

RETURNED  
APR - 5 2004

**DECLARATION OF BUILDING AND USE RESTRICTION  
OF  
ASPEN PLACE SUBDIVISION - PHASE 3-4**

10. 248-2101, 0102, 0103  
10. 252-0401 thru 0438

E 1975900 B 3511 P 401  
RICHARD T. MAUGHAN, DAVIS CNTY RECORDER  
2004 APR 5 10:44 AM FEE 61.00 DEP MEC  
REC'D FOR SECURITY TITLE COMPANY

**PART A. PREAMBLE**

**KNOW ALL MEN BY THESE PRESENTS:**

THAT, WHEREAS, THE UNDERSIGNED, being the owner (hereinafter the "Declarant") of the following described real property (hereinafter the "Subdivision") located in Davis County, State of Utah, to-wit:

Lots 301,302,303,and 401 through 438, inclusive, Aspen Place Subdivision, Phases III and IV, according to the official records of the county recorder's office of Davis County, State of Utah.

Do hereby establish, for purposes of preserving the market value of said property, the nature of the use and enjoyment of all lots in said subdivision and do declare that all conveyances of said lots shall be made subject to the following conditions, restrictions and stipulations:

**PART B. RESIDENTIAL AREA COVENANTS**

1. Land Use and Building Type. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two stories in height. All construction shall be of new materials, except that used brick may be used with prior written approval of the Architectural Control Committee. No plan will be built more than once in the subdivision without special approval by the Architectural Control Committee.
2. Architectural Control. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of the exterior with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the front building setback line unless similarly approved. Approval may be obtained only as provided in Part C.
3. Licensed General Contractor. Unless the Architectural Control Committee gives a written waiver of approval to a lot owner, no building shall be erected, altered or placed on any lot except by a licensed general contractor duly qualified and licensed by the appropriate governmental authorities.
4. Dwelling Cost, Quality and Size. No dwelling shall be permitted on any lot at a cost of less than \$80,000.00, exclusive of lot and financing, based upon cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenants to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The minimum permitted dwelling size, improvements and quality shall be as follows:
  - (a) In a rambler or split entry home, the ground floor square feet area of the main structure, exclusive of garage and any one-story open porches, shall not be less than 1,200 square feet
  - (b) In a two-story home, which is two stories above the curb level, the combined area of the ground

story level and the story above ground-story level, exclusive of garage and any one-story open porches, shall total not less than 1,500 square feet.

(c) In a multi-level home (i.e. three or four level split), the top two levels of the main structure, exclusive of garage and any one story open porches, shall not be less than 1,500 square feet.

(d) No building shall be erected or placed on any lot having less than brick and stucco front.

(e) All exterior materials must be approved by the Architectural Control Committee prior to commencement of construction.

(f) Aluminum, steel and vinyl siding shall be allowed on sides and rear and in soffit and fascia areas only.

(g) Roofing materials shall be cedar shake, tile, or architectural grade asphalt shingle (20 year grade or better) or as approved by the Architectural Control Committee. Metal roofing is not permitted.

The purpose of these covenants is to assure that all dwellings shall be of a quality of workmanship and materials substantially the same as or better than that which can be produced at the date that these covenants are recorded. The minimum square footage cited in this paragraph can be waived if prior written approval of the Architectural Control Committee is obtained and the lot size and topography justifies the waiver, and all other covenants contained in this declaration are met.

5. Building Location.

(a) No building shall be located on any lot nearer than 25 feet to the front lot line, or nearer than 20 feet to any side street line.

(b) Any dwelling or improvements erected or placed on the lot shall be situated within the side yard, set back and rear lot line as required by city ordinances. Detached garages or other permitted accessory buildings may not encroach upon any easements.

(c) For the purpose of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of any building on a lot to encroach upon another lot.

(d) No dwelling shall be erected or placed on any lot having a width of less than 60 feet at the point where it is proposed to locate the part of the dwelling closest to the front street.

6. Easement. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the lot owner, except for those improvements for which a public authority or utility company is responsible.

7. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No clothes drying or storage of any articles which are unsightly in the opinion of the Architectural Control Committee will be permitted on patios or in other open areas, unless the patio or area is enclosed and designed for such purpose. No automobiles, trailers, boats, or other vehicles are to be parked or stored on the front or side streets of the lots unless they are in running condition, properly licensed and are being regularly used. Automobiles must be moved every 24 hours. All RV's stored or parked on the lot must be located to the side or in the rear of the home and concealed from the front of the street. All roof mounted heating and cooling equipment must be set back to the back side of the roof out of view from the street. All TV antennas are to be placed in the attic out of view. Satellite dishes are to be hidden from view from the street. Solar heating panels shall be mounted flush with the roofing materials.

8. Landscaping. Within one month of occupancy of any home built in the subdivision, the front yard shall be planted in lawn or other acceptable landscaping so as not to negatively impact the aesthetics of the subdivision. "Acceptable landscaping" and "lawn" shall be defined by the majority of the lot owners in the subdivision. Trees, lawns, shrubs, or other plantings shall be properly nurtured and maintained or replaced at the lot owner's expense.

9. Fencing. Any Lot having a side yard that is parallel with any street of the subdivision is required to install a six foot vinyl privacy fence as close to the sidewalk as reasonably possible without encroaching on any public easement.

10. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used on any lot at any time as a residence either temporarily or permanently. No mobile homes are permitted.

11. Private Residence, Moving of Structures, Incomplete Building. Said premises shall be used for private residence purposes only, except as hereafter set forth, and no structure of any kind shall be moved from any other prior residence upon said premises. No incomplete building shall be allowed to remain incomplete for a period in excess of one year from the date the building is started unless approved, in writing, by the Architectural Control Committee.

12. Signs. No sign of any kind shall be displayed to the public view on any lot except signs used by a builder to advertise the property during the construction and sales period, or signs used by a lot owner advertising the property for sale.

13. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose and are restricted to the lot owner's premises or on leash under handler's control.

14. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each lot and its abutting street are to be kept free of trash, weeds and other refuse by the lot owner. No unsightly materials or other objects are to be stored on any lot in view of the general public.

15. Damage to Other Lots or Structures. The owner of a lot shall be liable for any damage done to another lot, or to improvements thereon, caused by the lot owner or by lot owner's contractor.

16. Sight Distance at Intersection. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines or in case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

17. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or gas shall be erected, maintained, or permitted upon any lot.

18. Maintenance. Trees, lawns, shrubs, or other plantings shall be properly nurtured and maintained or replaced at the lot owner's expense upon request of the Architectural Control Committee.

19. Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas of each lot and all improvements in them shall be maintained continuously by the lot owner, except for those improvements for which a public authority or utility company is responsible.

#### **PART C. ARCHITECTURAL CONTROL COMMITTEE**

1. Membership. The initial Architectural Control Committee shall consist of one member. Neither the member of the Committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. A majority of the committee may designate a representative to act for it. At such time that all lots owned by the Declarant are sold, the aforementioned Declarant shall be released from responsibility of the committee. The then-existing lot owners may then elect a replacement committee by majority vote. At any time after all lots owned by the Declarant are sold, the record lot owners of a two-thirds majority of the existing recorded lot owners shall have the power, through a duly recorded written instrument, to change the membership of the Committee or to withdraw from the committee or restore to it any of its powers and duties. The initial Architectural Control Committee is composed of: Lanse Chourmos

2. Procedure. The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within 30 days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required, and the related covenants shall be deemed to have been fully complied with.

3. Immunity. Notwithstanding the foregoing provisions, the Architectural Control Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this declaration, and no member of the Architectural Control Committee shall have any liability, responsibility, or obligation, whatsoever, for any decisions or lack thereof, in the carrying out of the duties as a member of such committee. Such committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of the declaration shall rest with each lot owner. Each lot owner agrees to save, defend, and hold harmless the Architectural Control Committee and each of its members on account of any activities of the Architectural Control Committee relating to such lot owner's property or buildings to be constructed on his or her property.

4. Architectural Control Committee Discretion. The Architectural Control Committee reserves the right to be "subjective" in approving or disapproving the construction of any home to be built in the subdivision in order to enhance and protect the value, desirability, and attractiveness of the lots. It is contemplated by this Declaration, and agreed to by all lot owners, that there will be variations and adjustments made by the Architectural Control Committee in approving or disapproving building plans. The process of approval by the Architectural Control Committee will be subjective, but not arbitrary, in approving building plans in substantial conformity with this Declaration.

#### PART D. GENERAL PROVISIONS

1. Accepted Declarant Activities. Nothing in this Declaration shall prevent Declarant, Declarant's transferee or the employees, contractors, or sub-contractors of Declarant or Declarant's transferee from doing on any part or parts of the subdivision whatever they determine may be reasonably necessary or advisable in connection with the development of the subdivision, including, but not limited to, construction and maintenance of such structures, including model homes, as may be reasonably necessary for the completion of the development of the subdivision; conducting the business of establishing the subdivision as a residential community in the disposing of lots by sale, lease, or otherwise; and the maintaining of such sign or signs on any of the lots owned or controlled by the Declarant or the Declarant's transferee as may be reasonably necessary. As used in this section, the words "Declarant's transferee" specifically exclude individual purchasers of improved lots.

2. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which time, said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a two-thirds (2/3) majority of the existing lot owners has been recorded, agreeing to change said covenants in whole or in part.

3. Enforcement. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. The rights granted herein to enforce this Declaration of Protective Covenants shall be cumulative and are not intended to exclude any other remedies which may be available to any other person in law or in equity. Any person or persons who bring a successful action to enforce this Declaration shall be entitled to an award for reasonable attorney's fees and costs incurred in prosecuting such action.

4. Severability. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

5. Acceptance of Restrictions. All purchasers of property described above shall, by acceptance of delivery of any deed, or by purchasing under a contract, or by acquiring any interest in any lot listed herein, or any portion thereof, be conclusively deemed to have consented and agreed to all restrictions, conditions, covenants and agreements set forth herein.

6. Modification. This Declaration of Protective Covenants may be modified, amended, supplemented, or cancelled by an instrument signed by a two-thirds (2/3) majority of the existing lot owners of record of all lots in the Subdivision.

Dated this     day of             , 2003.

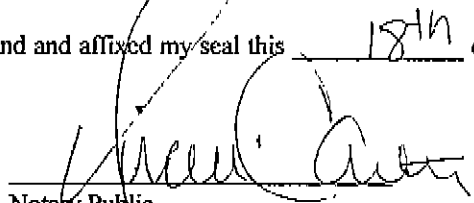
Silverstone Homes Development  
By:



STATE OF UTAH )  
 : ss  
COUNTY OF DAVIS )

On the 18<sup>th</sup> day of March, 200~~3~~<sup>4</sup>, personally appeared before me  
Lanse A. Chournos, who being by me duly sworn say that he is a member of the limited liability company that  
executed the above and foregoing instrument and that said instrument was signed on behalf of said company by  
authority and the said Lanse A. Chournos acknowledged to me that the said company executed the same.

IN WITNESS WHEREOF I have herewith set my hand and affixed my seal this 18<sup>th</sup> day of  
March, 200~~3~~<sup>4</sup>

  
Notary Public

Residing at:  
My Commission Expires:

