

THIRD AMENDED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ASPEN MOUNTAIN SUBDIVISION

This Third Amended Declaration of Restrictive Covenants for Aspen Mountain Subdivision is made this 7th day of May 1991, by The ASPEN MOUNTAIN PROPERTY OWNERS ASSOCIATION (hereafter referred to as the "Association").

RECITALS:

A. A Declaration of Restrictive Covenants dated April 11, 1974 was executed by SEVEN ASSOCIATES, INC. and recorded on August 13, 1974, as Entry No. 124017, in Book M58, at Page 550, of Summit County Recorder (the "Original Declaration"), affecting the following described real property situated in Summit County, State of Utah:

All of ASPEN MOUNTAIN SUBDIVISION, according to

The official plat thereof on file in the office of the County Recorder of Summit County, State of Utah;

B. Whereas, the Original Declaration was amended by a document entitled "Amendment to Restrictive Covenants for Aspen Mountain Subdivision", recorded July 7, 1975, as Entry No. 127361, in Book M68, at Page 242, of the records of the Summit County Recorder (the "Amended Declaration");

C. Whereas, the Original Declaration and Amended Declaration were amended by a document entitled "Amendment to Restrictive Covenants for Aspen Mountain Subdivision", recorded August 28, 1977, as Entry No. 189820, in Book M98, at Page 703, of the records of the Summit County Recorder (the "First Amended Declaration"); and

D. Article III of the Original Declaration, as amended, provides that the covenants and restrictions shall run with the land and be binding on all persons claiming any interest in the lots or any part thereof for a period of fifteen (15) years, at which time the covenants and conditions shall be automatically renewed for successive periods of ten (10) years unless by a vote of a majority of the then owners of said lots, it is agreed to change covenants and restriction in whole or in part:

E. The current owners of all of the lots in Aspen Mountain Subdivision are set forth with particularity on Exhibit "A" attached hereto and incorporated herein by this reference: and

F. A majority of the current owners of Aspen Mountain Subdivision have consented in writing to the following amendments to the Original Declaration, as heretofore amended.

NOW, THEREFORE, for the reasons recited above, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the following shall constitute the restrictions, reservations and limitations of Aspen Mountain Subdivision, which shall supercede the prior Declaration, as amended, and shall run with the land and the undersigned hereby declares that the above-described land is to be held and conveyed subject to the following covenants, restrictions, reservations and requirements:

I.

LOTS

1. Residential Lots. Each and every lot in the Subdivision is hereby designated as a residential lot and no structures shall be placed, erected, altered, constructed or permitted on any such lot and no use shall be made of any such lot or any structures thereon except as provided herein.

2. Lot Size. The lots within the Subdivision shall range from approximately one-half acre upwards in size. Lots may not be further subdivided by the owners thereof and no owner shall have the right to sell or convey less than a full-size lot, as recorded.

3. Lot Improvements. The following requirements shall apply to all dwellings placed, erected or constructed on any lot in the Subdivision:

(a) Minimum ground floor square footage for dwellings shall be 672 square feet for a single level dwelling and 550 square feet for a multiple level dwelling.

(b) All structures shall be completed on the exterior within 16 months from the start of construction including the application of the finished surface treatment.

(c) All dwellings shall be set on permanent foundations, or if necessary, on piers.

(d) No dwelling shall be higher than two stories from any one elevation.

(e) All structures must be set back not less than 30 feet from any street line and not less than 12 feet from any side line.

(f) No structure shall be erected, placed, altered or permitted to remain on a residential lot other than one single-family dwelling and private garage.

(g) No dwelling shall be occupied until plumbing and electrical work is substantially completed, including private inside bathroom facilities.

4. The Planning Committee.

(a) No building or other structure shall be placed, erected or constructed on any lot in the Subdivision without the prior written approval of the Planning Committee. No modifications, alterations or additions in excess of \$500.00 (fair market value) may be made to any lot in the Subdivision without the prior written approval of the Planning Committee.

(b) The Planning Committee shall be composed of 3 persons, 2 of who shall be officers or designees of the Association and the third shall be a person chosen by the Owner.

(c) All persons desiring to place, erect or construct a building or structure on any lot in the Subdivision or desiring to alter, amend or add to any existing building or structure within the Subdivision shall submit a written application for approval of such improvement or improvements showing the following:

1. The location of said improvement or improvements on the lot upon which it or they will be placed or constructed and the location of the proposed improvements or improvements relative to other improvements on said lot.

2. Floor plans of each floor level.
3. The basic structural system of the improvement or improvements and the materials to be used in the construction thereof.
4. Elevations.
5. Provisions for temporary and permanent parking of vehicles in connection with use of the facility.
6. Design and layout of proposed sewage disposal facilities.
7. Proposed time schedule for construction to completion.

(d) The Planning Committee shall not give its consent to the proposed improvements unless in the opinion of the Planning Committee the design, contour, materials, shapes, colors and general character of the improvements shall be in harmony with the surrounding landscape and existing structures on the lot and/or on neighboring lots, and unless the improvements shall be designed and located upon the lot so as to minimize the disruption of the natural land forms and vegetation cover. However, the consent of the Planning Committee shall not be unreasonably withheld.

(e) The Planning Committee, shall have the right to disapprove any application in the event said application and the plans and specifications submitted therewith are not in accordance with the provisions herein set forth, or if the design and plans for construction do not include sufficient safeguards for preservation of the environment or for any other reason the planning committee may reasonably deem is in the best interests of the Subdivision.

5. No Temporary or Mobile Structures. Mobile homes, trailers, temporary houses, tents and similar structures and vehicles may not be placed on or erected upon any lot except temporary structures may be placed on a lot for use in connection with the construction of permanent structures on said lot during the period of construction only.

II.

USE OF LOTS

Lots shall be used for residential purposes and purposes normally incidental to residential occupancy and any other use including, but not limited to the following, shall be prohibited:

1. Business Restriction. No commercial trade or business may be conducted on any lot in the Subdivision.
2. Aesthetics. No advertising signs including but not limited to "For Sale" or "For Rent" signs or structures may be placed on any lots.
3. Nuisance. No obnoxious or offensive or illegal activities or conduct shall be carried on upon any lot nor shall anything be done thereon which shall constitute an unreasonable annoyance or nuisance to occupants of other lots.
4. Cleanliness. Owners of occupied or unoccupied lots shall at all times keep and maintain their property in an orderly manner and all rubbish, trash, debris or garbage shall be regularly removed from the property and shall not be allowed to accumulate thereon. No unregistered vehicles, unless garaged, shall be allowed in the Subdivision.

5. Damage. Any dwelling, garage or other structure which is destroyed or damaged in whole or in part by fire, windstorm or for any other reason, must be rebuilt or all debris removed and the lot restored to a slightly condition with reasonable promptness.

6. Occupants and Owners Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of lot owners and which provide for sanctions against owners shall also apply to all occupants of any lot.

III.

COVENANTS TO RUN WITH LAND

The covenants and restrictions herein set forth shall run with the land described above and be binding on all persons claiming any interest in the lots or any part thereof for a period of 15 years from the date hereof, at which time said covenants and restrictions shall be automatically renewed for successive periods of 10 years unless by vote of a majority of the then owners of said lots, covenants and restrictions in whole or in part.

IV.

SEWAGE, WATER AND UTILITIES

1. Sewage. An individual sewage disposal system constructed in accordance with the requirements of the Utah State Department of Health and other appropriate health authorities shall be installed to serve each dwelling by the lot owner. No outside privy, toilet or outhouse, whether temporary or permanent, shall be permitted on any lot.

2. Water. Culinary water shall be supplied by the Association to a point adjacent to each lot on the road or on easement lines indicated on the Subdivision Plan, and the owner of each lot shall be required, at said owner's expense, to install pipelines connecting the dwelling on the owner's lot to such a point. Water shall be accepted and used by said owner in conformity with all the rules and regulations as may be adopted by the Association or any other proper authority. Outside use will be prohibited except for emergency use.

3. Water Connection Fee. At such time as a lot owner elects to connect his or her lot to the water distribution system, he or she shall pay to the Association, or its designee, the prevailing water connection fee.

4. Water Use Fee. Regardless of whether a lot owner has connected his or her lot to the water distribution system, each lot owner shall pay his or her annual water use fee to the Association. The water use fee is an annual obligation required for the Association to provide water to the entire subdivision.

V.

EASEMENTS

1. Utility Installation Easement. The Association reserves for itself and its successors and the members of the Association hereby grant to the Association an easement for the installation of utilities, including but not limited to power, water and sewage lines in all the roads or right-of-way within the subdivision which may be shown on the Subdivision Plat

2. Utility Maintenance and Repair Easement. The Association reserves for itself and its successors and the members of the Association hereby grant to the Association the right to enter upon any lot to construct, repair and maintain pipes, conduits, and other necessary materials in connection with the utilities, including but not limited to power, water and sewer systems. Whether underground or above ground, so long as such construction, repair and maintenance does not hinder or prevent the construction of buildings upon any lot or otherwise threaten in a material way the structural integrity of any improvement.

VI.

FENCES

The only fences allowed in the Subdivision will be for the purpose of marking the lot corners. Such fences shall be no higher than 4 feet, and no longer than 10 feet in each direction from the lot corner.

VII.

ASPEN MOUNTAIN PROPERTY OWNERS ASSOCIATION, INC.

1. Membership. Every person acquiring legal or equitable title to any lot in the Subdivision shall become a member of the Association and shall be entitled to one share of stock in said Association for each lot for which legal or equitable title was acquired: provided however, each lot owner shall be entitled to an additional 2 share of stock in the Association upon the completion of a dwelling upon a lot in the Subdivision. Each lot owner covenants to be and shall continue to be a shareholder of the Association and to promptly, fully and faithfully comply with and conform to the Declaration, By-Laws and Rules and Regulations of the Association and to promptly pay in full all dues, fees or assessments levied by said Association. In all of the business affairs of the Association calling for the vote of the shareholders, each share of stock shall be entitled to one vote. Transfer of title to a lot, whether by deed or contract, shall automatically transfer the shares of stock in the Association pertaining to such lot to the transferee(s). The Association shall be entitled to shares of stock in the Association based on lots it owns, if any, and shall have the full right to vote said shares.

2. Purpose of Association. The purpose of the Association shall be to promote and regulate the community health, safety and welfare of the Subdivision.

3. Maintenance and Repair. The association shall be responsible for the maintenance of the roads, utilities, and water distribution system within the Subdivision and the Association shall hold title for the benefit of the lot owners to such other property, if any, as may conveyed to it by the developer, the lot owners, or other third parties.

4. Enforcement. The Association shall be responsible for the establishment and enforcement of rules and regulations with respect to the use of all common areas and facilities, including but not limited to the use of the streets and roads within the Subdivision and such other common matters in the Subdivision upon which the lot owners by majority vote from time to time may agree.

VIII.

BUDGET / ASSESSMENTS / COLLECTIONS

1. Budget. Before the annual Association meeting each year the Board of Directors shall prepare a budget which sets forth an itemization of the Common Expenses which are anticipated for the 12-month fiscal year period commencing with the following July 1. This shall include but is not limited to the cost of providing water to and operating, maintaining and repairing the Subdivision. It shall contain a statement of the current water connection fee.
2. Deficit or Surplus. Such budget shall take into account any deficit or surplus realized during the previous fiscal year and such sums as may be necessary to fund the reserve accounts required hereunder.
3. Apportionment. The total of such expense shall be apportioned equally among all the lots.
4. Payment of Assessment. Prior to the 31st day of August, of each year, each lot owner shall pay to the Association his or her share of the Common Expenses. The exact dates and manner of payment may be modified by the Board at its discretion. For purposes of this Section, the term "lot owner" shall mean the owner of the legal and/or equitable interest of a lot, including but not limited to (a) the vested owner, (b) the owner of record, (c) both the buyer and seller under any land sales contract, who shall be jointly and severally liable, and (d) a mortgagee who has taken title to the lot by foreclosure or deed in lieu thereof.
5. Reserve. The Committee shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, replacement of the Common Areas and Facilities which the Board is Obligated to maintain, repair or replace.
6. Personal Obligation of Owner. Each assessment, including but not limited to the annual fee, the water use fee, accrued interest, costs, and reasonable attorney's fees, shall be the personal obligation of the person who was the owner of the lot at the time of the assessment or at the time the debt was incurred, and his or her grantee. They shall be jointly and severally liable for any unpaid portion of any assessments and debts at the time of conveyance; provided, however, no first mortgagee who obtains title deed shall be liable for unpaid assessments which accrued prior to the acquisition of title. Assessments shall be paid in the manner and on dates fixed by the Board.
7. Certificate of Assessments Due. The Association shall upon demand at any time furnish to any lot owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular lot. Failure to provide the certificate within 20 days after written demand, shall be conclusive evidence that assessments are paid current on the lot. The Association may require the advance payment of a processing fee not to exceed Five Dollars (\$5.00) for the issuance of such certificate
8. Superiority of Assessments. All assessments, and liens created to secure the obligation, are superior to any homestead exemptions to which a lot owner may be entitled.
9. Termination of Utility Service or Right to use Amenities for Non-Payment. At the discretion of the Board, any utility or water service to any lot owner occupant of any lot, if the assessments, or the right to use any Subdivision recreational facilities, amenities or property may be terminated if the lot owner or occupant is in arrears on his or her obligation to pay common area assessments and has failed to cure the default after reasonable notice.
10. Suspensions of Right to Vote for Non-Payment. At the discretion of the Board, the right of a lot owner to vote on issues concerning the Association may be suspended if the lot owner is

delinquent in the payment of his or her common area assessments, and has failed to cure the default after reasonable notice.

11. Remedies of the Association for Non-Payment of Assessments. Any assessments which are not paid when due are delinquent. Any assessment delinquent for a period of more than 10 days shall incur a late charge in an amount the Board may from time to time determine. The Association shall give a notice of delinquency to any member who has not paid within 20 days following the due date. If the assessment is not paid within 60 days of the due date, a lien, as provided in this Article, shall attach and shall include the late charge, interest on the principal amount due (not to exceed the maximum legal rate), and all late charges from the date first due, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law, and a notice of lien shall be recorded with the Summit County Recorder. If the assessment remains unpaid after 90 days from the due date, the Association may, as determined by the Board, institute suit to collect the amounts due and to foreclose the lien. Each Lot owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as other liens for the improvement of real property may be foreclosed. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other lot owners.

12. No Waiver. No lot owner may waive or otherwise exempt himself or herself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Areas, or abandonment of his or her lot.

13. Duty to Pay Independent. No diminution or abatement of a common area assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each lot owner.

14. Application of Payments. All payments shall be applied in the following manner: (a) to costs and attorney's fees, (b) to late charges, (c) to interest, (d) to delinquent assessments, (e) to any other costs or charges.

15. Lien for Non-Payment / Foreclosure. The lien for nonpayment of common expenses may be enforced by sale or foreclosure of the lot owner's interest in the property. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law.

In any foreclosure or sale, the lot owner shall pay the costs and expenses of such proceedings and reasonable attorney's fees.

In the case of foreclosure, the owner shall pay a reasonable rental for the unit during the pendency of the foreclosure action, and the Plaintiff in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the lot.

The Board may bid for the lot at foreclosure or other sale and purchase, hold, lease, mortgage, or convey the lot.

16. Foreclosure as Deed of Trust, Trustee. If the Association or Board elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the lot owner hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended; and hereby transfers in trust to the Trustee all of his or her right, title and interest in and to the lot for the purpose of securing his or her performance of the obligations set forth herein.

IX.

PENALTY FOR VIOLATION

The Association or other persons to whose benefits these restrictive covenants inure may prosecute any proceeding at law or in equity against any persons violating or attempting to violate any of the provisions hereof and may prevent such persons from committing such violations and may recover damages or seek other relief for such violations.

A waiver of a breach of any of the restrictive covenants contained herein shall not be construed as a waiver of any succeeding breach of violation thereof or of any other restrictive covenant.

If action is necessary to enforce any of these restrictive covenants, such as conformance to a restriction or payment of a fee, then the prevailing party shall be entitled to expenses of enforcement, including reasonable attorney's fees, whether a suit is filed or otherwise.

X.

SAVINGS CLAUSE

Invalidation of any one of the covenants and restrictions herein before set forth by judgment or court order or other official decree shall in no way affect any of the other provisions hereof or any renewals or extensions thereof. The Corporation and its successors reserve the right to grant a variance from these restrictions to any lot owner, when a literal enforcement thereof would work an undue hardship or prevent utilization of the best features of a lot in this Subdivision by an instrument duly recorded in the office of the County Recorder of Summit County, Utah. Said variance shall not conflict with any applicable county, state or federal regulation.

IN WITNESS WHEREOF, the Aspen Mountain Property Owners Association has caused this Declaration of Restrictive Covenants to be executed the day and year first above written.

ASPEN MOUNTAIN PROPERTY

OWNERS ASSOCIATION

H. DAVID BURTON, President

EDWARD BRINN, Secretary

May, 29, 1991