

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
THE ASPENS AT EAGLES NEST

449465 2:00 PM  
8/26/93

THIS DECLARATION is made this 25<sup>th</sup> day of August, 1993, by Rielly Homes Limited Liability Company, a Colorado limited liability company, (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in the County of Summit, State of Colorado, which is more particularly described as:

LOTS 1 THROUGH 50, OPEN SPACE, AND OPEN SPACE AND ACCESS AND UTILITY EASEMENT ACCORDING TO A FINAL PLAT OF THE ASPENS AT EAGLES NEST RECORDED ON THE 21<sup>st</sup> DAY OF AUGUST, 1993 AT RECEPTION NO. 449464 IN THE RECORDS OF THE CLERK AND RECORDER OF SUMMIT COUNTY, COLORADO

(hereinafter referred to as the "Property").

WHEREAS, Declarant desires to establish a planned unit development residential community of fifty (50) residential lots with open spaces and other common facilities for the benefit of the residents of that community and to subject the community and the Property to certain covenants, conditions, and restrictions;

WHEREAS, Declarant has caused or will cause to be incorporated, under the laws of the State of Colorado, The Aspens at Eagles Nest Association, a nonprofit corporation, for the purposes of exercising the functions as herein set forth.

NOW, THEREFORE, Declarant hereby submits the Property to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.33-101, et seq., Colorado Revised Statutes, as it may be further amended from time to time (the "Act"). In the event the Act is repealed, the Act, on the effective date of the Declaration, shall remain applicable; and

FURTHER, Declarant hereby declares that the Property 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 Property and be binding on all parties having any right, title, or interest in said Property, or any part thereof, and their heirs, successors, and assigns, and shall inure for the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1.1 "Association" shall mean and refer to The Aspens at Eagles Nest Association, a Colorado nonprofit corporation, its successors and assigns.

Section 1.2 "Board of Directors" or "Board" shall mean and refer to the duly elected and qualified members of the Board of Directors of the Association acting in an official capacity.

Section 1.3 "Declarant" shall mean and refer to [entity name to be provided prior to execution], its successors and assigns.

Section 1.4 "General Common Area" shall mean all real property and any improvements thereon or thereto owned by the Association for the common use and enjoyment of the Owners, their guests, invitees and tenants. The General Common Area to be owned by the Association at the time of the recording of this Declaration includes those areas identified as such, as Open Space or as an Easement on the Plat for the Property recorded immediately prior to the time this Declaration is recorded, and shall include any portion of the Property designated as General Common Area or Open Space on any amendments or supplements to the Plat for the Property, any and all real and personal property owned or controlled by the Association for the common use and benefit of all of the Owners and the Project, together with all improvements thereon, if any. Every Owner, and the successors and assigns thereof, shall be deemed to have consented to the use and control of said General Common Area by the Association for the benefit and enjoyment of all owners in accordance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations of the Association.

Section 1.5 "Improvements" shall mean and refer to all improvements now or hereafter constructed on the Property, not including Residences, but including, without limitation, driveways and fences installed or constructed by Declarant and other improvements provided for herein.

Section 1.6 "Lot" shall mean and refer to each of the separate parcels of property designated on the Plat as Lots 1 through 50, each of which may have been constructed on it a Residence and title to which shall be held in fee simple.

Section 1.7 "Mortgage" shall mean and include all mortgages or deeds of trust which represent a first security interest on or in one or more Lots, but shall not include mortgages or deeds of trust junior to a first mortgage or first deed of trust or involuntary liens, such as mechanic's liens and judgments.

Section 1.8 "Mortgagee" shall mean and include the holder of any mortgage representing a first security interest in one or more Lots or the beneficiary of any deed of trust representing a first

security interest in one or more Lots, but shall not include the holders of mortgages or beneficiaries of deeds of trust junior to a first mortgage or deed of trust or any claimant of an involuntary lien, such as a mechanic's lien or judgment lien.

Section 1.9 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall also include the Declarant, or its successors and assigns, with respect to all Lots held in the name of Declarant.

Section 1.10 "Plat" shall mean and refer to the subdivision plat that has been filed in the Office of the Clerk and Recorder for the County of Summit, State of Colorado, which plat is identified as A Final Plat of The Aspens at Eagles Nest.

Section 1.11 "Project" means all of the property and improvements, including Lots and the improvements thereon submitted to this Declaration.

Section 1.12 "Residence" shall mean and refer to each single family dwelling constructed on a Lot.

ARTICLE II  
ESTABLISHMENT OF PLANNED UNIT DEVELOPMENT  
AND DECLARATION OF PROPERTY RIGHTS

Section 2.1 Development of the Property. The development and improvement of the Property, which shall be known as The Aspens at Eagles Nest shall be under the control of the Declarant and shall be carried out according to the planned unit development ordinance and agreement and the zoning laws and regulations of the Town of Silverthorne, County of Summit, State of Colorado. Declarant intends to construct all of the Residences but may sell Lots without Residences, provided that then such Residences shall be constructed in accordance with the architectural control provisions hereof.

Section 2.2 Plat. The Plat sets forth the following: (i) the legal description of the real property subject to this Declaration; (ii) the linear measurements and location, with reference to the exterior boundaries of the land, of the public rights-of-way, of any easements, of the Lots and of the general Common Areas; and (iii) the designation by number or other symbol of each Lot.

Section 2.3 Title to Lot. Title to a Lot may be held individually or in any form of concurrent ownership recognized in the State of Colorado. Any contract of sale, deed, lease, deed of trust, mortgage, security interest, will or other instrument affecting a Lot may describe it by its number as shown on the Plat, followed by the name of the development, and reference to the Plat

and this Declaration. Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect a Lot and all appurtenant rights, benefits and burdens thereto as created by the provisions of this Declaration, and each such description shall be so construed.

Section 2.4 Encroachments. If any Residence or associated improvements installed or constructed by Declarant encroaches upon any other Lot or upon any portion of the General Common Areas, or if any such encroachment shall occur as a result of settling or shifting of any of the Residences, an easement for the encroachment and for the maintenance of the same so long as such Residence or associated improvement stands shall exist. If any of the Residences or associated improvements shall be partially or totally destroyed as a result of fire or other casualty, and then rebuilt, encroachments upon parts of the General Common Areas or upon any Lot due to such rebuilding, shall be permitted, and easements for such encroachments and the maintenance thereof shall exist so long as that Residence shall exist.

Section 2.5 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the General Common Area and easements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the General Common Area or upon any easement;

(b) the right of the Association to suspend the voting rights and right to use of any recreational facilities by an Owner for any period during which any assessment against his Site remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the General Common Area to any governmental entity or public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by two-thirds of the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of the Owners has been recorded.

(d) The right of the Association to borrow money for the purpose of improving the General Common Areas and easements, and in aid thereof to mortgage said General Common Areas, and to take such steps as may be reasonably necessary to protect the General Common Areas from foreclosure; provided that no such action shall be effective unless an instrument agreeing to such action signed by two-thirds of the Owners has been recorded;

(e) The right of the Association to close or limit the use of the General Common Areas or easements while maintaining, improving, or making replacements therein or thereto.

Section 2.6 Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his rights of enjoyment to the General Common Area, easements and facilities to the members of his family, his invitees, his tenants, or contract purchasers of his lot.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be apportioned to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3.2 Voting. The Association shall have one class of voting membership. Members shall be all Owners and 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, provided, however, that there shall be no more than one vote cast, with no fractional votes, for or with respect to any Lot and such vote shall be cast as the persons owning any Lot shall determine.

ARTICLE IV  
ASSESSMENTS

Section 4.1 Creation of the Lien and Personal Obligation for Assessments.

(a) Declarant, for each Lot owned within the Property, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, 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, (2) supplementary assessments, and (3) special assessments, such assessments to be established and collected as hereinafter provided.

(b) All annual, supplementary and special assessments, together with interest, at the highest lawful rate as provided by the Act as may be further amended from time to time, late charges, costs, and reasonable attorney's fees:

(1) Shall be a charge on the land and shall be a continuing lien in favor of the Association against the Lot against which such assessment is made. The Association's lien resulting from this paragraph shall be prior to any other lien or claim against a Lot, except for a lien for ad valorem taxes, Mortgages and liens and encumbrances recorded before the recordation of this Declaration, and except as otherwise provided in this Declaration. Each such assessment, together with

