mains or roads, separate written permits therefore shall be obtained from the District and all required fees shall be paid. For storm sewer taps, a written permit from the District shall be obtained and the required fees therefore paid.

Application for water tap permits, storm sewer permits or road access shall be made to the District on forms furnished by the District which shall give a full description of the work to be done, the address of the property or unit seeking to connect, the name of the licensed & approved contractor to perform the work under the permit, and such other information as may be required by the individual permit. Any permit may be revoked if the installation or use covered by the permit is not in accordance with requirements of these regulations or any prescribed standard and specification of the District or any governing rule of the Board.

The Licensee shall have the right to use water only on the licensed premises and for the purposes specified in the license, subject to the modification, suspension or revocation of such license as provided herein. The Licensee shall not deliver any wastewater to the storm sewer system from any premises or use including swimming pools, spas, Jacuzzi, et cetera, without the prior written consent of the District, which

the District shall have sole discretion to grant or deny.

Licenses attach to the licensed premises only. Licenses are not affected by changes in ownership of the licensed premises. Licenses can not be transferred from one premises to another without the prior written consent of the District.

- 2.4.1 Accessing District Facilities. No District water or storm sewer main or ditch or other district facility shall be tapped into or connected to without first having received a tap permit as described in Section II, paragraph 2.4, above, and second, having scheduled a tapping or connection date and time with the District's manager. All taps and connections to District facilities shall be made in accordance with the District's Standards & Specifications, particularly section 4.13. No tap made to any District main shall be buried prior to inspection by a District Representative. Taps to District facilities shall only be made by District approved contractors or District Staff.
- 2.5 Separate License/Tap Permit. Not more than one connection to the irrigation water or storm sewer main shall be allowed under each permit. A permit shall be limited to one independent structure and licenses attach to the licensed premises only. No combination of permits shall be allowed and each permit is separate from any other permit.
- 2.6 Other Permits. No permit issued by the District (except for a road cut permit) shall be taken as authority for the making of any cut in a District road or street, nor in lieu of any permit required by any other regulatory body. Permits required by other agencies are the responsibility of the Contractor. A District Road Cut Permit must be issued by the District and all appropriate fees paid prior to any cutting of any District road.

Hydrant Permit: No fire hydrant shall be used for any purpose without a valid hydrant permit, issued by the City of Aspen Water Department.

Road Cut Permit. No cut to any road, street, trail or access way within the District shall be undertaken without first having received a permit from the District.

Road Use Permit. The District does not allow parking on any road or street, including shoulders, within the District without an appropriate permit. Contractor parking, special event parking or any temporary parking may be allowed by permit only.

Stub-Out Permit: No stub-out taps and service line shall be permitted to be attached to any District main without prior approval of construction plans and the issuance of one stub-out permit for each proposed stub-out. Stub-out permits shall be valid for one year from date of issue and renewable for one year by application to the District and payment of appropriate fees.

- 2.7 Connection to Raw Water System. No connection to the raw water system shall be permitted without the consent of the District. The raw water system has been designed to serve specific areas only and is not intended to provide service unilaterally within the District.
- 2.10 Changes to Raw Water System. Changes or modifications to the raw water distribution system, shall be made by the developer but only after designs and specifications have been approved by the District
- 2.11 Hearing and Appeal Procedures. The hearing and appeal procedures adopted by the District shall apply to all complaints concerning the interpretation, application or enforcement of the District's Rules and Regulations, and Standards and Specifications. It shall not apply to any rule, regulation, standard or specification which is specifically exempted from the hearing or appeal process.
- 2.13.1 Initial Complaint - Informal Resolution. Complaints concerning the interpretation, application, or enforcement of any District Rule, Regulation, Standard or Specification must be in writing and presented to the Manager. Upon receipt of the complaint the manager, after full and complete review of the allegations contained in the complaint, shall take such action as may be warranted and shall notify the complainant of the action taken with fifteen (15) days after receipt of the complaint.
- 2.13.2 Appeal. In the event the complainant is not satisfied with the decision or action taken by the manager, the complainant shall advise the manager in writing of the reasons for continued dissatisfaction and shall request a formal hearing of the complaint. The manager shall then designate a hearing officer who may be an officer, agent, or employee of the Board, provided that said hearing officer shall not have participated in any manner in the decision or action, which is the subject of the complaint. The hearing officer shall then schedule a hearing within 30 days of the receipt of the request for a formal hearing and shall notify the complainant by certified mail of the hearing date and time.
- 2.13.3 Formal Hearing. The complainant and representatives of the District shall be permitted to appear in person and complainant may be represented by any person of his/her choosing. The District and complainant shall be entitled to present evidence and argument; together with the right to confront and cross-examine any person; and the right to oppose any testimony or statement made which may be relied upon by the hearing officer to reach a decision on the complaint. The hearing officer may receive and consider any evidence which has value to the hearing and which is commonly accepted by reasonable and prudent persons in the conduct of such a hearing.

The hearing officer shall determine whether reasonable grounds exist to support the interpretation, application or enforcement of any rule, regulation, standard or

specification upon which the complaint is based. If such grounds exist, the hearing officer shall then determine whether extenuating circumstances also exist with regard to the specific complaint. The hearing officer's decision shall be based on evidence provided at the hearing and the burden of proof shall be on the District as to reasonable interpretation, application or enforcement. The burden of showing sufficient extenuating circumstances shall be on the complainant.

2.13.4 Limits of Hearing Officer's Authority. The hearing officer, while having the right to correct errors, interpret rules and regulations, and standards and specifications, make adjustments and otherwise do equity, shall not have the authority to alter or make any finding contrary to the Board's rules and regulations or standards and specifications, as may be changed from time to time.

2.13.5 Appeals to Board. An appeal of the hearing officers decision may be taken to the District's Board of Directors who shall be the sole and final determiner of any complaint relating to an interpretation, application or enforcement of any rule, regulation, standard or specification of the District. The Board shall consider such appeal at any regularly scheduled or special Board meeting held within a reasonable time after filing of the appeal. The Board's consideration of the appeal shall be limited exclusively to a review of the record, supplemented by any additional statements by either the District or the complainant which support their respective positions, provided however, that no further evidence, unless discovered subsequent to the date of the the hearing before the hearing officer, shall be presented by any party to the appeal and there shall be no right to a new hearing before the Board.

## SECTION III. DRAINAGE & STORM SEWER SYSTEM

### 3.1 General Provisions and Use.

3.1.1 Operation. The drainage and storm sewer system shall be operated by the District in accordance with the District's Standards and Specifications, any operation and maintenance plan then in place, and according to the District's Rules and Regulations.

3.1.2 Detrimental Effluents Prohibited. Toxic or non-toxic biodegradable waste or any waste which State storm water standards shall not be discharged into the storm sewer system. Oils and greases for mechanical uses, gasoline and shall not be discharged into the storm sewer system. No foreign matter which could cause stoppage may be discharged into the storm sewer system. No drain by discharge from vehicle wash racks, filling stations, restaurants or other building sewers as specified by the District shall be connected to any storm sewer service line unless the discharge first passes through an acceptable grease, sand and oil interceptor, approved in writing by the District.

3.1.3 Manufacturing, Commercial and Industrial Uses.

Manufacturers and industries are prohibited from using the District storm sewer system unless they obtain from the Board a special permit defining the conditions, limitations and restrictions and the fees and charges determined by the Board to be for the best interest of the District and its inhabitants.

Except as provided herein, no person shall discharge or cause to be discharged any of the following described waters or wastes into any district drainage or storm sewer system.

- a. Any liquid or vapor having temperatures higher than 150 degrees Fahrenheit.
- b. Any water or waste which may contain more than 100 ppm by weight of animal or vegetable fat, oil or grease.
- c. Any gasoline, benzene, fuel oil or other flammable or explosive liquid, solid, or gas, oil or grease.
- d. Any garbage, waste water, grey water or sewage effluent.
- e. Any vegetation ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastic, wood, paunch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper and normal operation of the storm or drainage

- works.
- f. Any waters or wastes having ph lower that 5.5 or higher than 9.0 or having any other corrosive or toxic property capable of causing damage or hazard to structures, equipment and personnel.
  - g. Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or constitute a hazard to humans, animals or fish or create any hazard in the receiving waters.
  - h. Any waters or wastes containing suspended solids of such character and quantity that unusual attention and expense is required to handle such materials.
  - i. Any noxious substance or malodorous waste, waters, gases or substance capable of creating a public nuisance, either in the public sewer, or at the discharge point of the storm drainage system.

Grease, oil and sand interceptors shall be provided when, in the opinion of the District they are necessary for the proper handling of liquid wastes containing greases, oils, et cetera, in the excessive amounts or any flammable wastes, sand and other harmful ingredients. All interceptors shall be located as to be readily available and accessible for cleaning and inspection. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes of temperature. They shall be water tight and, if necessary, gas tight. Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continually efficient operation at all times.

Where necessary, the owner shall provide at his expense such preliminary treatment as may be necessary. Where preliminary treatment facilities are provided for any storm or drainage water they shall meet with the approval of the District for adequacy of design and, once built, shall be maintained continuously in satisfactory and effective operation by the owner. When required by the District the owner of any property served by a storm sewer carrying pre-treated water shall install a suitable control manhole in the sewer to facilitate observation, sampling and measurement of the discharge. Such manhole shall be accessible and safety located and constructed in accordance with plans and specifications approved by the District. The manhole shall be installed and maintained by the owner at his own expense.

3.1.4 Swimming Pools. No swimming pool or spa pool shall be connected to the District's storm or drainage system nor allowed to flow onto District property without prior written consent of the District.

3.1.5 Drainage Waters. It shall be unlawful to discharge any waste water or drainage water

into any natural drainage within the service area of the District without prior written consent of the District.

#### SECTION IV. - IRRIGATION WATER SUPPLY SYSTEM

##### 4.1 General Provisions and Use.

This section specifically addresses the raw water facilities owned and operated by the FiveTrees Metropolitan District.

4.1.1 Ownership and Operation of the Raw Water System. The raw water supply system shall be owned by the District and operated consistent with these Rules and Regulations and the Standards and Specifications of the District.

The District shall own all community raw water facilities between the source and the point of delivery which is the sprinkler head. The District shall have the right to inspect, repair, and replace any portion of the system deemed to be faulty or in need of repair or replacement and the property owner shall not refuse to allow the District to make such repairs or replacements.

4.1.2 Water Use and Restriction. The district shall have the sole authority to determine irrigation water use from the community system and shall be solely responsible for the timing and duration of all watering. No tampering with any irrigation controller is permitted.

4.1.3 Metered Service. All raw water provided by the District is metered by the District and the City of Aspen. No by-pass of any meter shall be permitted by any individual.

4.1.4 Liability. No claim for damages shall be made against the District by reason of the following: Damage to any real property or other personal property resulting from inadequate or sporadic pressures or damage caused by any blockage or water escaping from open or defective facilities or devices or damage caused by burst pipes or other facilities owned by the District.

4.1.5 Tampering with System Prohibited. It shall be unlawful for any person to tamper with any portion of the raw water system installed or owned by the District or to place, install or put on or near any such controller any instrument or device which will affect to operation or the effectiveness thereof.

4.1.6 Access to Water Hydrants; Unauthorized Obstruction or Operation; Penalties. Any damage caused to a District raw water hydrant or other facility while being operated under a valid Permit shall be the sole responsibility of the Permittee. All costs of

repair or replacement shall be borne by the Permittee.

It shall be a violation for any unauthorized person to open or operate any raw water hydrant, draw water therefrom or obstruct the approach thereto. (See § 1.6.) Violators shall be subject to fines and all damages associated with such unauthorized use including the cost of any repairs needed to return the hydrant to acceptable condition.

#### 4.1.8 Damage to District Facilities

Any damage caused to any District facility by any person shall be the sole responsibility of the person, company, or entity causing such damage. The cost of repair or replacement shall be borne solely by the responsible party and such costs shall include, but may not be limited to, any costs associated with the repair or replacement of the damaged facilities, including all costs incurred by the District or its agents, and all repair or replacement costs associated with any damage caused by fugitive water.

- 4.2 Compliance with Raw Water Service Agreement. The ability of the District to deliver water to its constituents is detailed in the Raw Water Service Agreement with the City of Aspen. The District may be limited to diversion amounts contained in this Agreement during times of administrative curtailment. During such periods of time, or during periods of drought when water supplies may be limited, the District shall; a) not violate the terms and conditions of the Agreement; and b) shall reserve the right to reduce or curtail deliveries to its constituents.

## SECTION V. FIVETREES LIFT USE POLICIES

- 5.1 General. The FiveTrees Lift is owned by the District and operated by agreement with the Aspen Skiing Company. It shall be unlawful for any person to access the FiveTrees Lift without the prior written permission of the District, which permission is granted only to residents and guests of the District or by a specific agreement or license granted by the District to Extra-Territorial Users. In all cases, residents of the District shall have priority in use of the lift over all others.
- 5.2 Procedure for Accessing the Lift. A specific license to use the lift is hereby granted to all residents of the District and their guests. By Agreement, others may access and use the lift but such access and use of the lift and ski easements is subject to these rules and regulations. In order to facilitate the orderly and proper use of the lift, all persons entitled to use the lift by virtue of a valid license or agreement shall be required to show proof of license to any person so requesting such proof. It is intended that proof of a valid license shall be demonstrated through the provision of a “lift pass” provided by the District. This pass may be in any form determined appropriate by the District and may change annually at the sole discretion of the District
- 5.3 Inspection Fees. All inspection fees required by the State or other involved entity shall be paid by the owner of the Developer.
- 5.4 District Ownership and Maintenance. The District owns the FiveTrees Lift and all equipment, appurtenances and land upon which the lift operates. The District, by contract with the Aspen Skiing Company, operates and maintains the lift. The District does not presently operate or provide grooming of any ski trail or easement within the District or associated with the operation of the lift, whether the ski easement or trail is public or private. At the sole discretion of the District, the District may pack or otherwise groom ski trails or ski easements but the District shall not be required to do so and shall not be responsible for an injury resulting from the use of any ski trail or easement for any permitted purpose.
- 5.5 Extra-Territorial Users. By Agreement, the Aspen School District staff, administrators and students; the Aspen Valley Ski Club team members, staff and board members and by individual license or agreement, residents of the original Aspen Highlands Subdivision, including properties along Glen Eagles, Glen Gary and Glen Dee, and properties within the Meadowood subdivision may also use the FiveTrees Lift upon prior payment of all fees or charges associated with the use of the lift. These fees are generally described below:
- 5.5.1 Aspen School District and Aspen Valley Ski and Snowboard Club Use. As described in paragraph 5.5, the ASD and AVSC shall be entitled to use the FiveTrees

lift upon prior payment of all annual fees to the District. ASD and AVSC have agreed to pay a percentage of the total annual costs of lift operation and these costs must be paid in advance in order to maintain their license to use the lift and ski easements of the District.

5.5.2 Aspen Highlands and Meadowood Subdivisions. By execution of a Ski Lift and Ski Trail Easement and Use Agreement and payment of all costs, fees and charges in advance, residents of the Aspen Highlands subdivision and the Meadowood subdivision may use the FiveTrees Lift and those ski easements provided by agreement. The fee to use the lift shall be similar and equitable to fees paid by residents of the FiveTrees subdivision and shall be based on the assessed value of the property as determined by the Pitkin County Assessor's office. This assessed value shall then be applied toward that portion of the FiveTrees Metropolitan District's mill levy to support the cost of the FiveTrees Lift. All rights to use the FiveTrees Lift and Ski Easements shall terminate upon failure by Licensee to pay any fee or charge assessed by the District for access to the lift and easements.

5.5.3 Revocation of License. Any lift pass provided to any licensee or any guest may be cancelled or revoked at any time if the pass holder violates any rule of the District concerning the use of the lift or ski easements, or if the pass holder shall provide the pass to any unauthorized person, or if the pass holder is found to have damaged the lift or lift facilities or appurtenances or ski trails of the District, or for reason of trespass, or for non-payment of all required fees, taxes or charges for use of the lift.

5.5.3.1 Use of Lift and Easements. In addition to all other rules and regulations pertaining to the use of the lift and easements, the following shall apply to all valid license holders and guests. Failure to abide by the following shall be cause for immediate revocation of Lift and ski easement use privileges.

1. Abusive treatment of district and/or lift personnel, property, lift equipment, including all chairs and appurtenances of the lift and easements, including signs, buildings and facilities of the lift and District.
2. Unauthorized use of the lift or easements without proper license or permit.
3. Damage to any portion of the lift or easements.
4. Creation of any unsafe structure or obstacle across any ski easement or pathway of the lift, including but not limited to any jump, ramp, pipe, rail, wall or similar structure or device.
5. Use of any unauthorized mechanized vehicle upon any ski easement.
6. Walking upon or bringing a dog upon any ski easement at any time

during the ski season.

7. Skiing out of bounds or off of ski easement areas, or upon private land without the permission of the landowner or the District.

5.6 Ski Easements. The District provides easements for the benefit of those using the lift for ingress and egress purposes. Any resident of FiveTrees may use both private and common ski easements within the District for any approved purpose. Extra-Territorial Users may only use those common public easements which cross District owned lands or for which a specific ski easement has been granted by agreement. The District does not employ, contract for nor make available any ski patrol or emergency staff and therefore the District does not patrol its ski easements, public or private. All skiers using District ski easements, trails or open spaces do so at the skiers own risk.

5.7 Approved Uses of Ski Easements. No mechanized use of any ski trail or easement shall be permitted except by District personnel in the discharge of their duties. Ski easements and trails may only be used for alpine and nordic skiing, snowboarding, snowshoeing and telemark skiing. No walking, hiking or dogs shall be allowed on any ski easement or trail at any time during the ski season. Unauthorized use of any ski trail or easement within the District shall be subject to a fine and trespassers shall be subject to detainment and arrest.

No jumps, terrain alterations or modifications, including the movement of snow for any reason shall be allowed on any District land or easement without the prior written consent of the District. District maintenance of trails, including the movement of snow or removal of obstacles is permitted.

5.8 Utility Easements. Easements are required wherever any utility proposes to cross or lie within the FiveTrees Lift Easement. All easements shall be prepared in accordance with the District's Standards and Specifications; and it shall be at the sole discretion of the District whether any easement to cross or otherwise use the FiveTrees Lift Easement is granted.

## SECTION VI. - ROADS, STREETS AND SAFETY PROTECTION

### 6.1 General.

It shall be unlawful for any person to construct, excavate, repair, rehabilitate or replace any road within the jurisdiction of the District without first having made formal application to the District for approval and having complied with all the regulations and rulings of the District.

The applicant shall provide the District with definitive preliminary engineering plans and plats including topography of all proposed development projects which require installation of roads, streets or traffic signage and signals. The District shall review such plans, plats, and other submittals and District approval must be obtained prior to preparation of the final plans. Applicant must obtain and dedicate to the District all necessary easements without charge for all roadways and related facilities. The applicant shall further obtain and grant to the District any additional easements necessary for installation of any utilities and related facilities prior to the signing of a contract for the actual construction thereof. Any costs for acquisition of land or easements necessary for the District to serve the proposed project shall be paid by the applicant.

No roads, streets or safety improvements shall be constructed within the Board's jurisdiction until final plans and specifications have been approved by the District and written authorization to proceed has been obtained from the District. No excavation shall be started until all permits of the District or County have been obtained. No roads or streets shall be paved prior to being inspected by the District nor placed into operation unless they have been accepted and approved in writing by the District's authorized representative.

No private road shall be approved for installation within the District without the prior written approval of the District Board, which approval shall not be granted unless the Board shall determine that the private road can be constructed and maintained throughout its economic life to the same standards required for a District road.

### 6.2 Procedure for Road Extension Construction. Upon approval of preliminary planning for a proposed project, the landowner or developer will then prepare detailed plans and contract documents for final review by the District.

To the extent of the proposed development requires changes in existing roadways or other existing district facilities in order to provide access or adequate fire protection for the development then developer shall be required to design and construct all such improvements at his own expense. Dedication to the District of facilities and improvements constructed shall be in accordance with paragraph 6.4 herein and with

the Standards and Specifications of the District.

To the extent any new construction of road ways, streets or safety improvements are required to serve the proposed development, in the sole discretion and opinion of the District, all costs associated therewith shall be borne by the developer. When required by the District, improvements which benefit a substantial portion of the District beyond the proposed development may be accepted by the District as a partial credit toward required road impact fees, or may be approved for reimbursement of a portion of the costs by the District, or may be approved for reimbursement of a portion of the costs by future users of such improvements.

- 6.3 Inspection Fees. All inspection fees required by the District, County or other involved entity shall be paid by the owner or the Developer.
- 6.4 District Ownership. Landowners or developers who have completed road way construction shall, before these roads are accepted by the District for use, deed the roads and appurtenances to the District free and clear of all liens and encumbrances and furnish a bond to cover all maintenance for encumbrances and furnish a bond to cover all warranty maintenance for one year from the date of acceptance of the roads by the District, or provide an easement or right-of-way acceptable to the District for the entire width of the road, including ditches, and set-backs for signage, hydrants or other District facilities. Easement requirements are contained within the District's Standards and Specifications, all of which are incorporated herein.
- 6.5 Rights-of Way. No roads, streets or safety improvements shall be constructed within the District which do not fall within a District right-of-way or within a District approved and accepted road easement or an alignment owned by the District.
- 6.6 Utility Easements. Easements are required wherever utilities are proposed for installation in a District right-of-way. All easements shall be prepared in accordance with the District's Standards and Specifications; and must specifically adhere to the "Road Design" section.
- 6.7 Damage to District Roads or Signs. Any damage caused to any District road by any person shall be the sole responsibility of the person, company, or entity causing such damage. The cost of repair or replacement shall be borne solely by the responsible party and such costs shall include, but may not be limited to, any costs associated with the repair or replacement of the damaged roadway, shoulder, sub-grade, drainage, and/or traffic systems, including all costs incurred by the District or its agents, including all administrative costs, and all repair or replacement costs associated with any damage caused as a result of the damage to any road.
- 6.8 Review, Inspection, Observation, Testing & Other Fees. The District shall require

payment of appropriate fees for the provision of services or costs not directly related to the sale of water. These include plan & submittal review fees, construction inspection or observation fees, testing & materials fees, engineering, legal and professional fees, and others. All fees shall be reimbursed at actual District cost and billed in accordance with Section 4.2 herein.

In addition, any costs required to be paid by the contractor, developer or owner, such as insurance costs, costs to repair or replace damage facilities, et cetera, may be paid by the District at the District's sole discretion, and all monies so paid by the District shall be subsequently charged to and paid by the contractor, developer, or owner.

- 6.9 Heavy Vehicle Use Fee and Road Damage Deposit. In addition to all other fees and permits, the District shall have and exercise the right to assess property owners within the District a Heavy Vehicle Use Fee and to collect a Road Damage Deposit to offset damage created to District roads by individual users, contractors, vendors, suppliers, et cetera. These fees and deposits shall be due and payable to the District at the time of issuance of any building permit. The District Board reserves the right to refuse to allow certain vehicles to use the roads or streets of the District unless and until such fees or deposits have been paid to the District. Damage to roads caused by heavy vehicles, equipment or negligence that is in excess of the Road Damage Deposit will be charged to the responsible party or property owner.
- 6.10 Parking and Traffic Control. As stated previously, the District's roads are not for public use except by invitation. Parking is not permitted on any road within the District without the express permission of the District. Permits for construction parking, temporary or event parking or special needs parking may be obtained through the District for a fee. Violation of the District's parking rules may result in a fine being issued by the District. The District has established a fine schedule for parking violations that begins at \$30.00 per violation. Repeat offenders may be subject to the installation of a Denver Boot upon a vehicle and the cost to remove a boot shall be not less than \$80.00.

## SECTION VI. BYLAWS

### 7.1 Directors and Meetings.

- 7.1.1 Board of Directors. The property and business of the District shall be managed by a five-member Board of Directors who shall be elected and otherwise chosen pursuant to and shall exercise the powers granted by law, particularly Title 32, Article 1, Colo. Rev. Stat. §§801-835 (1973), as amended.
- 7.1.2 Recall. Any director who has been a board member for six months is subject to recall pursuant to the procedures enumerated in Colo. Rev. Stat. §32-1-096 (1973), as amended.
- 7.1.3 Meetings and Minutes. The board shall meet as required at 715 West Main Street, Suite 304, Aspen, which is the registered office of the District in Pitkin County, Colorado. Public notice of the time and place designated for regular meetings shall be posted by the secretary or manager of the District in at least three public places within the District and at the Pitkin County Court House in Aspen, Colorado. Such notices to remain posted and to be changed in the event that the time and place of such regular meeting is changed. Meetings may be held at other locations within the District or without, so long as the meeting location is properly noticed and business of the District is duly conducted. An accurate accounting of the proceedings and contents of each meeting shall be recorded in written form and shall constitute official minutes of the meeting. These minutes shall be signed by the District Manager and the Secretary of the Board.
- 7.1.4 Quorum. Three members of the Board shall constitute a quorum at any meeting.
- 7.1.5 Rules of Order. So far as practical, Roberts' Rules of Order shall be followed at meetings of the Board.
- 7.1.6 Compensation. Each member of the Board may receive as compensation for services a sum to be determined in advance by resolution of the Board not in excess of \$1,20.00 per anum, payable at the rate of \$75.00 per meeting attended. No member of the Board shall be interested in any contract or transaction with the District except in his official representative capacity and no member of the Board shall receive any compensation as an employee of the District or otherwise other than as provided in this section.
- 7.1.7 Vacancy. Any vacancy on the Board shall be filled within 60 days by appointment of the remaining members or member of the Board, the appointee to act until the next biennial election when the vacancy shall be filled by election.

7.1.8 Election Day. The biennial election of the directors shall be held on the Tuesday succeeding the first Monday in May of every even-numbered year with ten first such election to be held in the first even-numbered year after the organization of the District and successive elections to be in every second calendar year thereafter.

## 7.2 Officers.

7.2.1 Elective Officers. The elective officers of the District shall include a president, vice president, secretary and treasurer. The Board shall elect one of its members as Chairman of the Board of Directors and President of the District and another of its members as Vice Chairman of the Board of Directors and Vice President of the District. The Secretary and Treasurer, who may or may not be members of the Board, shall also be elected by the Board. The Secretary and Treasurer may be one person.

7.2.2 Election. The regular election of such officers shall be held biennially at the first regular meeting of the Board following the biennial election of the Directors in each such year. A special election to fill any vacancies in such offices may be held by the Directors at any regular or special meeting. Any officer elected to fill a vacancy shall serve until the next regular election of officers.

7.2.3 Officer Absence. In the event of absence or inability of any officer to act, the Board may delegate the powers or duties of such officer to any other officer, director or person whom it may select.

## 7.3 Seal, Clerical, Finance, and Powers.

7.3.1 Seal. The Board shall adopt a seal of the District to be used in all places and in such manner as seals generally used by public and private corporations. The Secretary shall have custody of the seal and shall be responsible for its safekeeping and use.

7.3.2 District Records. The Secretary shall keep a record of all the proceedings of the Board, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection during business hours by all residence or property owners in the District as well as to all other interested parties.

7.3.3 Banks. The monies of the District shall be deposited in the name of the District in such bank or banks or trust company or trust companies as the Board of Directors shall designate and as shall be authorized by law and may be drawn out only on checks signed in the name of the District by such person or persons as the Board by appropriate resolution shall direct.

7.3.4 Accounting. The Treasurer shall keep strict and accurate accounts of all money

received by and disbursed for and on behalf of the District in permanent records. Capital accounts and operating and maintenance account shall be segregated according to the methods specified and defined by the Board or as otherwise specified by applicable laws of the State of Colorado, and budget and audit reports shall have separate schedules for the two types of accounts. Capital income shall include system development charges and fees, bond sale proceeds, debt service mill levies, other ad valorem taxes and government grants. Operations income shall include all other rates, fees and charges, operations mill levies, specific ownership taxes, interest and other ad valorem taxes and government grants. The Board shall apply for an exemption for audit or cause an audit or audits to be made of all financial affairs of the District at the end of each fiscal year in accordance with the "Colorado Local Government Audit Law" and shall make the required publication thereof.

7.3.5 Budget. The Board of Directors shall adopt an annual budget for the ensuing fiscal year before the first day of each fiscal year and shall cause a certified copy of such budget and adopted mill levies to be filed with the appropriate State and County officials as provided by law, as provided by Part 1 of Title 29, Colorado Rev. Stat. (1973).

7.3.6 Powers. The Board shall have the following powers.

- A. To sue and be sued;
- B. To enter into contracts and agreements;
- C. To borrow money and incur indebtedness;
- D. To acquire, dispose of and encumber real and personal property;
- E. To manage, control and supervise all of the business and affairs of the District;
- F. To appoint, hire and retain agents, employees, consultants and attorneys;
- G. To fix and, from time to time, increase or decrease fees, rates, penalties or charge for services, programs or facilities furnished by the special district;
- H. To assess reasonable penalties for delinquency in the payment of rates, fees, tolls or charges or for any violations of the rules and regulations of the special district together with interest on delinquencies from any date due at not more than one percent per month or fraction thereof and to shut off or discontinue water and sewer service for such delinquencies and delinquencies in the

payment of taxes or for any violation of the rules and regulations of the special district and to provide for the connection with and the disconnection from the facilities of such district;

- I. To acquire water rights and construct and operate facilities within and without the District;
- J. To fix and, from time to time, increase or decrease tap fees. The Board may pledge such revenue for the payment of any indebtedness of the special district;
- K. To levy and collect ad valorem taxes on and against all taxable property within the special district, which shall not be limited except as provided in Part 3 of Article 1 of Title 29, Colo. Rev. Stat. (1973);
- M. To adopt, amend and enforce rules, regulations and bylaws not in conflict with the Constitution and the laws of this State for carrying on the business, objects and affairs of the Board and of the special district;
- O. To exercise any other powers that have been or may be granted to Metropolitan Districts by the State of Colorado.

7.3.7 Ad Valorem Tax. The Board of Directors shall, before December 15 of each year and in the manner required by law, certify to the Board of the County Commissioners of Pitkin County, Colorado, the rate of any ad valorem tax levy which the Board of Directors shall have fixed as the annual levy for the District.

#### 7.4 Mill Levy; Rate Changes.

7.4.1 Mill Levy. The Board shall annually determine the need for both operating and debt mill levies and shall set the mill levy rate in accordance with the need to satisfy either or both. Mill levies shall be certified to the County each year and shall comply fully with all state laws.

7.4.2 Rate Changes. Prior to the drafting of the annual budget, the Board shall meet with its manager to confirm any rate, fee or levy changes. Such changes shall, by resolution of the Board, be included in these rules, regulations and bylaws. The Board shall make all necessary budgetary adjustments in consideration of such fee changes.

**APPENDIX I**  
**FEES, CHARGES, FINES AND PENALTIES SCHEDULE**

**ROADS & PARKING**

Special Use Parking Permit	\$150.00 month (\$5/day)
Road Cut Permit	100.00
Parking Violation - each offense	\$ 30.00
Booting of vehicle - each offense	50.00
Towing of Vehicle - each offense	150.00 or actual cost
Abandoned Vehicle	Tow plus disposal charge

Vehicles will be booted or towed if outstanding tickets are not paid within ten days and a subsequent (repeat) violation occurs. All fines and boot charges must be paid before vehicle will be released.

Road impact fee	\$ 0.3 per square foot constructed
Road impact deposit	Based on construction plans and collected by FiveTrees HOA-DRB

**SKI LIFT AND EASEMENTS**

Unauthorized use of a Ski Easement/Trespass	\$50.00 fine
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**DRAINAGE SYSTEMS**

Illegal dumping of materials in District drains	\$300.00 fine plus costs
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**LICENSES AND PERMITS**

Right-of-way Use License	\$100.00 plus admin costs
Easement Use Permit	100.00 plus admin costs
Event/concession Permit	Based on impacts/costs

**MISCELLANEOUS FEES**

Inspection fees	Actual cost of inspection & follow-up
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ANY FEE OR PERMIT NOT PAID PRIOR COMMENCEMENT OF WORK SHALL BE SUBJECT TO A TREBLING OF FEES, CHARGES OR FINES PLUS ANY COSTS OF COLLECTION.

ANY FINE NOT PAID WITHIN THE PERIOD PRESCRIBED IS SUBJECT TO A LATE FEE OF \$10 PLUS INTEREST AT 1% PER MONTH PLUS ANY COSTS OF COLLECTION