

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
GRAND TETON VILLAGE TOWNHOMES

This Declaration made this 24<sup>th</sup> day of May, 2001, by ASPEN HOMES DEVELOPMENT, INC., a Utah corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of real property described in Exhibit "A" attached hereto and incorporated herein by this reference, located in Ogden City, Weber County, State of Utah, and desires to create thereon a Townhome project; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities of said Townhome project for the benefit of the property owners thereof and for the maintenance of open spaces and improvements thereon, and desires to subject the real property described in Exhibit "A" hereof to the covenants and restrictions set forth hereinafter for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the preservation of the values and amenities of said Townhome project to create an association for the purpose of maintaining and enforcing the covenants and restrictions as specified herein;

NOW, THEREFORE, the Declarant declares that the real property, described in Exhibit "A" hereto and such additions thereto as may hereafter be made, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, liens and easements hereinafter set forth.

DECLARATION

The following Declaration contains covenants, conditions and restrictions relating to this Townhome Association, which shall be enforceable equitable servitudes, and shall run with the land:

1. Name: The name by which the Townhome Association shall be known is GRAND TETON VILLAGE OWNERS' ASSOCIATION.

2. Definitions: The terms used in this Declaration,

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including Exhibits attached hereto, shall have the meaning stated herein unless the context otherwise requires:

a. "Association" shall mean GRAND TETON VILLAGE OWNERS' ASSOCIATION, its successors and assigns, of which all of the Lot Owners are members.

b. "Common Areas and Facilities" shall mean and refer to:

(1) That portion of the Property not specifically included in the respective Lots as herein defined or dedicated as public streets;

(2) All land other than such as is part of Lot, exterior walkways, driveways, streets, and such recreational areas as may be provided, yards, fences, service and parking areas and entrances and exits, and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the Common Areas normally in common use;

(3) Those areas specifically set forth and designated in the Plat as "Common Area"; and

(4) All Common Areas and Facilities, whether or not expressly listed herein.

(5) All Limited Common Areas, whether or not expressly listed herein.

c. "Common Expenses" shall mean and refer to:

(1) All expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities;

(2) All things lawfully assessed against the Lot owners;

(3) All things agreed upon as common expenses by the Association; and

(4) All expenses declared as common expenses by law, this Declaration, or the Bylaws of the

Association.

d. "Lot" shall mean and refer to the ownership of a lot, as reflected and numbered upon the Plat in this townhome project.

e. "Declarant" shall mean ASPEN HOMES DEVELOPMENT, INC. and all persons who sign as such upon this Declaration. From the time of the recordation of any amendment to the Declaration expanding this expandable project, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successor of the persons referred to in this subsection that shall come to stand in the same relation to the project as their predecessor also shall come within this definition.

f. "Land" shall mean and refer to the real property described on Exhibit "A;" excluding the public streets as dedicated on the plat.

g. "Limited Common Areas" shall mean and refer to those Common Areas designated herein or on the Plat as reserved for use of a certain Lot to the exclusion of the other lots. Said areas are to extend no more than ten (10) feet from the exterior boundary of any lot, and shall also consist of but are not limited to a patio, entrance walkway contiguous with the lot, and driveway, as indicated on the Plat.

h. "Board of Trustees" shall mean the Board of Trustees of the Association elected in accordance with the Bylaws of the Association, and may sometimes be referred to as the Governing Board of Trustees, but which may also be referred to as the Board of Directors of the Association and its members may be referred to individually as Trustees or Directors.

i. "Manager" shall mean and refer to the person, persons or corporation selected by the Association to manage the affairs of the Property.

j. "Plat" shall mean and refer to the Plat of the Property recorded as pertaining hereto in the Office of the Weber County Recorder, State of Utah.

k. "Member" shall mean any Lot owner holding membership in the Association as provided herein.

1. "Property" shall mean and include the land, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

3. Submission to Lot Ownership. Declarant hereby submits the Land, and other improvements, constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of this Declaration. It is the intention of Declarant that such provisions shall apply to the Property.

4. Covenants to Run With the Land. This Declaration containing covenants, conditions and restrictions relating to the Project shall be enforceable equitable servitudes which shall run with the land and this Declaration and its servitudes shall be binding upon Declarant, its successors and assigns and upon all Lot Owners or subsequent Lot Owners, the Association, their grantees, mortgagee, successors, heirs, executors, administrators, devisees and assigns.

5. Description of Property.

a. Description of Land. The Land is that tract or parcel, more particularly described in Exhibit "A" attached hereto.

b. Description of Improvements. The significant improvements contained or to be contained in the Project include two-story buildings containing either two (2) or four (4) Lots each, which range from approximately 1300 to 1320 square feet

each. Each lot shall contain a building constructed principally of concrete foundation with exterior walls of vinyl siding, asphalt shingle roofing, interior walls of wood studs, plywood and dry wall plaster. Each building has an attached 2-car garage. The Project also includes landscaping, and other facilities located substantially as shown in the Plat and will be subject to easements which are reserved through the Project as may be required for utility services.

c. Description and Legal Status of Lots. The Plat shows each Lot with Lot Number and its location. The Plat also shows the Facilities which are reserved for each lot's use, including a driveway, and the Common Areas and Facilities to which it has immediate access. All Lots, of whatever type, shall be capable of being independently owned, encumbered and conveyed.

d. Common Areas and Facilities. Except as otherwise provided in this declaration, the Common Areas and Facilities shall consist of the areas and facilities described in the definitions and constitute in general all of the parts of the Property except the Lots as identified above. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following:

(1) Private Streets, Driveways, parking areas, lawns, shrubs and gardens, and recreational areas;

(2) Any utility pipe or line or system servicing more than a single Lot, and all ducts, wires, conduits, and other accessories used therewith;

(3) All other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities in the Plat;

(4) The Limited Common Areas herein described; and

(5) All repairs and replacements of any of the foregoing.

e. Description of Limited Common Areas. Each Owner of a Lot is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas reserved exclusively for the use of his Lot. The Limited Common Areas appurtenant to any

given Lot consist of but are not limited to a patio, entrance walkway contiguous with the Lot, and driveway, as indicated on the Plat. The exclusive right to use and occupy each Limited Common Area shall be appurtenant to and shall pass with the title to the Lot with which it is associated.

6. Statement of Purpose and Restriction on Use.

a. Purpose. The purpose of the Project is to provide residential housing, garage and parking spaces for Lot Owners and for tenants and guests.

b. Restrictions on Use. The Lots and Common Areas and Facilities shall be used and occupied as hereinafter set forth.

(1) Each of the Lots shall be restricted to single family dwellings and may be occupied by the Lot Owner, his family, servants, guests or tenants as a private residence and for no other purpose.

(2) Each Lot Owner shall also occupy a garage for vehicle use.

(3) No parking area shall be used for parking of trailers, mobile homes, boats, snowmobiles or campers which have been detached from trucks or repair of any vehicle, trailer or boat may be performed in any parking or Common Area. There shall be no storage of any kind, except of vehicles as above provided, in any parking stall or Common Area. Each Lot owner shall park only within their Limited Common Area.

(4) The Common Areas and Facilities shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Lots.

(5) Nothing shall be done or kept in any Lot or in the Common Areas and Facilities which will increase the rate of insurance on the Common Areas and Facilities without the prior written consent of the Management or the Association. No Lot Owner shall permit anything to be done or kept in his Lot garage or in the Common Areas and Facilities which is in violation of any law, ordinance or regulation of any governmental authority.

(6) No Lot Owner shall cause or permit anything, including, without limitation, a sign, awning, canopy, shutter, radio, television antenna, or satellite dish, clothes lines, pots, plants, wind chimes or other decorative items to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the inside or outside of windows or doors, without the prior written consent of the Management or the Association. Temporary open house signs may be placed subject to written approval of the Management or the Association as to location, duration, size and design. If signs are placed without written approval, the Management or the Association retains the right to remove them. No signs for the sale of a lot or motor vehicle may be placed in or upon any vehicle or common areas.

(7) Horizontal levelor-type window blinds are allowed subject to Management, or Association approval of the color. No plastic, sun screen or reflective type material shall be used on the interior or exterior of the windows.

(8) No noxious or offensive activity shall be carried on or permitted in any Lot or in the Common Areas and Facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Lot Owners or occupants.

(9) Nothing shall be done in any Lot garage or in, on, or to the Common Areas and Facilities which will impair the structural integrity of the buildings or any part thereof or which would structurally change the buildings or any part thereof except as is otherwise provided herein.

(10) No animals or pets of any kind are to be raised, bred or kept in any Lot garage or in the Common Areas or Limited common Areas without the prior written approval of the Management or the Association with respect to the specific pet. Lot Owners shall keep their pets off the common Areas. If the pet becomes a nuisance to other Lot owners, the pet owner shall remove the pet from the Project upon written notice by the Management or the Association or its

representative. Each pet owner is responsible for cleaning up after their own pet.

(11) The Common Areas, Limited Common Areas, and Facilities shall be kept free and clear of all rubbish, debris and other unsightly materials.

(12) No Owner shall violate the rules and regulations regarding use of the Lots and of the Common Areas as adopted from time to time by the Management or the Association.

(13) No owner shall place or cause to place a fence in the common area, however an owner may place a patio privacy screen in the limited common area immediately adjacent to their lot.

(14) Notwithstanding any of the above, no lot shall be used in any manner other than a single family dwelling, as defined in the zoning ordinances of Ogden City.

7. Person to Receive Service of Process. The person to receive service of process in the cases provided herein is Charles R. Dubuc, Jr., 2909 Washington Blvd, Suite 104, Ogden, Utah 84401. The said person may be changed by the recordation by the Association of an appropriate instrument.

8. Ownership and Use.

a. Ownership of a Lot. Except with respect to any of the Common Areas, each Lot Owner shall be entitled to the exclusive ownership and possession of his/her Lot and exclusive use of the Limited Common Area for his/her particular lot; as well as having membership in the GRAND TETON VILLAGE OWNERS' ASSOCIATION.

b. Nature of and Restrictions on Ownership and Use. Each Lot Owner shall have and enjoy the rights and privileges of fee simple ownership of his Lot. There shall be no requirements concerning who may own Lots, it being intended that they may and shall be owned as any other property rights by persons, corporations, partnership, or trusts and in the form of common tenancy. The Lot Owners may lease or rent their property and garages with their appurtenant rights subject to terms and conditions of this Declaration. All Lot Owners, their tenants



and other occupants or users of the Property, shall be subject to this Declaration, the Bylaws, and all rules and regulations of the Association.

c. Prohibition Against Subdivision of Lot. No Lot Owner, by deed, map or otherwise, shall subdivide or in any manner cause the ownership of his Lot to be separated into physical tracts or parcels smaller than the whole Lot as shown on the Plat.

d. Ownership of Common Areas and Facilities. The Common Areas and Facilities contained in the Project are described and identified in this Declaration. Said Common Areas and Facilities are owned by the GRAND TETON VILLAGE OWNERS' ASSOCIATION which shall have as one of its responsibilities the obligation to manage the use, maintenance and upkeep of the common areas. Each Lot owner will have membership in the Association.

e. Use of Common Areas and Facilities. Except with respect to Limited Common Areas each Lot Owner may use the Common Areas and Facilities in accordance with the purpose for which they are intended, but subject to this Declaration, the Bylaws, and the rules and regulations of the Association. This right of use shall be appurtenant to and run with each Lot.

An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the right of the City of Ogden and any other governmental or quasi-governmental body having jurisdiction over the Land to enjoy access and rights of ingress and egress over and across any private street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, and providing any other governmental or municipal service.

9. Use of Limited Common Areas. A Lot Owner's exclusive right of use and occupancy of the Limited Common Areas reserved for his Lot shall be subject to and in accordance with this Declaration and the Bylaws. Any Limited Common Area appurtenant to a Lot may be leased only to persons who reside in the Project or used by the family, servants or guests thereof on a temporary basis.

10. Voting - Multiple Ownership. Each Owner of a Lot shall be a member of the Association. The vote attributable to

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and exercisable in connection with a member of the Association shall be one vote for each Lot owned, subject to the special rule of Class Membership and voting as set forth in Paragraph 12c below. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any meeting of the Association shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

11. Association.

a. Association. The Association shall have, and is hereby granted, the following authority and powers:

(1) The authority to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common Areas and Facilities; and work performed pursuant to such easements must be done in a workmanlike manner and any damage to the interior structure or decor of a Lot must be repaired;

(2) The authority to execute and record, on behalf of all members of the Association, any amendment to the Declaration or Plat which has been approved by a majority vote necessary to authorize such amendment;

(3) The authority to enter into contracts which in any way concern the Project, so long as a majority vote of the members of the Association necessitated by the subject matter of the agreement has been obtained;

(4) The power and authority to convey or transfer any interest in real property, so long as a majority vote necessary under the circumstances has been obtained;

(5) The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by a majority vote which is necessary under the circumstances:

(6) The power to sue and be sued.

(7) The power and authority to borrow money, provided that no indebtedness for borrowed funds shall exceed in the aggregate at any given time the sum of \$5,000.00 without the prior vote or approval of a majority of members of the Association.

(8) The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Management in carrying out any of its functions or to ensure that the project is maintained and used in a manner consistent with the interests of the members of the Association; and

(9) The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Association to perform its functions for the members of the Association.

b. Manager. The Association may carry out through a Professional Property Manager any of its functions which are properly the subject of delegation. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Lot Owners, and shall to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any agreement for professional management of the project which may be entered into by the Association shall call for a term not exceeding one (1) year renewable by agreement of the parties for successive one-year periods.

## 12. Membership in the Association.

a. Membership. Every Owner of a Lot shall be a member of the Association. Memberships in the Association shall not be assignable, except to the successor in interest of the Member, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot.

b. Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged, or alienated in any way, except upon the transfer, sale or encumbrance of such

Lot, and then only to the transferee, purchaser or mortgagee of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot shall fail or refuse to transfer the membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Trustees shall have the right to record the transfer upon the books of the Association. The Board of Trustees shall have the right to charge a reasonable Special Assessment against any Owner and his Lot, equal to the cost to the Association of effectuating any such transfer of his membership upon the books of the Association.

c. Class Voting Rights. The Association shall have two classes of voting membership:

(1) Class A. Class A members shall be all Owners, with the exception of Aspen Homes Development, Inc., and shall be entitled to one vote for each Lot or Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

(2) Class B. The Class B member(s) shall be Aspen Homes Development, Inc., or its successor, and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total vote outstanding in the Class B membership; or

(b) Seven (7) years from the date of recording of the Declaration.

d. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration; annexation of additional properties, dedication of Common Areas, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

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13. Change in Ownership. The Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Lot which is owned by him. In the event of any transfer of a fee or undivided fee interest in a Lot either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Weber County, Utah. The Association may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it or, at its option, the Association may act and rely on current ownership information respecting any Lot or Lots which is obtained from the office of the County Recorder of Weber County, Utah. The address of an Owner shall be deemed to be the address of the Lot owned by such person unless the Management Committee is otherwise advised in writing.

14. Association Assessments. Every Lot Owner shall pay his equal share of the Common Expenses. Payment thereof shall be in such amounts and at such times as the Association determines in accordance with the Declaration, Articles of Incorporation or the Bylaws.

No assessment for a single improvement in the nature of a capital expenditure which exceeds the sum of \$5,000 shall be made without the same having been first voted on and approved by at least a majority of the members of the Association.

15. Destruction or Damage. In the event of destruction or damage of part or all of the improvements in the Common Areas and Facilities, the procedures of this section shall apply.

a. If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

b. If less than 75% of the improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Lots shall be assessed for any deficiency.

c. Any reconstruction or repair which is required to be carried out by this section shall be accomplished at the instance and direction of the Association. Any question regarding the extent of damage to or destruction of improvements shall be made by an MAI appraiser selected by the Association who shall determine the figure representing the percentage of project improvements which have been destroyed or substantially damaged.

16. Taxes. It is understood that each Lot is subject to separate assessment and taxation by each assessing lot and special district for all types of taxes authorized by law. Each Lot Owner will, accordingly, pay and discharge any and all taxes which may be assessed against his Lot.

17. Insurance.

a. Fidelity Insurance. The Association shall at all times maintain in force fidelity coverage against dishonest acts on the part of managers (and employees of manager), trustees, employees, officers, Association members, or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance shall name the Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one hundred fifty percent (150%) of the estimated annual operating expenses of the Development including reserve funds, unless a greater amount is required by a majority of the Mortgagees or their designees. Such fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Eligible Mortgagee at least thirty (30) days in advance of the effective date of any reduction in or cancellation of the policy.

b. Liability Insurance. The Association shall at all times maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such insurance shall include a "Severability of Interest Endorsement" or its equivalent, which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of other Owners, or the Association. The coverage afforded by such public liability insurance include protection

against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as customarily are covered with respect to developments similar to the Development in construction, location and use. The limit of liability under such insurance shall not be less than \$500,000 for all claims for personal injury and/or property damage arising out of a single occurrence.

c. General Requirements Concerning Insurance. Each insurance policy or fidelity bond maintained pursuant to the foregoing Sections 18(a) through 18 (b) shall be written by an insurance carrier which is licensed to transact business in the State of Utah. No such policy or fidelity bond shall be maintained where: (1) under the terms of the carrier's charter, bylaws, bond or policy, contributions may be required from, or assessments may be made against the Association, the Common Areas, or the Project; (2) by the terms of the carriers charter, bylaws, bond or policy, loss payments are contingent upon action by the carrier's board of directions, policy holders, or members; (3) the bond or policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (4) the bond or policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the Individual Lot Owners or their Mortgagees. Each such fidelity bond or policy shall provide that: (a) coverage shall not be prejudiced by any act or neglect of the Lot Owners when such act or neglect is not within the control of the Association; (b) coverage shall not be prejudiced by any failure by the Association to comply with any warranty or condition with regard to any portion of the Development over which the Association has no control; and (c) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds named therein, including any Mortgagee named as an insured. If due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under Sections 18(a) through 18 (b) hereof cannot reasonably be secured, with respect to such coverage the Association shall obtain, and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist; however, the Association shall not self insure.

d. Additional Provisions. The following additional provisions shall apply with respect to insurance:

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(1) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Development in construction, nature, and use.

(2) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Lot Owners or their mortgagees.

(3) Each policy of insurance obtained by the Association shall, if possible, provide: That it cannot be canceled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Association or of the Manager 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 the Lot Owners.

(4) Any Lot Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Association. Any Lot Owner who individually obtains insurance covering any portion of the Development shall supply the Association with a copy of his policy within thirty (30) days after he acquired such insurance.

18. Payment of Common Expenses.

a. Each Lot Owner shall pay the Association his allocated portion, past, present, and future, of the Common Expenses deemed necessary by the Association to manage and operate the Development, upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Association. Each installment shall be due on or before the first day of each month. If the Lot Owner shall fail to pay any installment within ten (10) days of the time when the same becomes due, the Owner shall pay a ten dollar (\$10.00) late fee and shall pay interest on the installment at the rate of eighteen percent (18%) per annum from the date when such installment shall become due to the date of the payment thereof, together with all



costs and expenses, including attorney's fees, incurred in any proceedings brought to collect such unpaid common expenses.

b. The Common Expenses above referred to for each year, or portions of the year, are hereby defined and shall be deemed to be such aggregate sum as the Association from time to time shall determine, in its judgment, is to be paid by all the Owners of the Development then in existence to enable the Association to pay all estimated expenses and outlays of the Association to the close of such year, growing out of or in connection with the maintenance and operation of such land and improvements; which sum may include, among other things, the cost of management, water and sewer fees, special assessments, fire, casualty, flood, fidelity, public liability and other insurance or bond premiums, common lighting, landscaping, and the care of the grounds, repairs, and renovations to Common Areas and Facilities (other than services which are separately billed or metered to the individual Lots by the utility or party furnishing such service), legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the payment of any deficit remaining from the previous period, creation of a reasonable contingency or other necessary reserve or surplus fund, as well as all other costs and expenses relating to the Development. The Association may, from time to time, up to the close of the year for which such cash requirements have been so filed or determined, increase or diminish the amount previously fixed or determined for such year. It may include in the cash requirements for any year any liabilities or items of expense which accrued or became payable in the previous year, or which might have been included in the cash requirements for a previous year, but were not included therein; and also any sums which the Association may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year.

c. The portion payable with respect to each Lot in and for each year or for a portion of a year shall be a sum equal to the aggregate amount of such Common Expenses for such year, or portion of year, determined as aforesaid, divided by the number of members of the Association or Lot. Such assessments, together with any additional sums accruing under this Declaration, shall be payable monthly in advance, or in such payments and installments as shall be required by the Association.

d. The Association shall have discretionary powers to

prescribe the manner of maintaining and operating the Development and to determine the cash requirements of the Association to be paid as aforesaid by the Owners under this Declaration. Every such reasonable determination by the Association within the bounds of this Declaration shall be final and conclusive as to the Owners, and any expenditures made by the Association, within the bounds of this Declaration, shall as against the Owner be deemed necessary and properly made for such purpose.

e. If an Owner shall at any time let or sublet his Lot and shall default for a period of one month in the payment of any assessment, the Association may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner occupying the Lot the rent due or becoming due and payment of such rent to the Association shall be sufficient payment and discharge of such tenant or subtenant and the Owner to the extent of the amount so paid.

Each monthly assessment and each special assessment shall be separate, distinct and personal obligations of the Owner(s) of the Lot against which the same is assessed at the time the assessment is made and shall be collectible, as such. Suit to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the following lien securing the same; the amount of any assessment, whether regular or special, assessed to a Lot plus interest at eighteen percent (18%) per annum plus late fees, and costs, including reasonable attorney's fees, shall become a lien upon such Lot upon recordation of a notice of assessment. The said lien for nonpayment of common expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(1) Tax and special assessment liens on the Lot in favor of any assessment lot, and special district; and

(2) Encumbrances on the interest of the Lot Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

g. A certificate executed and acknowledged by the Manager or Association stating the unpaid common expenses then outstanding with respect to a Lot shall be conclusive upon the Association and the Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to

any Owner or encumbrancer or prospective Owner or encumbrancer of a Lot upon rest at a reasonable fee not to exceed the Ten Dollars (\$10.00). Unless the request for a certificate of indebtedness shall be compiled within ten (10) days; all unpaid common expenses which became due prior to the date of making of such request shall be subordinate to the lien or interest held by or obtained by the person making the request. Any encumbrancer holding a lien on a Lot may pay any unpaid common Expenses payable with respect to such Lot and upon such payment such encumbrancer shall have a lien on such Lot for the amounts paid of the same rank as the line of his encumbrance.

Subject to the provisions of this subparagraph, a purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid assessment against the Lot up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

h. Upon payment of delinquent assessments concerning which a notice of assessment has been recorded or other satisfaction thereof, the Association shall cause to be recorded in the same manner as the notice of assessment a further notice stating the satisfaction and release of the lien thereof. Such lien for nonpayment of assessment may be enforced by sale of the Lot by the Association or by a bank or trust company or title insurance company authorized by the Association, such sale to be conducted in accordance with the provisions of the law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In any foreclosure or sale, the Lot Owner shall be required to pay the costs and expenses of such proceedings including reasonable attorney's fees.

I. In the event of foreclosures, the Lot Owner shall be required to pay a reasonable rental for the Lot and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Association or Manager shall have the power to bid in the Lot at foreclosure or other sale and to hold, lease, mortgage and convey the Lot.

19. Maintenance.

a. Each owner of a Lot, at his own expense, shall keep the interior and exterior of such Lot in good order, condition

and repair and in a clean and sanitary condition, and shall do all interior and exterior redecorating and painting which may at any time be necessary to maintain the good appearance of such Lot. Except to the extent that the Association is protected by insurance against such injury, the lot Owner shall repair all injury or damages to the Lot or building or buildings caused by the act, negligence or carelessness of the Lot Owner or that of any tenant or subtenant, or any member of the Lot Owner's family or of the family of any tenant or subtenant, and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work as determined and approved in writing by the Association. Without the written permission of the Association first had and obtained, a Lot Owner shall not make or permit to be made any structural alteration to the exterior of the buildings, and shall not paint, decorate or plant any portion of the exterior of the buildings, and shall not paint, decorate or plant any portion of the exterior of the Lot or of the buildings in which the Lot is located, including any Limited Common area.

b. Except as hereinafter provided, the Association shall provide for such maintenance and operation of the Common Areas and facilities and of the Limited Common Areas and Facilities as may be reasonably necessary to keep them clean, functional, attractive and generally in good condition and repair. The Association shall have no obligation regarding the interior or exterior maintenance or care of Lots.

20. Right of Entry. The Association and its duly authorized agents shall have the right to enter any and all of the Lots and the Limited Common Areas appurtenant thereto in case of an emergency originating in or threatening such Lot or any other party of the Project, whether or not the Lot Owner or occupant thereof is present at the time. The Association and its duly authorized agents shall also have the right to enter into any and all of said Lots and Limited Common Areas at all reasonable times as required for the purpose of performing emergency installations, alterations or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to other Lots in the Development; and provided further that the Lot Owner or occupant affected by such entry shall first be notified thereof if available and if time permits.

21. Administrative Rules and Regulations. The

Association shall have the power to adopt and establish by resolution such building management and operational rules as it may deem necessary for the maintenance, operation, management and control of the Development. The Association may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the Lot Owners, such amendment, alteration or provision shall be taken to be a part of such rules. Lot Owners shall at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Lot Owners, tenants, subtenants or other occupants of the Lots.

22. Obligation to Comply with Declaration, Bylaws, Articles, Rules and Regulations. Each Lot Owner, tenant, subtenant or other occupant of a Lot shall comply with the provisions of this Declaration, the Bylaws and Articles of Incorporation of the Association and its rules and regulations, all agreements and determinations lawfully made and/or entered into by the Association or the Lot Owners, when acting in accordance with their authority. Failure to comply with any of the provisions thereof shall be grounds for an action by the Association or other aggrieved party for injunctive relief or to recover any loss or damage resulting therefrom.

23. Indemnification of Board of Trustees. Each member of the Board of Trustees, which Board may from time to time be referred to as the Board of Directors of the Association, and its members may be referred to as Directors, shall be indemnified and held harmless by the Lot Owners against all costs, expenses and liabilities whatsoever, including, without limitation, attorney's fees, reasonably incurred by him or her in connection with any proceeding to which he or she may become involved by reason of being or having been a member of said Board of Trustees; provided, however, the foregoing indemnification shall not apply if the loss, expense or liability involved resulted from the willful misconduct, gross negligence or other intentional act of the member.

24. Amendment.

(a) It is hereby acknowledged and understood that Grand Teton Village Townhome project has been granted a Conditional Use Permit by the City of Ogden based upon its compliance with Ogden City ordinances and the approved development plans. Substantive

changes to the Declaration, the Plat, the Common Areas, building design and materials, and the approved site plan may require an amendment to the Conditional Use Permit and failure to seek such amendment may result in an ordinance violation or a revocation of the Conditional Use Permit.

(b) This Declaration, the Plat, the Common Areas, building design and materials, may be amended upon the receipt of not less than a 66.6% affirmative vote of the membership of the Association. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Association. In said instrument the Association shall certify that the vote or consent required by this section has occurred.

25. Consent in Lieu of Vote. In any case in which this Declaration requires the vote of the members of the Association for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, the requisite consents in writing to such transaction from Lot Owners. The following additional provisions shall govern any application of this section:

a. All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner;

b. Any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

26. Severability. The invalidity of any one or more phrases, sentences, subparagraphs, paragraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part thereof, and in the event that any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or subparagraphs, paragraph or paragraphs, subsection or subsections or section or sections had not been inserted.

27. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

28. Lease of Lots. With the exception of a lender in possession or a Lot following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Lot Owner shall be permitted to lease or rent his lot for transient or hotel purposes which means the initial term of any lease shall be at least six (6) months. No Lot Owner may lease less than the entire lot. A lease agreement shall be required, and it shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Bylaws, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing and a copy of such lease shall be delivered to the Association five (5) days prior to occupancy by the tenant. The Lot Owner shall notify the Association of the names of the lessee, of the Lot. In the event of a lease of a Lot, only the tenant and not the Lot Owner shall have the right to the use of the Common Areas and Facilities while the Lot is leased. In the event insurance costs covered by paragraph 18 are increased due to the percentage of rentals, then those Lot Owners shall pay their portion of the increased costs of insurance charged.

29. Legal Description of a Lot. Every conveyance or contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the number shown on the official records of Weber County, Utah, and in substantially the following form:

Lot \_\_\_\_\_, as shown in the Plat for Aspen Village Townhomes, appearing in the Records of the County Record of Weber County, Utah, in Book \_\_\_\_\_, Page \_\_\_\_\_ of Maps, and as defined and described in the Declaration of Covenants, conditions and Restrictions, appearing in such records at Book \_\_\_\_\_, Page \_\_\_\_\_, thereof.

This conveyance is subject to the provisions of the aforesaid Declaration.

Such description will be construed to describe the Lot, and to incorporate all the rights incident to ownership of a Lot and all the limitations on such ownership as described in this Declaration.

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30. Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions

hereof apply either to corporations or individuals, male or female, shall in all cases be assumed as through in each case fully expressed.

31. Invalidity. The invalidity of any provisions of this Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

32. Waivers. No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

33. Topical Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

34. Effective Date. This Declaration shall take effect upon recording, and shall remain in effect as long as the P.R.U.D. exists.

35. Party Walls. Each wall which is built as a part of the original construction of the buildings upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

a. Sharing Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

b. Destruction by Fire or Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Such damage to a party wall shall be repaired and the wall restored by the Owners.



c. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner hereunder shall be appurtenant to the land and shall pass to such Owner's successor in title.

DATED the day and year first above written.

ASPEN HOMES DEVELOPMENT, INC.

By: *Charles R. Dubuc, Jr.*  
Charles R. Dubuc, Jr.  
Executive Vice President

NOTARY STATEMENT

State of Utah )  
                  ) ss.  
County of Weber )

On the 25<sup>th</sup> day of MAY, 2001, personally appeared before me CHARLES R. DUBUC, JR., known to me to be the Executive Vice President of ASPEN HOMES DEVELOPMENT, INC., a Utah corporation, and who subscribed the said company name to the foregoing instrument, and who acknowledged to me that he executed the same on behalf of said corporation.

*Michelle Campbell*  
Notary Public



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