

58.00

2,3/ASPEN3  
2,3/ASPEN6  
no/ASPEN7  
no/ASPE17

Inst # 2005070555 Wed Nov 30 15:09:18 CST 2005  
Filing Fee: \$58.00  
Lancaster County, NE Assessor/Register of Deeds  
cpo/jms  
Office RESCOV  
Pages 7



**AMENDED DECLARATION**

**OF**

**COVENANTS, CONDITIONS AND RESTRICTIONS**

**ASPEN 3<sup>RD</sup> ADDITION HOMEOWNERS ASSOCIATION, INC  
A Nonprofit Corporation**

THIS AMENDED DECLARATION made on this 29<sup>th</sup> day of November, 2005,  
by the undersigned Owners of record.

**WITNESSETH:**

**WHEREAS**, the undersigned are the owners of certain real property in Lincoln,  
County of Lancaster, State of Nebraska, as described below:

Lots 1 through 12, block 2, lots 1 through 12, block 3, Aspen 3<sup>rd</sup> addition;  
lots 1 through 4, block 3, lots 1 & 2, block 2, lots 8 & 9, Aspen 6<sup>th</sup> addition;  
lots 1 through 3 Aspen 7<sup>th</sup> addition; lots 1 through 6, lots 8 through 10,  
Aspen 17<sup>th</sup> addition; lots 1 & 2 Aspen 18<sup>th</sup> addition. *Block 3;*

**NOW THEREFORE**, the undersigned hereby declares that all of the properties  
described above shall be held, sold and conveyed subject to the following easements,  
restrictions, covenants and conditions, which are for the purpose of protecting the value  
and desirability of, and which shall run with the real property and be binding on all  
parties having any right, title or interest, in the described properties or any part thereof,  
their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.  
The lots are, and each lot is and shall be subject to all and each of the following  
conditions and terms:

**ARTICLE I.**

**DEFINITIONS**

Section 1. "**ASSOCIATION**" shall mean and refer to the Aspen 3<sup>rd</sup> Addition  
Home Owners Association, Inc., a non-profit corporation, its successors and assigns.

Section 2. "**OWNER**" shall mean and refer to the record owners, whether one or  
more persons or entities, of a fee simple title to any Lot which is a part of the Properties,  
including any contract sellers, but excluding those having such interest merely as security  
for the performance of an obligation.

Section 3. "**PROPERTIES**" shall mean and refer to that certain real property  
described in Section 4 hereof, and such additions thereto as may hereafter be brought  
within the jurisdiction of the Association.

Section 4. "**LOT**" shall mean and refer to the plots of land shown upon any  
recorded subdivision map of the properties, as described above.

Section 5. **"DECLARATION"** shall mean and refer to the Amended Declaration of Covenants, Conditions and Restrictions, applicable to the Properties recorded in the Office of the Register of Deeds of Lancaster County, Nebraska.

Section 6: **"MEMBER"** shall mean and refer to those persons entitled to membership as provided in the Amended Declaration.

## ARTICLE II.

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have the right of enjoyment in, and to his Lot, subject to the following provisions:

- a. The right of the Association to adopt reasonable rules and regulations for the maintenance of the Properties which includes: lawn care; sprinkler systems; snow removal from the sidewalks and driveways; garbage and refuse removal; maintenance of any landscape screen which is installed as required by the City of Lincoln, Nebraska; and the maintenance of the exterior of any structures within the Properties.
- b. The right of the Association to suspend the voting rights of an owner of any period during which any assessment against his Lot remains unpaid; or for any infraction of its published rules and regulations.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment.

## ARTICLE III.

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have one class of voting membership;

All owners shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

## ARTICLE IV.

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the properties as provided in Article II, Section 1(a) of this Declaration.

**Section 3. Annual Assessment.** The Board of Directors shall fix the amount of the annual assessment of each lot at least 30 days in advance of each annual assessment period. The annual assessments shall be based on estimated costs. Any deficiency in the estimated cost shall be billed equally to the lot owners when the actual cost has been determined.

**Section 4. Rate of Assessment.** Annual assessments must be fixed at a uniform rate for all developed Lots, and may be collected on a monthly, quarterly, semi-annual or annual basis, as determined by the Board of Directors. Directors may fix the assessment against undeveloped Lots at a different rate than the rate for developed Lots.

**Section 5. Date of Commencement of Annual Assessments: Due Dates.** The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Following the Annual Meeting, written notice of the annual assessment shall be delivered to every Owner, within 30 days. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 6. Effect of Nonpayment of Assessment: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his Lot.

**Section 7. Subordination of the Lien to Mortgages and Deeds of Trust.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage, deed of trust, foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE V.

### USE RESTRICTIONS

**Section 1.** No lot nor any building hereinafter placed or constructed on any lot within the Properties shall be used other than for residential purposes, except as noted in Section 10.

**Section 2.** All structures within the Properties shall be constructed in conformity with the requirements of the applicable building codes of the City of Lincoln, Nebraska. Subdivision of the lots located within the properties is prohibited and not more than one residence and attendant buildings thereto shall be erected or constructed upon any lot in the Properties.

Section 3. No partially completed dwelling or temporary building and no trailer, tent, shack or garage on any lot within the Properties shall be used as either a temporary or permanent residence.

Section 4. No vehicle, boat, trailer, cart, mobile home, aircraft, camper truck, auto-drawn or mounted trailer, truck, or any other equipment shall be stored on any part of a Lot, other than in an enclosed structure. The plans for such structure or enclosure must be approved by the Architectural Control Committee in accordance with the provisions in Article VII of this Declaration.

Section 5. Unless specifically waived by the Architectural Control Committee in writing, aerials, antennas or T.V. satellite dishes exceeding 24 inches in diameter, shall not be constructed or installed on the Properties other than inside an approved building or structure.

Section 6. Fencing shall not be installed on any portion of the Properties unless specifically approved by the Architectural Control Committee in writing.

Section 7. No solar or other supplementary or auxiliary energy-saving type of device shall be installed or constructed on any of the Properties, except those which are integral with the building or structure for which written approval was given by the Architectural Control Committee. The intent of this restriction is to prohibit, without prior written approval of the Architectural Control Committee, independent free-standing devices, such as wind generators, solar collection banks, etc., which may be considered for installation after building plans have been originally approved.

Section 8. Plans for any addition or exterior alteration to be constructed on any lot or building within the Properties shall be subject to the provisions described in Section 2 of these restrictions.

Section 9. No nuisance, advertising sign, billboard, or other advertising device shall be permitted, erected, placed or suffered to remain upon any said lots or upon any improvements thereon. Said lots shall not be used in any way, or for any purpose, which may endanger the health or reasonably disturb the quiet of any holder of adjoining lots. Moreover, this restriction shall not prevent an owner of a lot from placing upon any lots owned by him a "For Sale" sign either placed there by the owner or by his agent advertising such lot or lots for sale.

Section 10. A lot within the Properties may be used for a home occupation, provided said home occupation meets the definition and regulation of 27.03.320 and 27.70.010 of the Municipal Code of the City of Lincoln, Nebraska, effective May 8, 1979 and May 31, 1988, respectively. Except that Day Care Centers are prohibited.

Section 11. The Properties shall be kept free of debris and weeds and shall be kept mowed. If a lot is not maintained in the above manner, the Association may notify the owner of the lot in writing that such maintenance must be done in 10 days, after which, if the owner has not complied, the Association may perform the work and charge the owner for such work.

Section 12. No recreational motorized vehicle shall be driven on the Properties or the Common Area, except on the public streets. The provisions of the City of Lincoln anti-noise ordinance shall be applicable to all types of activities.

Section 13. No animals other than domestic household pets shall be kept or maintained on any lot within the Properties. Any such household pets shall not leave the owner's lot unless under strict control of the owner or shall such pet become a nuisance. No such household pet shall be raised, bred or kept for any commercial purposes.

Section 14. No building or structure of any kind whatsoever shall be moved on to any building lot.

Section 15. Once construction of a residence is begun, the residence shall be completed within one year.

Section 16. All utility connections extended to any improvements erected upon any lot from utility lines originally installed as shown on the final plat shall be underground.

## ARTICLE VI.

### EASEMENTS

Section 1. Utilities. The Association reserves to itself the right to enter upon any lot to maintain, repair or replace any water, sewer, gas, electrical, cable or telephone line to a residence located upon a lot. It is the Lot Owner's individual responsibility and expense to maintain, repair and replace any line or lines which services the residence on his own lot. Should the Owner fail to maintain, repair or replace such line or lines when needed then the Association shall have the right to repair or replace such lines and charge the Lot Owner for the actual cost of such repair or replacement.

Section 2. License to enter upon Lots for Maintenance. The Association reserves the right to enter upon any Lot within the Properties to provide the maintenance set forth in Article II, Section 1(a) of this Declaration.

Section 3. Party Walls. Any wall constructed on any common lot line between two adjoining lots within the Properties shall be a party wall. Any expense of structural repair, replacement or reconstruction of a party wall, or of the protection of a party wall against the natural elements, shall be borne equally by the member who is the titleholder of the adjoining Lot sharing such party wall. The provisions of this paragraph shall not operate to relieve any member from any liability which the member may incur by reason of negligent or willful acts or omissions resulting in damage to a party wall.

## ARTICLE VII.

### ARCHITECTURAL CONTROL

Plans for any building, structure or modification of the original undeveloped Lot, to be placed or constructed upon any Lot within the Properties shall be submitted to an Architectural Control Committee appointed annually by the Board of Directors and shall show the size, exterior materials, design and plot plan for the proposed construction. If the Architectural Control Committee determines that the proposed plans will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, the Architectural Control Committee may refuse approval of the proposed plans.

## ARTICLE VIII.

### GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.



**CERTIFICATION**  
November 29, 2005

Aspen 3<sup>rd</sup> Addition Home Owners Association, Inc.

We the undersigned Officers & Directors hereby certify that the attached Aspen 3<sup>rd</sup> Addition Home Owners Association, Inc., AMENDED DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS, dated November 29, 2005, were approved by a three-fourths (3/4) assent of the members, at the Association's Annual Meeting, held November 15, 2005. Of the 35 members entitled to vote; 30 voted for the amended declarations, 5 abstained and there were no votes against.

State of Nebraska            )  
  ) SS.  
County of Lancaster        )

Dale Nurnberg and James Aitken being first duly sworn on oath, depose and say that they are the President and Secretary/Treasurer, respectively, of the corporation above named and are the subscribers to the foregoing certificate and that the statements contained therein are true.

Dale Nurnberg  
Dale Nurnberg, President & Director

James Aitken  
James Aitken, Secretary/Treasurer & Director

Subscribed and sworn before me this 29th day of November, 2005.

Denise A. Hockamier Notary Public

