

Recorded DEC 3 1964 RE 8530  
Request of NATIONAL TITLE INSURANCE CO.  
Fee Paid FAZEL TAGGART CHASE  
Recorder, Salt Lake County, Utah  
\$ 27.00 By [Signature] Deputy  
Ref. \_\_\_\_\_

2045133

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
ASPEN VILLAGE CONDOMINIUM TOWNHOUSES

1 This Declaration of Covenants, Conditions and Restrictions, hereinafter called  
2 "Declaration", is made and executed in Salt Lake County, State of Utah, this 24 day  
3 of November, 1964, by David K. Richards and Sharon Peterson Richards,  
4 his wife, hereinafter called "Declarant," pursuant to the provisions of the Utah Condomin-  
5 ium Ownership Act,

6 WITNESSETH:

7 WHEREAS, Declarant is the owner of certain real property located in the vicin-  
8 ity of 2765 Connor Street, Salt Lake County, State of Utah, and more particularly described  
9 as follows:

10 Beginning at a point which is 78.5 rods East and 8.93 rods South from the  
11 Northwest corner of Section 27, T 1 S R 1 E, S. L. B. & M. and running  
12 thence North 259.545 feet, thence East 265.75 feet, thence South 259.545  
13 feet, thence West 265.75 feet to beginning.

14 and

15 WHEREAS, Declarant is the owner of certain Townhouse buildings and certain  
16 other improvements heretofore constructed or hereafter to be constructed upon the aforesaid  
17 premises which property constitutes a "Condominium Project" under the terms of the provi-  
18 sions of the Utah Condominium Ownership Act, (Title 57, Chapter 8, Utah Code Annotated  
19 1953), and it is the desire and the intention of the Declarant to divide the project into  
20 condominiums and to sell and convey the same to various purchasers, subject to the cov-  
21 enants, conditions and restrictions herein reserved to be kept and observed; and

22 WHEREAS, on the 24 day of November, 1964, Declarant filed for  
23 record in the office of the County Recorder of Salt Lake County, State of Utah, a certain  
24 instrument entitled "Record of Survey Map of Aspen Village Condominium Townhouses"  
25 hereinafter referred to as "Map", which Map is filed of record, herewith; and

26 WHEREAS, Declarant desires and intends by filing this Declaration and the afore-  
27 said Map to submit the above described property and the Townhouse buildings and other  
28 improvements constructed thereon, together with all appurtenances thereto, to the  
provisions of the aforesaid act as a condominium project and to impose upon said property  
mutually beneficial restrictions under a general plan of improvement for the benefit of

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1 all of said condominiums and the owners thereof,

2 NOW, THEREFORE, the Declarant does hereby publish and declare that all of  
3 the property described above is held and shall be held, conveyed, hypothecated, encum-  
4 bered, leased, rented, used, occupied, and improved subject to the following covenants,  
5 conditions, restrictions, uses, limitations and obligations, all of which are declared and  
6 agreed to be in furtherance of a plan for the improvement of said property and the division  
7 thereof into condominiums, and shall be deemed to run with the land and shall be a burden  
8 and a benefit to Declarant, its successors and assigns and any person acquiring or owning an  
9 interest in the real property and improvements, their grantees, successors, heirs, executors,  
10 administrators, devisees and assigns.

11 1. Definitions: Certain terms as used in this Declaration shall be defined as  
12 follows, unless the context clearly indicates a different meaning therefor:

13 (a) "Declarant" shall mean David K. Richards and Sharon Peterson  
14 Richards, his wife, who have made and executed this Declaration;

15 (b) "Declaration" shall mean this instrument by which the Aspen  
16 Village Condominium Townhouses Project is established as provided for under the  
17 Utah Condominium Ownership Act;

18 (c) "Project" shall mean the entire parcel of real property referred to  
19 in this Declaration to be divided into condominiums, including all structures  
20 thereon;

21 (d) "Map" shall mean the Record of Survey Map of Aspen Village  
22 Condominium Townhouses filed for record herewith by Declarant;

23 (e) "Unit" shall mean the elements of a condominium which are not  
24 owned in common with the Owners of other condominiums in the project as  
25 shown on the Map. The boundary lines of each Unit are the interior surfaces  
26 of its perimeter walls, bearing walls, floors, fireplaces, ceilings, windows and  
27 window frames, doors and door frames, and trim, and includes both the portions  
28 of the building so described and the air space so encompassed;

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(f) "Common Area" shall mean all land and all portions of the property not located within any Unit; and also includes, but not by way of limitation, air conditioning equipment, roofs, foundations, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, perimeter walls, bearing walls, beams, columns and girders to the interior surfaces thereof, regardless of location, patios, yards, gardens, storage areas, carports and parking areas, recreational facilities including cabana and swimming pool, all installations of power, lights, gas, hot and cold water and heating existing for common maintenance and safety, or normally in common use;

(g) "Condominium" shall mean the entire estate in the real property owned by any Owner, consisting of an undivided interest in the Common Area and ownership of a separate interest in a Unit;

(h) "Owner" shall mean any person with an ownership interest in a condominium in the project;

(i) "Management Committee" shall mean the governing body of the Project, elected pursuant to paragraph 5 hereof;

(j) "Manager" shall mean the person or firm designated by the Management Committee to manage the affairs of the Project;

(k) "Mortgage" shall mean a deed of trust as well as a mortgage;

(l) "Mortgagee" shall mean a beneficiary under or holder of a deed of trust as well as a mortgagee;

(m) "Record" means to file of record with the office of the County Recorder of Salt Lake County, State of Utah;

(n) "Condominium Act" shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated 1953).

2. Voting. At any meeting of the Owners, each Owner, including Declarant, shall be entitled to cast a number of votes as shown on Exhibit A, attached hereto and incorporated herein by reference thereto. Any Owner may attend and vote at such meeting in

1 person, or by an agent duly appointed by an instrument in writing signed by the Owner and  
2 filed with the Management Committee or the Manager. Any designation of an agent to act  
3 for an Owner may be revoked at any time by written notice to the Management Committee  
4 or Manager, and shall be deemed revoked when the Management Committee or the Manager  
5 shall receive actual notice of the death or judicially declared incompetence of such Owner  
6 or of the conveyance by such Owner of his condominium. Where there is more than one  
7 record Owner, any or all of such persons may attend any meeting of the Owners, but it shall  
8 be necessary for those present to act unanimously in order to cast the votes to which they are  
9 entitled. Any designation of an agent to act for such persons must be signed by all such  
10 persons. Declarant shall be entitled to vote with respect to any condominium owned by  
11 Declarant.

12 In the event that a notice of default is recorded by any mortgagee who holds a  
13 mortgage which is a first lien on a condominium against the Owner of the condominium  
14 covered by the mortgage, then and in that event and until the default is cured, the right  
15 of the Owner of such condominium to vote shall be transferred to the mortgagee recording  
16 the notice of default.

17 3. Meetings. The presence at any meeting of Owners having a majority of the  
18 total votes shall constitute a quorum. In the event that a quorum is not present at any  
19 meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later  
20 date and give notice thereof to all the Owners in accordance with the provisions of para-  
21 graph 4 hereof, and at that meeting the presence of Owners holding in excess of thirty per  
22 cent of the total votes shall constitute a quorum for the transaction of business; but in the  
23 event a quorum is not present at that meeting, the Owners present, though less than a quor-  
24 um, may give notice to all the owners in accordance with paragraph 4 of an adjourned  
25 meeting, and, at that meeting, whatever Owners are present shall constitute a quorum.  
26 Unless otherwise expressly provided in this Declaration, any action may be taken at any  
27 meeting of the Owners upon the affirmative vote of a majority of the voting power of the  
28 Owners present and voting provided that a quorum is present as provided for above.

1 (a) Annual Meeting. There shall be a meeting of the Owners on the  
2 second Tuesday of March of each year at 8:00 P.M. upon the Common Area  
3 or at such other reasonable place or time (not more than sixty (60) days  
4 before or after such date) as may be designated by written notice of the Man-  
5 agement Committee delivered to the Owners not less than ten (10) days prior  
6 to the date fixed for said meeting. At the annual meeting, the Management  
7 Committee shall present an audit of the common expenses, itemizing receipts  
8 and disbursements for the preceding calendar year, the allocation thereof  
9 to each Owner, and the estimated common expenses for the coming calendar  
10 year. Within ten (10) days after the annual meeting, said statement shall be  
11 delivered to the Owners not present at said meeting.

12 (b) Special Meetings. Special meetings of the Owners may be called at  
13 any time for the purpose of considering matters which, by the terms of this Declar-  
14 ation require the approval of all or some of the Owners, or for any other reasonable  
15 purpose. Said meetings shall be called by written notice, signed by a majority of  
16 the Management Committee, or by the Owners having one-third (1/3) of the total  
17 votes and delivered not less than fifteen (15) days prior to the date fixed for said  
18 meeting. Said notices shall specify the date, time and place of the meeting, and  
19 the matters to be considered thereat.

20 4. Notices. Any notice permitted or required to be delivered as provided herein  
21 may be delivered either personally or by mail. If delivery is made by mail, it shall be  
22 deemed to have been delivered twenty-four (24) hours after a copy of same has been de-  
23 posited in the United States mail, postage prepaid, addressed to each such person at the  
24 address given by such person to the Management Committee or Manager for the purpose of  
25 service of such notice or to the Unit of such person if no address has been given to the  
26 Manager. Such address may be changed from time to time by notice in writing to the Man-  
27 agement Committee or the Manager.

28 5. Election and Proceedings of the Management Committee.

(a) Election. At each annual meeting, subject to the provisions of sub-

1 paragraph 5 (e) hereof, the Owners shall elect a Management Committee for the forthcoming  
2 year, consisting of Five (5) Owners; provided, however, that the first Management Commit-  
3 tee elected hereunder may be elected at a special meeting duly called, said Management  
4 Committee to serve until the first annual meeting held thereafter. Every Owner entitled to  
5 vote at any election of members of the Management Committee may cumulate his votes and  
6 give one candidate a number of votes equal to the number of members of the Management  
7 Committee to be elected, multiplied by the number of votes to which such Owner is other-  
8 wise entitled, or distribute his votes on the same principle among as many candidates as  
9 he thinks fit. The candidates receiving the highest number of votes up to the number of  
10 members of the Management Committee to be elected shall be deemed elected.

11 (b) Term. Members of the Management Committee shall serve for a term  
12 of two (2) years; provided that three of the five members of the first Management Committee  
13 elected shall serve for a one-year term. The other two shall serve for a two-year term.  
14 The members of the Management Committee shall serve until their respective successors are  
15 elected, or until their death, resignation or removal; provided that if any member ceases to  
16 be an Owner, his membership on the Management Committee shall thereupon terminate.

17 (c) Resignation and Removal. Any member may resign at any time by giving  
18 written notice to the Manager, and any member may be removed from membership on the  
19 Management Committee by vote of the Owners; provided that unless the entire Management  
20 Committee is removed, an individual member shall not be removed if the number of votes  
21 cast against his removal exceeds Twenty per cent (20%).

22 (d) Proceedings. Three (3) members of the Management Committee shall con-  
23 stitute a quorum and, if a quorum is present, the decision of a majority of those present  
24 shall be the act of the Management Committee. The Management Committee shall elect  
25 a chairman, who shall preside over both its meetings and those of the Owners. Meetings  
26 of the Management Committee may be called, held and conducted in accordance with such  
27 regulations as the Management Committee may adopt. The Management Committee may also  
28 act without a meeting by unanimous written consent of its members.

1 (e) Declarant Performs Functions. Until a date one year from the date  
2 of completion of construction of the project or until all units have been sold, whichever  
3 is sooner, the rights, duties and functions of the Management Committee shall at Declar-  
4 ant's option be exercised by Declarant.

5 (f) Notice of Election. After the first election of the Management Com-  
6 mittee, Declarant shall execute, acknowledge and record an affidavit stating the names of  
7 all of the persons elected to membership on the Management Committee. Thereafter, any  
8 two persons who are designated of record as being members of the most recent Management  
9 Committee (regardless of whether or not they shall still be members) may execute, acknowl-  
10 edge and record an affidavit stating the names of all of the members of the then current Man-  
11 agement Committee. The most recently recorded of such affidavits shall be prima facie  
12 evidence that the persons named therein are all of the incumbent members of the Management  
13 Committee and shall be conclusive evidence thereof in favor of all persons who rely thereon  
14 in good faith.

15 6. Authority of the Management Committee. The Management Committee, for  
16 the benefit of the condominiums and the Owners, shall enforce the provisions hereof and  
17 shall acquire and shall pay for out of the common expense fund hereinafter provided for,  
18 the following:

19 (a) Water, sewer, garbage collection, electrical, telephone and gas  
20 and other necessary utility service for the Common Area (and to the extent not  
21 separately metered or charged, for the Units);

22 (b) A policy or policies of fire insurance as the same are more fully set  
23 forth in paragraph 24 of this Declaration, with extended coverage endorsement, for the  
24 full insurable replacement value of the Units and Common Area, payable as pro-  
25 vided in paragraph 26, or such other fire and casualty insurance as the Management  
26 Committee shall determine gives substantially equal or greater protection to the  
27 Owners, and their mortgagees, as their respective interests may appear, which said  
28 policy or policies shall provide for a separate loss payable endorsement in favor of

1 the mortgagee or mortgagees of each condominium if any;

2 (c) A policy or policies as the same are more fully set forth in paragraph  
3 24 of this Declaration insuring the Management Committee, the Owners and the  
4 Manager against any liability to the public or to the Owners (of Units and of the  
5 Common Area, and their invitees, or tenants), incident to the ownership and/or  
6 use of the project, and including the personal liability exposure of the Owners.  
7 Limits of liability under such insurance shall not be less than Three Hundred Thou-  
8 sand Dollars (\$300,000.00) for any one person injured, for any one accident, and  
9 shall not be less than One Hundred Thousand Dollars (\$100,000.00) for property  
10 damage each occurrence (such limits and coverage to be reviewed at least annually  
11 by the Management Committee and increased in its discretion). Said policy or  
12 policies shall be issued on a comprehensive liability basis and shall provide cross  
13 liability endorsement wherein the rights of named insureds under the policy or  
14 policies shall not be prejudiced as respects his, her or their action against another  
15 named insured.

16 (d) Workmen's compensation insurance to the extent necessary to comply  
17 with any applicable laws;

18 (e) The services of a person or firm to manage its affairs (herein called  
19 "the Manager") to the extent deemed advisable by the Management Committee as well  
20 as such other personnel as the Management Committee shall determine shall be  
21 necessary or proper for the operation of the Common Area, whether such personnel  
22 are employed directly by the Management Committee or are furnished by the  
23 Manager;

24 (f) Legal and accounting services necessary or proper in the operation of  
25 the Common Area or the enforcement of this Declaration;

26 (g) A fidelity bond naming the Manager, and such other persons as may  
27 be designated by the Management Committee as principals and the Owners as obligees,  
28 for the first year in an amount at least equal to the estimated cash requirement for

1 that year as determined under paragraph 9 hereof, and for each year thereafter in an amount  
2 at least equal to the total sum collected through the common expense fund during the pre-  
3 ceding year;

4 (h) Painting, maintenance, repair and all landscaping of the Common  
5 Area, and such furnishings and equipment for the Common Area as the Management Committee  
6 shall determine are necessary and proper, and the Management Committee shall have the  
7 exclusive right and duty to acquire the same for the Common Area; provided, however, that  
8 the interior surfaces of each Unit shall be painted, maintained and repaired by the Owners  
9 thereof, all such maintenance to be at the sole cost and expense of the particular Owner;

10 (i) Any other materials, supplies, furniture, labor, services, maintenance,  
11 repairs, structural alterations, insurance, taxes or assessments which the Management Com-  
12 mittee is required to secure or pay for pursuant to the terms of this Declaration or by law or  
13 which in its opinion shall be necessary or proper for the operation of the Common Area or  
14 for the enforcement of this Declaration, provided that if any such materials, supplies,  
15 furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes  
16 or assessments are provided for particular Units, the cost thereof shall be specially assessed  
17 to the Owners of such Units.

18 (j) Maintenance and repair of any Unit, if such maintenance or repair  
19 is reasonably necessary in the discretion of the Management Committee to protect the  
20 Common Area or preserve the appearance and value of the project, and the Owner or Owners  
21 of said Unit have failed or refused to perform said maintenance or repair within a reasonable  
22 time after written notice of the necessity of said maintenance or repair delivered by the  
23 Management Committee to said Owner or Owners, provided that the Management Commit-  
24 tee shall levy a special assessment against the condominium of such Owner or Owners  
25 for the cost of said maintenance or repair.

26 The Management Committee's power hereinabove enumerated shall be limited in  
27 that the Management Committee shall have no authority to acquire and pay for out of the  
28 common expense fund capital additions and improvements (other than for purposes of re-

1 placing portions of the Common Area, subject to all the provisions of this Declaration)  
2 having a cost in excess of Two Thousand Five Hundred Dollars (\$2,500.00) except as  
3 expressly provided herein.

4 7. Management Committee Powers, Exclusive. The Management Committee shall  
5 have the exclusive right to contract for all goods, services and insurance, payment  
6 for which is to be made from the common expense fund.

7 8. Alterations, Additions and Improvements of Common Area. There shall be  
8 no structural alterations, capital additions to, or capital improvements of the Common Area  
9 requiring an expenditure in excess of Two Thousand Five Hundred Dollars (\$2,500.00)  
10 without the prior approval of Owners holding 75% of the total votes.

11 9. Common Expenses: Assessments.

12 (a) Within thirty (30) days prior to the beginning of each calendar year the  
13 Management Committee shall estimate the net charges to be paid during such year (includ-  
14 ing a reasonable provision for contingencies and replacements and less any expected income  
15 and any surplus from the prior year's fund). Said "estimated cash requirement" shall be  
16 assessed to the Owners pursuant to the percentages set forth in the schedule attached hereto  
17 and marked Exhibit A. Declarant will be liable for the amount of any assessment against  
18 completed Units owned by Declarant. If said sum estimated proves inadequate for any  
19 reason, including nonpayment of any Owner's assessment, the Management Committee may at  
20 any time levy a further assessment, which shall be assessed to the Owners in like propor-  
21 tions, unless otherwise provided herein. Each Owner shall be obligated to pay assessments  
22 made pursuant to this paragraph to the Management Committee in equal monthly install-  
23 ments on or before the first day of each month during such year, or in such other reasonable  
24 manner as the Management Committee shall designate;

25 (b) The rights, duties and functions of the Management Committee set forth  
26 in this paragraph shall be exercised by Declarant for the period ending thirty (30) days  
27 after the election of the first Management Committee hereunder;

28 (c) All funds collected hereunder shall be expended for the purposes design-  
ated herein.

1 (d) The omission by the Management Committee, before the expiration of  
 2 any year, to fix the assessments hereunder for that or the next year, shall not be deemed a  
 3 waiver or modification in any respect of the provisions of this Declaration, or a release  
 4 of the Owner from the obligation to pay the assessments, or any installment thereof for that  
 5 or any subsequent year, but the assessment fixed for the preceding year shall continue  
 6 until a new assessment is fixed. Amendments to this paragraph shall be effective only upon  
 7 unanimous written consent of the Owners and their mortgagees. No Owner may exempt him-  
 8 self from liability for his contribution towards the common expenses by waiver of the use or  
 9 enjoyment of any of the Common Area or by abandonment of his Unit.

10 (e) The Manager or Management Committee shall keep detailed, accurate  
 11 records in chronological order, of the receipts and expenditures affecting the Common Area,  
 12 specifying and itemizing the maintenance and repair expenses of the Common Area and  
 13 any other expenses incurred. Records and vouchers authorizing the payments involved  
 14 shall be available for examination by the Owner at convenient hours of week days.

15 10. Default in Payment of Assessments. Each monthly assessment and each special  
 16 assessment shall be separate, distinct and personal debts and obligations of the Owner  
 17 against whom the same are assessed at the time the assessment is made and shall be collect-  
 18 ible as such. Suit to recover a money judgment for unpaid common expenses shall be  
 19 maintainable without foreclosing or waiving the lien securing the same. The amount of any  
 20 assessment, whether regular or special, assessed to the Owner of any condominium plus  
 21 interest at seven per cent (7%), and costs, including reasonable attorneys' fees, shall be-  
 22 come a lien upon such condominium upon recordation of a notice of assessment as provided  
 23 in Section 57-8-20 of The Condominium Act. The said lien for nonpayment of common ex-  
 24 penses shall have priority over all other liens and encumbrances, recorded or unrecorded,  
 25 except only

26 (1) Tax and special assessment liens on the Unit in favor of any assessment  
 27 unit, and special district, and

28 (2) Encumbrances on the Owner's condominium recorded prior to the date  
 such notice is recorded which by law would be a lien prior to subsequently recorded encum-

brances.

1           A certificate executed and acknowledged by a majority of the Management Committee  
2 stating the indebtedness secured by the lien upon any condominium created hereunder, shall  
3 be conclusive upon the Management Committee and the Owners as to the amount of such  
4 indebtedness on the date of the certificate, in favor of all persons who rely thereon in  
5 good faith, and such certificate shall be furnished to any Owner or any encumbrancer or  
6 prospective encumbrancer of a condominium upon request at a reasonable fee, not to exceed  
7 Ten Dollars (\$10). Unless the request for a certificate of indebtedness shall be complied  
8 with within ten days, all unpaid common expenses which become due prior to the date of  
9 the making of such request shall be subordinate to the lien held by the person making the  
10 request. Any encumbrancer holding a lien on a condominium may pay any unpaid common  
11 expenses payable with respect to such condominium and upon such payment such encumbrancer  
12 shall have a lien on such condominium for the amounts paid of the same rank as the lien  
13 of his encumbrance.

14           Upon payment of a delinquent assessment concerning which such a certificate  
15 has been so recorded, or other satisfaction thereof, the Management Committee shall cause  
16 to be recorded in the same manner as the certificate of indebtedness a further certificate  
17 stating the satisfaction and the release of the lien thereof. Such lien for nonpayment of  
18 assessment may be enforced by sale by the Management Committee or by a bank or trust  
19 company or title insurance company authorized by the Management Committee, such sale  
20 to be conducted in accordance with the provisions of law applicable to the exercise of  
21 powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by  
22 law. In any foreclosure or sale, the Owner shall be required to pay the costs and expenses  
23 of such proceedings and reasonable attorney's fees.

24           In case of foreclosure, the Owner shall be required to pay a reasonable rental  
25 for the condominium and the plaintiff in the foreclosure action shall be entitled to the  
26 appointment of a receiver to collect the rental without regard to the value of the mortgage  
27 security. The Management Committee or Manager shall have the power to bid in the condo-  
28 minium at foreclosure or other sale and to hold, lease, mortgage and convey the condominium.

1           11. Mortgage Protection. Notwithstanding all other provisions hereof:

2                   (a) The liens created hereunder upon any condominium shall be subject  
3 and subordinate to, and shall not affect the rights of the holder of the indebtedness secured  
4 by any recorded first mortgage (meaning a mortgage with first priority over other mortgages)  
5 upon such interest made in good faith and for value, provided that after the foreclosure of  
6 any such mortgage there may be a lien created pursuant to paragraph 10 hereof on the  
7 interest of the purchaser at such foreclosure sale to secure all assessments, whether regular  
8 or special, assessed hereunder to such purchaser as an Owner after the date of such fore-  
9 closure sale, which said lien, if any claimed, shall have the same effect and be enforced  
10 in the same manner as provided herein;

11                   (b) No amendment to this paragraph shall affect the rights of the holder of  
12 any such mortgage recorded prior to recordation of such amendment who does not join  
13 in the execution thereof;

14                   (c) By subordination agreement executed by a majority of the Management  
15 Committee, the benefits of (a) and (b) above may be extended to mortgages not otherwise  
16 entitled thereto.

17           12. Delegation to Manager. The Management Committee may delegate any of its  
18 duties, power or functions, including, but not limited to, the authority to give the certifi-  
19 cate provided for in paragraph 10 hereof, and the authority to give the subordination agree-  
20 ments provided for in paragraph 11 hereof, to any person or firm, to act as Manager of the  
21 project, provided that any such delegation shall be revocable upon notice by the Management  
22 Committee. The members of the Management Committee shall not be liable for any omission  
23 or improper exercise by the Manager of any such duty, power or function so delegated by  
24 written instrument executed by a majority of the Management Committee. In the absence  
25 of any appointment, the Chairman of the Management Committee shall act as Manager.

26                   Any Manager named or employed by Declarant shall be employed to manage only  
27 until the first election of a Management Committee, at which time, the new Management Com-  
28 mittee shall have the right to retain or discharge said Manager as it determines desirable  
in its discretion.

1           13. Exclusive ownership and Possession by Owner.

2           Each Owner shall be entitled to exclusive ownership and possession of his Unit.

3           Each Owner shall be entitled to an undivided interest in the Common Area in the percentage  
4           expressed in Exhibit A of this Declaration. The percentage of the undivided interest of  
5           each Owner in the Common Area as expressed in Exhibit A shall have a permanent character  
6           and shall not be altered without the consent of all owners expressed in an amended declara-  
7           tion duly recorded. The percentage of the undivided interest in the Common Area shall  
8           not be separated from the Unit to which it appertains and shall be deemed to be conveyed  
9           or encumbered or released from liens with the Unit even though such interest is not express-  
10          ly mentioned or described in the conveyance or other instrument. Each Owner may use the  
11          Common Area in accordance with the purpose for which it is intended, without hinder-  
12          ing or encroaching upon the lawful rights of the other Owners.

13          An Owner shall not be deemed to own the undecorated and/or unfinished surfaces  
14          of the perimeter walls, floors, ceilings, windows and doors bounding his Unit, nor shall  
15          the Owner be deemed to own the utilities running through his Unit which are utilized for,  
16          or serve more than one Unit, except as a tenant in common with the other Owners. An  
17          Owner, however, shall be deemed to own and shall have the exclusive right to paint,  
18          repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the  
19          walls, floors, ceilings, windows and doors bounding his Unit.

20          14. Owner's Obligation to Repair. Except for those portions which the Manage-  
21          ment Committee is required to maintain and repair hereunder (if any), each Owner shall  
22          at the Owner's expense keep the interior of his Unit and its equipment and appurtenances  
23          in good order, condition and repair and in a clean and sanitary condition, and shall do  
24          all redecorating, painting and varnishing which may at any time be necessary to maintain  
25          the good appearance and condition of his Unit. In addition to decorating and keeping the  
26          interior of the Unit in good repair, the Owner shall be responsible for the maintenance,  
27          repair or replacement of any plumbing fixtures, water heaters, furnaces, lighting fixtures,  
28          refrigerators, air conditioning equipment, dishwashers, disposals or ranges that may be in,

1 or connected with the Unit. It is expressly understood that there is, appurtenant to each Unit,  
2 an air conditioner which is located outside the Unit but adjacent to the building. An ease-  
3 ment is hereby reserved in favor of each Unit for the purpose of maintenance, repair or  
4 replacement of the said air conditioners by the respective Owners as required hereinabove.

5 The Owner shall also, at the Owner's own expense, keep the interior of the  
6 patios, storage area and carport or carports which have been assigned to his Unit in a clean  
7 and sanitary condition. The Management Committee and Manager shall not be responsible  
8 to the Owner for loss or damage by theft or otherwise of articles which may be stored by  
9 the Owner in the patios, storage area, carport or carports or Unit.

10 The Owner shall promptly discharge any lien which may hereafter be filed against  
11 his condominium and shall otherwise abide by the provisions of Section 57-8-19 of The  
12 Condominium Act.

13 15. Prohibition Against Structural Changes by Owner. The Owner shall not, with-  
14 out first obtaining written consent of the Management Committee, make or permit to be made  
15 any structural alteration, improvement or addition in or to his Unit or in or to the exterior  
16 of the buildings or other Common Area. The Owner shall do no act nor any work that will  
17 impair the structural soundness or integrity of the buildings or safety of the property or impair  
18 any easement or hereditament without the written consent of all owners. The Owner shall  
19 not paint or decorate any portion of the exterior of the buildings or other Common Area  
20 or any portion of the patio fences, storage areas, or carport or carports assigned to his Unit.

21 16. Limitation on Use of Units and Common Area. The Units and Common Area  
22 shall be occupied and used as follows:

23 (a) No Owner shall occupy or use his Unit, or permit the same or any part  
24 thereof to be occupied or used for any purpose other than as a private residence for the Owner  
25 and the Owner's family or the Owner's Lessees or guests.

26 (b) There shall be no obstruction of the Common Area. Nothing shall be  
27 stored in the Common Area without the prior consent of the Management Committee.

28 (c) Nothing shall be done or kept in any Unit or in the Common Area which

1 will increase the rate of insurance on the Common Area, without the prior written consent  
2 of the Management Committee. No Owner shall permit anything to be done or kept in his  
3 Unit or in the Common Area which will result in the cancellation of insurance on any Unit  
4 or any part of the Common Area, or which would be in violation of any law. No waste will  
5 be committed in the Common Area;

6 (d) No sign of any kind shall be displayed to the public view on or from  
7 any Unit or the Common Area, without the prior consent of the Management Committee;

8 (e) No animals, livestock or poultry of any kind shall be raised, bred,  
9 or kept in any Unit or in the Common Area, except that dogs, cats or other household pets  
10 may be kept in Units, subject to rules and regulations adopted by the Management Committee;

11 (f) No noxious or offensive activity shall be carried on in any Unit or in  
12 the Common Area, nor shall anything be done therein which may be or become an annoyance  
13 or nuisance to the other Owners;

14 (g) Nothing shall be altered or constructed in or removed from the Common  
15 Area, except upon the written consent of the Management Committee;

16 (h) There shall be no violation of rules for the use of the Common Area  
17 adopted by the Management Committee and furnished in writing to the Owners, and the Man-  
18 agement Committee is authorized to adopt such rules.

19 (i) None of the rights and obligations of the Owners created herein, or by  
20 the Deed creating the condominiums shall be altered in any way by encroachments due to  
21 settlement or shifting of structures or any other cause. There shall be valid easements for  
22 the maintenance of said encroachments so long as they shall exist; provided, however, that in  
23 no event shall a valid easement for encroachment be created in favor of an Owner or Owners  
24 if said encroachment occurred due to the wilful conduct of said Owner or Owners.

25 (j) No children under twelve years of age shall be permitted as permanent  
26 residents of a Unit. The Owner shall be permitted to have guests under twelve years of age  
27 visit the Owner on a temporary basis.

28

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1           17. Entry for Repairs. The Management Committee or its agents may enter any Unit  
2 when necessary in connection with any maintenance, landscaping or construction for which  
3 the Management Committee is responsible. Such entry shall be made with as little inconven-  
4 ience to the Owners as practicable, and any damage caused thereby shall be repaired by the  
5 Management Committee out of the common expense fund.

6           18. Failure of Management Committee to Insist on Strict Performance No Waiver.  
7 The failure of the Management Committee or Manager to insist in any one or more instances,  
8 upon the strict performance of any of the terms, covenants, conditions or restrictions of this  
9 Declaration, or to exercise any right or option herein contained, or to serve any notice  
10 or to institute any action shall not be construed as a waiver or a relinquishment for the future,  
11 of such term, covenant, condition or restriction but such term, covenant, condition or restric-  
12 tions shall remain in full force and effect. The receipt by the Management Committee or Man-  
13 ager of any assessment from an Owner, with knowledge of the breach of any covenant hereof  
14 shall not be deemed a waiver of such breach, and no waiver by the Management Committee  
15 or Manager of any provision hereof shall be deemed to have been made unless expressed in writ-  
16 ing and signed by the Management Committee or Manager.

17           19. Limitation of Management Committee's Liability. The Management Committee  
18 shall not be liable for any failure of water supply or other service to be obtained and paid  
19 for by the Management Committee hereunder, or for injury or damage to person or property  
20 caused by the elements or by another Owner or person in the project, or resulting from elec-  
21 tricity, water, rain, dust or sand which may leak or flow from outside or from any parts of  
22 the buildings, or from any of its pipes, drains, conduits, appliances, or equipment, or from  
23 any other place unless caused by gross negligence of the Management Committee. No dimin-  
24 ution or abatement of common expense assessments shall be claimed or allowed for inconven-  
25 iences or discomfort arising from the making of repairs or improvements to the Common Area  
26 or from any action taken to comply with any law, ordinance or orders of a governmental  
27 authority.

28

1           20. Indemnification of Management Committee Members. Each member of the Man-  
2 agement Committee shall be indemnified by the Owners against all expenses and liabilities  
3 including attorneys' fees, reasonably incurred by or imposed upon him in connection with any  
4 proceeding to which he may be a party, or in which he may become involved, by reason of  
5 his being or having been a member of the Management Committee, or any settlement thereof,  
6 whether or not he is a member of the Management Committee at the time such expenses are  
7 incurred, except in such cases wherein the member of the Management Committee is adjudged  
8 guilty of willful misfeasance or malfeasance in the performance of his duties; provided that  
9 in the event of a settlement the indemnification shall apply only when the Management Com-  
10 mittee approves such settlement and reimbursement as being for the best interests of the Man-  
11 agement Committee.

12           21. Sale or Lease Right of First Refusal. In the event any Owner of a condominium  
13 shall wish to re-sell or lease the same, and shall have received a bona fide offer therefor from  
14 a prospective purchaser or tenant, the remaining Owners shall be given written notice thereof  
15 together with an executed copy of such offer and the terms thereof. Such notice and copy  
16 shall be given to the Management Committee for all of the Owners. The remaining Owners  
17 through the Management Committee or a person named by the Management Committee, shall  
18 have the right to purchase or lease the subject condominium upon the same terms and condi-  
19 tions as set forth in the offer therefor, provided written notice of such election to purchase  
20 or lease is given to the selling or leasing Owner, and a matching down payment or deposit  
21 is provided to the selling or leasing Owner during the twenty-one day period immediately  
22 following the delivery of the notice of the bona fide offer and copy thereof to purchase or  
23 lease.

24           In the event any Owner shall attempt to sell or lease his condominium without afford-  
25 ing to the other Owners the right of first refusal herein provided, such sale or lease shall be  
26 wholly null and void and shall confer no title or interest whatsoever upon the intended pur-  
27 chaser or lessee.

28           The subleasing or subrenting of said interest shall be subject to the same limitations

1 as are applicable to the leasing or renting thereof. The liability of the Owner under these  
2 covenants shall continue, notwithstanding the fact that he may have leased or rented said  
3 interest as provided herein.

4 In no case shall the right of first refusal reserved herein affect the right of an Owner  
5 to subject his condominium to a trust deed, mortgage or other security instrument.

6 The failure of or refusal by the Management Committee to exercise the right to so  
7 purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase  
8 or lease when an Owner receives any subsequent bona fide offer from a prospective purchaser  
9 or tenant.

10 22. Mortgages not Affected by Right of First Refusal. In the event of any default  
11 on the part of any Owner under any first mortgage made in good faith and for value, which  
12 entitled the holder thereof to foreclose same, any sale under such foreclosure, including de-  
13 livery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear  
14 of the provisions of paragraph 21, and the purchaser (or grantee under such deed in lieu of  
15 foreclosure) of such condominium shall be thereupon and thereafter subject to the provisions  
16 of this Declaration. If the purchaser following such foreclosure sale (or grantee under deed  
17 given in lieu of such foreclosure) shall be the then holder of the first mortgage, or its nom-  
18 inee, the said holder or nominee may thereafter sell and convey the condominium free and  
19 clear of the provisions of paragraph 21, but its grantee shall thereupon and thereafter be sub-  
20 ject to all of the provisions thereof.

21 The transfer of a deceased joint tenant's interest to the surviving joint tenant or  
22 the transfer of a deceased's interest to a devisee by will or his heirs at law under intestacy  
23 laws shall not be subject to the provisions of paragraph 21.

24 If an Owner of a condominium can establish to the satisfaction of the Management  
25 Committee that a proposed transfer is not a sale or lease, then such transfer shall not be  
26 subject to the provisions of paragraph 21.

27 23. Certificate of Satisfaction of Right of First Refusal. Upon written request of  
28 any prospective transferor, purchaser, tenant or an existing or prospective mortgagee of

1 any condominium, the Management Committee shall forthwith, or where time is specified,  
2 at the end of the time, issue a written and acknowledged certificate in recordable form,  
3 evidencing that:

4 (a) With respect to a proposed lease or sale under paragraph 21, that  
5 proper notice was given by the selling or leasing owner and that the remaining Owners  
6 did not elect to exercise their option to purchase or lease;

7 (b) With respect to a deed to a first mortgagee or its nominee in lieu of  
8 foreclosure, and a deed from such first mortgagee or its nominee, pursuant to paragraph  
9 22, that the deeds were in fact given in lieu of foreclosure and were not subject to the pro-  
10 visions of paragraph 21;

11 (c) With respect to any contemplated transfer which is not in fact a sale or  
12 lease, that the transfer is not or will not be subject to the provisions of paragraph 21;  
13 Such a certificate shall be conclusive evidence of the facts contained therein.

14 24. Insurance. The Management Committee shall obtain and maintain at all times  
15 insurance of the type and kind and in at least the amounts provided hereinabove, and in-  
16 cluding insurance for such other risks, of a similar or dissimilar nature, as are or shall here-  
17 after customarily be covered with respect to other condominium projects similar in construc-  
18 tion, design and use which insurance shall be governed by the following provisions:

19 (a) All policies shall be written with a company licensed to do business  
20 in the State of Utah and holding a rating of "AAA" or better by Best's Insurance Reports;

21 (b) Exclusive authority to adjust losses under policies hereafter in force  
22 in the project shall be vested in the Management Committee or its authorized representative;

23 (c) In no event shall the insurance coverage obtained and maintained by the  
24 Management Committee hereunder, be brought into contribution with insurance purchased by  
25 individual owners or their mortgagees;

26 (d) Each Owner may obtain additional insurance at his own expense; pro-  
27 vided, however, that no Owner shall be entitled to exercise his right to maintain insurance  
28 coverage in such a way as to decrease the amount which the Management Committee, in

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1 behalf of all of the Owners, may realize under any insurance policy which the Management  
2 Committee may have in force on the project at any particular time;

3 (e) Each Owner shall be required to notify the Management Committee of all  
4 improvements made by the Owner to his Unit, the value of which is in excess of One Thousand  
5 and Dollars (\$1,000.00);

6 (f) Any Owner who obtains individual insurance policies covering any part  
7 tion of the project other than personal property belonging to such Owner, shall be required to  
8 file a copy of such individual policy or policies with the Management Committee within  
9 thirty (30) days after purchase or such insurance;

10 (g) The Management Committee shall be required to make every effort to  
11 secure insurance policies that will provide for the following:

12 (1) A waiver of subrogation by the insurer as to any claims  
13 against the Management Committee, the Manager, the Owners and  
14 their respective servants, agents, and guests;

15 (2) That the master policy on the project cannot be cancelled,  
16 invalidated or suspended on account of the conduct of any one or more  
17 individual Owners;

18 (3) That the master policy on the project cannot be cancelled,  
19 invalidated or suspended on account of the conduct of any officer or  
20 employee of the Management Committee or Manager without a prior  
21 demand in writing that the Management Committee or Manager cure  
22 the defect;

23 (4) That any "no other insurance" clause in the master policy ex-  
24 clude individual owners' policies from consideration;

25 (h) The annual insurance review which the Management Committee is re-  
26 quired to conduct as provided in Paragraph 6 above shall include an appraisal of the improve-  
27 ments in the project by a representative of the insurance carrier writing the master policy.

28 25. No Partition. There shall be no judicial partition of the project or any  
part thereof, nor shall Declarant or any person acquiring any interest in the project or any

1 part thereof seek any such judicial partition, until the happening of the conditions set forth  
2 in Paragraph 26 hereof in the case of damage or destruction or unless the property has been  
3 removed from the provisions of the Condominium Act as provided in Section 57-8-22  
4 thereof; provided, however, that if any condominium shall be owned by two or more co-  
5 tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed  
6 to prevent a judicial partition as between such co-tenants. But such partition shall not af-  
7 fect any other condominium.

8       26. Damage and Destruction. In case of fire, casualty or any other disaster, the  
9 insurance proceeds, if sufficient to reconstruct the buildings, shall be applied to such recon-  
10 struction. Reconstruction of the buildings, as used in this paragraph means restoring the  
11 buildings to substantially the same condition in which they existed prior to the fire, casualty  
12 or other disaster, with each Unit and the Common Area having the same vertical and horizontal  
13 boundaries as before. Such reconstruction shall be accomplished by the Manager or Manage-  
14 ment Committee.

15       If the insurance proceeds are insufficient to reconstruct the building, damage to or  
16 destruction of the building shall be promptly repaired and restored by the Manager or Manage-  
17 ment Committee, using proceeds of insurance, if any, on the buildings for that purpose,  
18 and the Unit owners shall be liable for assessment for any deficiency. However, if three-  
19 fourths or more of the buildings are destroyed or substantially damaged and if the Owners,  
20 by a vote of at least three-fourths of the voting power, do not voluntarily, within one hund-  
21 red days after such destruction or damage, make provision for reconstruction, the Manager  
22 or Management Committee shall record, with the county recorder, a notice setting forth  
23 such facts, and upon the recording of such notice:

- 24               (1) the property shall be deemed to be owned in common by the Owners;
- 25               (2) the undivided interest in the property owned in common which shall
- 26 appertain to each Owner shall be the percentage of undivided interest previously owned by
- 27 such Owner in the Common Area;
- 28

1 (3) any liens affecting any of the condominiums shall be deemed to be trans-  
2 ferred in accordance with the existing priorities to the undivided interest of the Owner in the  
3 property; and

4 (4) the property shall be subject to an action for partition at the suit of any  
5 Owner, in which event the net proceeds of sale, together with the net proceeds of the insur-  
6 ance on the property, if any, shall be considered as one fund and shall be divided among all  
7 the Owners in a percentage equal to the percentage of undivided interest owned by each  
8 Owner in the Common Area, after first paying out of the respective shares of the Owners, to  
9 the extent sufficient for the purposes, all liens on the undivided interest in the property owned  
10 by each Owner.

11 Notwithstanding all other provisions hereof, the owners may, by an affirmative vote  
12 of at least three fourths of the voting power, at a meeting of Unit Owners duly called for such  
13 purpose, elect to sell or otherwise dispose of the property. Such action shall be binding upon  
14 all Unit Owners and it shall thereupon become the duty of every Unit Owner to execute and  
15 deliver such instruments and to perform all acts as in manner and form may be necessary to  
16 effect the sale.

17 27. Enforcement. Each Owner shall comply strictly with the provisions of this Declara-  
18 tion and with the administrative rules and regulations drafted pursuant thereto as the same  
19 may be lawfully amended from time to time and with decisions adopted pursuant to said Declara-  
20 tion and administrative rules and regulations, and failure to comply shall be grounds for an  
21 action to recover sums due for damages or injunctive relief or both, maintainable by the Man-  
22 agement Committee or Manager on behalf of the Owners, or in a proper case, by an aggrieved  
23 Owner.

24 28. Personal Property. The Management Committee or Manager may acquire and  
25 hold, for the benefit of the Owners, tangible and intangible personal property and may dis-  
26 pose of the same by sale or otherwise; and the beneficial interest in such personal property  
27 shall be owned by the Owners in the same proportion as their respective interests in the  
28 Common Area, and shall not be transferable except with a transfer of a condominium. A





EXHIBIT A

ASPEN VILLAGE CONDOMINIUM TOWNHOUSES PROJECT

% Ownership in Common Area\*  
 (Also Determinative of Voting  
 Rights and Pro Rata Share of  
 Common Expenses)

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<u>Unit Number</u>	<u>Building Number</u>	
1	A	7.0922
2	A	"
3	B	"
4	B	"
5	C	"
6	C	"
7	D	"
8	D	"
9	E	"
10	E	"
11	F	"
12	F	"
13	G	7.4468
14	G	7.4468

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