

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
CITY OF ASPEN WATER TREATMENT PLANT
AND
AFFORDABLE HOUSING PROJECT
SPA AND SUBDIVISION**

This Declaration of Covenants, Conditions and Restrictions for City of Aspen Water Treatment Plant and Affordable Housing Project SPA and Subdivision is made this 13 day of March, 1998, by the City of Aspen, a Colorado home rule municipality, whose address is 130 S. Galena Street, Aspen, Colorado 81611, hereinafter referred to as "Declarant".


I. DECLARATION - PURPOSES AND EFFECT

1.1 General Purposes. Declarant is the owner of the First Amended City of Aspen Water Treatment Plant and Affordable Housing Project SPA and Subdivision recorded at Book 44 Page 53 in the Pitkin County Clerk and Recorder's Office, and hereinafter referred to as "the Property." Declarant desires to submit the Property to this Declaration to provide for the use, operation, administration and maintenance of certain facilities or functions common to the use or benefit of the Property.

The Declaration establishes certain rights and obligations with respect to the Property for the Declarant and all present and future owners of the Property. Declarant intends that such owners, mortgagees and any other person or entity now or hereafter acquiring any interest in the Property shall hold their interests subject to the rights, privileges, obligations, and restrictions established by this Declaration. All such rights, privileges, obligations and restrictions are declared to be in furtherance of a plan to promote and protect the value, desirability and attractiveness of the Property as a City of Aspen employee housing project.

1.2 Declaration. Declarant hereby submits the Property:

- a. to this Declaration and declares that the Property shall at all times be owned, used or occupied subject to the provisions of this Declaration, which provisions shall constitute covenants running with the land and shall be binding upon and inure to the benefit of Declarant and any person or legal entity acquiring any interest in the Property; and
- b. to the provisions of the CIOA.


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II. DEFINITIONS

The terms listed below, as used in this Declaration, shall have the meanings set forth as follows:

- 2.1 "Association" means the Water Place Homeowners Association, a Colorado non-profit corporation.
- 2.2 "CIOA" means the Common Interest Ownership Act, as amended, as set forth in Colorado Revised Statutes 38-33-101, et seq., as it may be amended from time to time.
- 2.3 "Common Elements" means the Parcels when conveyed by the Declarant to the Association, and such other real property acquired by the Association as authorized by the CIOA.
- 2.4 "Land Use Plan" means the Land Use Plan for First Amended City of Aspen Water Treatment Plant and Affordable Housing Project SPA and Subdivision recorded in the office of the Clerk and Recorder of Pitkin County, Colorado, in Plat Book 44 at Page 53, or as the same may be hereafter amended.
- 2.5 "Lot" means each single family residential lot numbered from 18 through 23, inclusive, and each duplex lot numbered 1 through 17, inclusive, as shown on the Plat. For purposes of the CIOA, a Lot shall be considered a unit.
- 2.6 "Owner" means the person or legal entity holding fee simple title to a Lot.
- 2.7 "Parcels" means each tract of land numbered 1 through 24 as shown on the Plat.
- 2.8 "Plat" means the Plat of Subdivision recorded in the office of the Clerk and Recorder of Pitkin County, Colorado, in Plat Book 44 at Page 53, or as the same may be hereafter amended.
- 2.9 "Property" means the real property located in Pitkin County, Colorado, described in Exhibit A hereto and the Plat, filed of office in the Clerk and Recorder of Pitkin County, Colorado, in Plat Book 44 at Page 53.
- 2.10 Undefined Terms. Each capitalized term not otherwise defined in this Declaration, the Land Use Plan or the Plat shall have the meaning specified or used in the CIOA

III. PROVISIONS APPLICABLE TO THE PROPERTY

- 3.1 Use. The use of the Property shall comply with the provisions of the Land Use Plan.

3.2 Reservation of Rights to Declarant. Declarant reserves the right with respect to the Property, which right shall be reserved to and remain vested in Declarant, notwithstanding the conveyance of the Lots or Parcels by Declarant to any other persons or entities, to grant additional easements, and to relocate existing easements, for utilities, irrigation, drainage, grading, driveway access and similar purposes as may be required by Declarant; provided that no such easements shall be granted or relocated so as to encroach upon the building envelopes of the Lot as shown on the Plat.

IV. PROVISIONS APPLICABLE TO THE LOTS

4.1 Residential Use. Each Lot shall be used only for single family residential purposes and such accessory uses as may be permitted by the Aspen Municipal Code.

4.2 Compliance with Land Use Plan. All buildings and other improvements constructed upon a Lot, and the use thereof, shall comply with the provisions of the Land Use Plan. All above-grade improvements, except for driveways, parking areas, retaining walls, and landscaping, shall be located within the Building Envelope of the Lot as shown on the Land Use Plan.

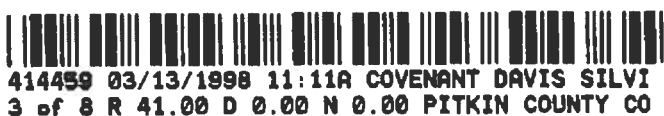
4.3 Outdoor Fixtures. Outdoor fixtures, except for chimneys and weather vanes, shall not exceed the height of the highest building on such Lot.

4.4 Reflective Finishes. Reflective finishes and reflective glass shall not be used on exterior surfaces, including, without limitation, walls, roofs, windows, doors, trim, retaining walls and fences; except that the foregoing shall not prohibit skylights.

4.5 Utilities. All water, sewer, gas, electrical, telephone, cable television and other utility pipes or lines shall be buried underground and shall not be carried on overhead poles or above the surface of the ground. Any areas of natural vegetation or terrain disturbed by the burying of utility lines shall be revegetated by and at the expense of the Owner causing the installation of the utilities no later than the next growing season following such installation.

4.6 Animals. No horses, cows, fowl or other farm animals shall be kept on any Lot. Domestic pets shall be permitted, subject to the rules and regulations with respect thereto as may be promulgated from time to time by the Association. All domestic pets, when outdoors, must be leashed at all times or confined within the boundaries of a Lot by a fence or other physical restraint.

4.7 Enclosure of Unsightly Facilities and Equipment. All unsightly facilities, equipment and other items including but not limited to those specified below, shall be enclosed within a covered structure. Any motorhome, trailer, boat, truck, tractor, snow removal or garden equipment and any similar items shall be kept at all times, except when in actual use, in an enclosed garage. Any refuse or trash containers, tanks, utility meters or other facilities, service area, or storage pile shall be enclosed within a structure or appropriately screened



from view by planting or fencing approved by the Homeowners Association and adequate to conceal the same from neighbors and public and private roads. No lumber, metals, materials, scrap, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except building materials during the course of construction and only for such reasonable periods of time as is necessary prior to the collection of or disposal thereof.

4.8 No Water Wells. Individual water wells shall not be permitted on any Lot and no Owner shall be permitted to drill for water on a Lot.

4.9 Impairment of Drainage. No Owner shall do anything which shall impair or adversely affect the natural drainage of the Property, or divert drainage water onto another Lot, or deprive any other Lot of its natural drainage course. Each Owner shall install culverts where driveways cross road ditches, irrigation channels and other drainageways.

4.10 No Subdivision. No Lot shall be subdivided into smaller lots or conveyed or encumbered in any less than the full dimensions thereof as shown on the Plat.

4.11 Ownership Subject to Occupancy and Resale Deed Restriction, Agreement, and Covenant. Ownership of all lots shall be subject to and conditional upon certain Occupancy and Resale Deed Restriction, Agreement and Covenant, a copy of which is appended hereto as **Exhibit B** and incorporated herein as if set forth in full.


4.12 Enforcement. The provisions of this Article shall be enforceable by the Declarant, the Homeowners Association, or any Owner.

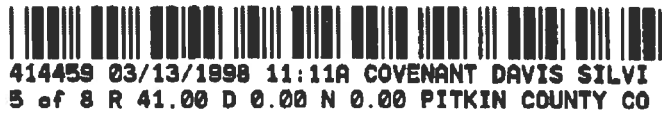
V. PROVISIONS APPLICABLE TO PARTY WALLS

5.1 Establishment. The duplex lots numbered 1 through 11, inclusive, as shown on the Plat, share common walls. Said walls shall be party walls, and the Owners of the lots which share the party walls shall have a right to use these jointly. The following provisions shall be applicable to those party walls.

5.2 Repairs or Rebuilding.

If it becomes necessary or desirable to repair or rebuild the whole or any part of a party wall, the repairing or rebuilding expense shall be borne equally by the Owners of the adjoining lots that share the party wall, or by their heirs and assigns. Any repairing or rebuilding of the wall shall be on the same location and of the same size as the original wall or part of the original wall, and of the same or similar material of the same quality as that used in the original wall or part of the original wall.


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5.3 Dispute Resolution.

In the event of a dispute or controversy as to any matter within or arising out of the use, repair or rebuilding of a party wall, the dispute or controversy shall be submitted to the Water Place Homeowners Association, and the arbitration of such matters shall be an express condition precedent to any legal or equitable action or proceeding of any nature whatever.

VI. THE ASSOCIATION

6.1 Membership. All Owners shall automatically be Members of the Association. Membership shall be appurtenant to a Lot and shall not be separately conveyed, encumbered or abandoned. Such membership shall automatically cease upon termination of an Owner's ownership interest in a Lot.

6.2 Authority. The Board of Directors of the Association, the Executive Board referred to in the CIOA, shall govern and manage the Common Elements and shall enforce the provisions of this Declaration. The operation of the Association shall be governed by its Articles of Incorporation, its Bylaws, this Declaration, the Colorado Nonprofit Corporation Act, and the CIOA.

6.3 Association Powers. The Association shall have all of the powers, authorities and duties permitted pursuant to the CIOA necessary and proper to manage its business and affairs. In addition to its others powers, the Association shall have the following specific powers:

- a. The right to bring suit in its own name for either legal or equitable relief for any lack of compliance with its Articles of Incorporation, its Bylaws, this Declaration and all rules, regulations and agreements lawfully made by the Association; and
- b. The right to levy assessments against the Owners, impose a lien on lots for the nonpayment of assessments, foreclosure of a lien; and
- c. The right to assign its future income, including its rights to receive common expense assessments, but only upon the affirmative vote of not less than eighteen (18) Owners at a meeting called for that purpose.

6.4 Declarant Control. The Declarant shall have the power to appoint and remove officers of the Association and members of the Board of Directors. The period of Declarant control terminates sixty (60) days after the conveyance of seventy-five percent (75%) of the lots that may be conveyed to Owners other than Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and Directors before termination of the periods of Declarant control, but in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board of Directors,

as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

6.5 Limitation on Declarant Control. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots to Owners other than a Declarant, at least one (1) member, and not less than twenty-five percent (25%) of the members of the Board of Directors, shall be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be conveyed to Owners other than Declarant, not less than one-third (1/3) of the members of the Board of Directors must be elected by Owners other than Declarant.

VII. COVENANT FOR COMMON EXPENSE ASSESSMENTS

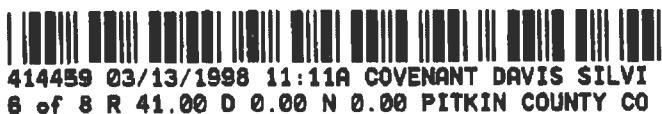
7.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Declarant, for each Lot, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association annual Common Expense Assessments. Such assessments, including fees, charges, late charges, attorney fees, fines and interest charged by the Association shall be the personal obligation of the Owner at that time when the assessment or other charges became or fall due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them.

The Common Expense Assessments of the Association shall also be a continuing lien upon the Lot against which each such assessment is made. A lien under this Section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) the first lien Security Interest on the Lot recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot shall not affect the Association's lien except that sale or transfer of any Lot pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Association's lien as provided in the Act. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Common Expense Assessments thereafter becoming due, or from the lien thereof.

VIII. ALLOCATION OF INTERESTS

8.1 Determination of Allocated Interests. The interests allocated to each Lot have been calculated as follows:

- a. Liability for Common Expense is one twenty third (1/23);



b. The number of votes in the Association is one (1).

IX. TERM, REVOCATION AND AMENDMENT OF DECLARATION

9.1 Term of Declaration. The term of this Declaration shall be perpetual.

9.2 Revocation of Declaration. This Declaration may be revoked if all of the Owners and the Declarant agree to such revocation by an executed, acknowledged instrument recorded in the office of the Clerk and Recorder of Pitkin County, Colorado. The prior written approval of each First Mortgagee of Association Property will be required for any such revocation, except in the case of obsolescence, substantial destruction by fire or other casualty, taking by condemnation or eminent domain, or abandonment or termination provided by law.

9.3 Amendment of Declaration. This Declaration may be amended if the Owners holding two-thirds or more of the votes outstanding and entitled to be cast under the Bylaws, and the Declarant, agree thereto by an executed, acknowledged instrument recorded in the office of the Clerk and Recorder of Pitkin County, Colorado.

X. MISCELLANEOUS

10.1 Declarant's Rights Transferable. Any right or interest of the Declarant established or reserved in this Declaration may be transferred by Declarant either separately or with one or more of such rights or interests.

10.2 Provisions Incorporated in Deed. Each provision contained in this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

10.3 Number and Gender. Unless the context shall otherwise provide, a singular number shall include the plural, a plural number shall include the singular, and the use of any gender shall include all genders.

10.4 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of certain common facilities and functions and for the maintenance of the Parcels.

10.5 Disclaimer. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Property, or any portion thereof, or any improvement thereon, its physical condition, zoning, compliance with the applicable laws, fitness or intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulations hereof as a planned unit development, except as expressly set forth in this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

THE CITY OF ASPEN, COLORADO

John Bennett
John Bennett, Mayor

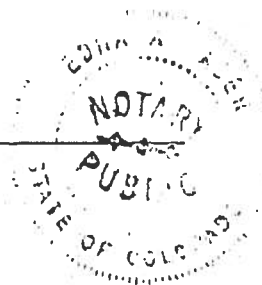
STATE OF COLORADO)
) ss.
County of Pitkin)

The foregoing instrument was acknowledged before me this 10th day of March, 1998, by

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: 12/26/2000

Edna A. Adeh
Notary Public



130 S. Galena St., Aspen, CO 81611
Address

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