

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

This Amended and Restated Declaration of Restrictive Covenants for Aspen Mountain Subdivision is made by the ASPEN MOUNTAIN PROPERTY OWNERS ASSOCIATION, a Utah nonprofit corporation, of 6821 East Weber Canyon Road, P.O. Box 382, Oakley, UT 84055 (hereafter referred to as the "Association").

RECITALS:

A. Whereas, a Declaration of Restrictive Covenants dated April 11, 1974 was executed by SEVEN ASSOCIATES, INC. (the "Declarant" or "Developer") 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");

D. Whereas, 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 Association desires to amend and restate the Declaration; and

F. All of the voting requirements have been satisfied.

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 supersede 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 27 months from the start of construction including the application of the finished surface treatment. A fine of \$500/year may be assessed by the Association against a lot owner/Lot where the exterior work for any structure is not completed within said 27 month period. This is cumulative to the Remedies set forth in Article VIII, Section 11 below, which the Association may pursue if the lot owner fails to pay the fine and/or complete the exterior work within the time permitted.
 - (c) All dwellings shall be set on permanent foundations, or if necessary, on piers.
 - (d) No dwelling shall be higher than two stories as viewed from the upslope elevation. The downslope elevation may include a walk-out basement or exposed foundation wall but in no case shall the dwelling exceed 3 stories as viewed from the downslope 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. Association Approval of Dwelling, Structure or Improvements.
 - (a) Any new building or structure or alteration to existing structures that require a Summit County Building Permit shall also require prior written approval of the Board of Trustees.
 - (b) 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.

(c) The Board of Trustees shall not give its consent to the proposed improvements unless in the opinion of the Board of Trustees 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 Board of Trustees shall not be unreasonably withheld, conditioned or delayed.

(d) The Board of Trustees, 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 Board of Trustees may reasonably deem is in the best interests of the Subdivision.

(e) The approval of the Board of Trustees of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

(f) The Board of Trustees may authorize variances from compliance with any of the provisions of the design guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Board of Trustees from denying a variance in other circumstances. For purposes of this paragraph, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

(g) The Association, Board of Trustees and/or any of its employees, agents,

representatives or consultants shall not be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In any and all events, the Board of Trustees shall be defended and indemnified by the Association as provided herein.

(h) Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board of Trustees, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore the as required hereunder, the Board of Trustees or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted unit and collected as an individual assessment pursuant hereto.

5. No Temporary or Mobile Structures. Mobile homes, trailers, temporary houses, yurts, tepees, tents and similar structures and vehicles may not be placed on or erected upon any lot as permanent features. Self contained camping trailers 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 but shall not exceed 27 months' duration from start of construction.

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, including but not limited to the rental or leasing of dwellings. Home based offices not requiring public access are allowed provided they comply with the local Home Occupation ordinance.
2. Aesthetics. No advertising signs including but not limited to "For Sale" or "For Rent" signs or structures may be placed on any lots. The Association may not prohibit the display of a U.S. flag on a lot or inside a dwelling, if the care of the flag and display is consistent with federal law.
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 for watering of vegetation will be allowed unless functionality of the water system, availability of water, or other unforeseen conditions require the Board of Trustees to place restrictions .

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. The annual water use fee is included automatically as part of the annual membership fees.

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

No fences are allowed in the Subdivision.

VII. ASPEN MOUNTAIN PROPERTY OWNERS ASSOCIATION, INC.

1. Membership. Membership is mandatory. Every person who holds legal or equitable title to any lot in the Subdivision is automatically a member of the Association and shall be entitled to one vote for lot owned .

2. Legal Status and Purpose of Association. The Association shall be a Utah non-profit corporation. The Board of Trustees may unilaterally re-file the articles of incorporation of the Association if its status has been suspended or dissolved, and adopt the prior bylaws. The purpose of the Association shall be to enforce to Declaration, Bylaws and Rules, and 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 and repair of the roads and water distribution system within the Subdivision and any other property the Association shall acquire.

4. Enforcement. The Association shall be responsible for enforcement of the Declaration, Bylaws and the rules and regulations adopted by the Board of Trustees 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. The Board of Trustees may exercise its business judgment in deciding whether to impose sanctions or pursue legal action against violators and shall consider common concerns when taking or deciding not to take formal action, such as a weak legal position, conflict with current law, technical violations, minor or collateral issue, and whether or not it is in Association's best interests to pursue the matter and, if so, to what extent.

VIII. BUDGET / ASSESSMENTS / COLLECTIONS

1. Budget. At least 30 days before the annual Association meeting each year the Board of Trustees shall prepare and deliver to all of the lot owners a budget which sets forth an itemization of the Common Expenses which are anticipated for the twelve (12) month fiscal year period commencing with the following January 1. This shall include but is not limited to the cost

of providing water to and operating, maintaining and repairing the Subdivision. The lot owners may call a special meeting within 45 days of the annual Association meeting to vote to disapprove the Budget, although to set it aside and to reject a proposed Budget requires the affirmative written consent of at least a majority of total ownership. If the new budget is disapproved, then the prior year's budget continues.

2. Deficit or Surplus. Such budget shall take into account any deficit or surplus realized during the previous fiscal year.

3. Apportionment. The total of such expense shall be apportioned equally and, as determined by the Board of Trustees, may be based upon either (a) the number of lots owned by the member or (b) the total number of (i) square feet or (ii) acreage owned by each member.

4. Payment of Assessment. Prior to the last day of June 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 Board of Trustees 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. The Association shall prepare, make available to the lot owners and Fund, by and through the Board of Trustees, the Reserve Analysis or Study (and any/all updates). Reserve Plan and Reserve Fund as required by statute.

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. 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.

8. Termination of Utility Service or Right to Gate Access or to Use Amenities for Non-Payment. At the discretion of the Board of Trustees, gate access or 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.

9. Suspensions of Right to Vote for Non-Payment. At the discretion of the Board of Trustees, 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.

10. Remedies of the Association for Non-Payment of Assessments. Any assessments which are not paid when due are considered delinquent. The Association may charge a late fee and default interest in the amount or at the rate determined by the Board of Trustees. The lot owners hereby convey and warrant pursuant to U.C.A., Sections 57-1-20 and 57-8-45, as amended or supplemented, to the individual or entity appointed as trustee with power of sale, any lot or lots and all improvements to such lot or lots for the purpose of securing payment of assessments under the terms of this Declaration. To secure payment a lien may be recorded against the interest of the debtor in a lot. If the Assessments and related charges, including all attorneys fees and collection costs, remain unpaid, the Association may, as determined by the Board of Trustees, (a) deactivate the lot owner's gate access rights and/or (b) institute suit to obtain a personal judgment and/or (c) proceed judicially or non-judicially to foreclose the lien.

11. 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.

12. 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.

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

14. 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 of 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.

15. 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 Association 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.

XI. INSURANCE

1. The Association **shall** secure and at all times maintain the following insurance coverage:
 - a. A Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurance replacement value of all improvements, if any, comprising a part of the common areas. The name of the insured under each such policy shall be in form and substance similar to: "Aspen Mountain Property Owners Association, for the use and benefit of the individual members, lot owners and mortgagees, as their interests may appear".
 - b. A comprehensive general liability insurance policy insuring the owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the common areas which may rise among themselves, to the public, and to any invitees or tenants of the Property or of the owners. Limits of liability under such insurance shall not be less than \$1,000,000 Combined Single Limit Each Occurrence for bodily injury and property damage liability and not less than \$2,000,000 General Aggregate. Non-owned and Hired automobile liability is to be included with \$1,000,000 limits of liability each accident. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.
 - c. Directors and Officers coverage for no less than \$1,000,000 limits of liability per occurrence and annual aggregate.
 - d. A fidelity bond or employee's dishonesty policy/endorsement.

2. The following additional provisions shall apply with respect to insurance:
- a. In addition to the insurance described above, the Association shall secure and all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.
 - b. All policies shall be written by a company holding a rating of “AA” or better from Best’s Insurance Reports.
 - c. The Association shall have the authority to adjust losses.
 - d. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual owners or their mortgagees.
 - e. Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer’s subrogation rights with respect to the Association, the owner, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended or invalidated due to the conduct of any particular owner or owners; that it cannot be cancelled, suspended or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; without a prior written demand that the defect be cured; that any “no other insurance” clause therein shall not apply with respect to insurance held individually by Owners.
 - f. In the event of a conflict, inconsistency or incongruity between the provisions of this Article and applicable Utah law, the latter shall in all respects govern and control.

