

John L. Lynn  
1024 K St  
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LANCASTER COUNTY, NE.

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REGISTERED DEEDS

INST. NO 95

Dec 12 1 09 PM '95

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ASPENS  
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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**THIS DECLARATION** made on this 12<sup>th</sup> day of December, 1995, by the undersigned Owners of record.

**WITNESSETH:**

**WHEREAS**, the undersigned, **Krein Real Estate, Inc.**, a Nebraska corporation, is the Owner-Developer of certain real property in the County of Lancaster, State of Nebraska, which is more particularly described as:

**Lots 11 & 12, Block 2; Lots 1 through 12, Block 3; and Lots 1&2, Block 4; all located in Aspen 3rd Addition, Lincoln, Lancaster County, Nebraska.**

**WHEREAS**, the undersigned, **Truax Homes, Inc.**, a Nebraska corporation is the Owner of certain real property in the County of Lancaster, State of Nebraska; which is more particularly described as:

**Lots 1, 2, 5, 7, 8, 9 & 10, Block 2, Aspen 3rd Addition, Lincoln, Lancaster County, Nebraska.**

**WHEREAS**, the undersigned, **Aspen**, a Nebraska general partnership is the Owner of certain real property in the County of Lancaster, State of Nebraska, which is more particularly described as:

**Lots 3, 4 & 6, Block 2, Aspen 3rd Addition, Lincoln, Lancaster County, Nebraska.**

**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.

**ARTICLE I**

**DEFINITIONS**

**Section 1.** "ASSOCIATION" shall mean and refer to the Aspen 3rd 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 5 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 more particularly described as:

Lots 1 through 12, Block 2; Lots 1 through 12, Block 3; and Lots 1 & 2, Block 4; all located in Aspen 3rd Addition, Lincoln, Lancaster County, Nebraska.

Section 5. "OWNER-DEVELOPER" shall mean and refer to Krein Real Estate, Inc., a corporation, its successors and assigns.

Section 6. "DECLARATION" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions, applicable to the Properties recorded in the Office of the Register of Deeds of Lancaster County, Nebraska.

Section 7. "MEMBER" shall mean and refer to those persons entitled to membership as provided in the 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 (including 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 improvements (including residential 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 two classes of voting membership;

**Class A.** Class A members shall be all Owners, with the exception of the Owner-Developer, 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. 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.

**Class B.** The Class B member shall be the Owner-Developer and shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs last:

a. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or,

b. On December 31, 1998.

**Section 3. Additional Members.** The Owner-Developer has the right to annex additional real property to the properties, the Lot Owners of which, shall become members of this Association, provided however.

a. The real property annexed must be located within the NE¼ of Section 20, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska.

b. The annexation must be completed by December 31, 1998; and,

c. The property annexed must adopt its own "USE RESTRICTIONS" by Declaration and shall have no vote in determining amendments to Article V of this Declaration; and,

d. The Lot Owners of any real property annexed shall become a separate class of Owners from the Class A membership of this Association and such annexation shall not increase the annual membership dues, nor shall it impose any additional financial obligations for the existing Class A membership.

## **ARTICLE IV**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Owner-Developer, for each Lot owned within the Properties, 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, 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.** Until January 1, 1997, the first annual estimated assessment shall be Six Hundred and no/100 Dollars (\$600.00) per Lot. The annual assessments thereafter shall be based on estimated actual costs. Any deficiency on estimated actual cost shall be billed to the Lot Owner when determined.

**Section 4. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Class A & B membership Lots, and may be collected on a monthly basis or on an annual basis, as determined by the Board of Directors. The actual cost of any exterior maintenance shall be assessed against the Lot on which the structure is located.

**Section 5. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot within the Properties. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. 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. Written notice of the annual assessment shall be sent to every Owner subject thereto. 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 9 percent (9%) 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.

**Section 2.** No family residence or structure shall be constructed on a Lot until approved in writing by the architectural control committee.

**Section 3.** 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 4.** 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 5.** Provisions shall be made so that all recreational vehicles, boats, trailers, carts or any other equipment owned by the owner of any lot, can be stored in a permanent structure or enclosure. 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. The above-described items shall be stored in the approved structure or enclosure.

Section 6. Unless specifically waived by the Architectural Control Committee in writing, aerials, antennas or T.V. satellite dishes shall not be constructed or installed on the Properties other than inside an approved building or structure.

Section 7. Fencing shall not be installed on any portion of the Properties other than by the Owner-Developer, unless specifically approved by the Architectural Control Committee in writing.

Section 8. 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 9. 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 10. No nuisance, advertising sign, billboard, or other advertising device shall be permitted, erected, placed or suffered to remain upon any of 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. This restriction shall not prevent the Owner-Developer from placing upon any lots owned by said Owner-Developer, signs advertising the subdivision or lots therein. 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 11. 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.

Section 12. 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 13. 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 antinoise ordinance shall be applicable to all types of activities.

Section 14. 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 15. No building or structure of any kind whatsoever shall be moved on to any building lot.

Section 16. Once construction of a residence is begun, the residence shall be completed, in accordance with the plans approved by the Architectural Control Committee, within one year.

Section 17. 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. **Sewer and Waterline Easements.** The Association reserves to itself the right to enter upon any lot to maintain, repair or replace any water or sewer line to residence located upon a lot. It is the Lot Owner's individual responsibility and expense to maintain, repair and replace any water or sewer line 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, other than by the Owner-Developer, shall be submitted to an Architectural Control Committee appointed annually by the Owner-Developer and shall show the size, exterior materials, design and plot plan for the proposed construction. One set of such plans shall be left on permanent file with the Owner-Developer. The construction of any such structures, other than by the Owner-Developer, shall not be commenced unless and until written approval of the plans for the structure has first been secured from the Architectural Control Committee. Written approval or disapproval of such plans shall be given by the Architectural control committee within 30 days from and after the receipt thereof. Approval of such plans shall not be unreasonably withheld, and in the event of disapproval of such plans, a written statement of the grounds for such disapproval shall be given. At such time that the Owner-Developer's ownership of the undeveloped residential lots has been reduced to twenty five percent (25%), the Board of Directors of the Association shall then appoint the Architectural Control Committee annually thereafter.

## 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.

Section 2. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. **Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, unless otherwise provided herein, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a 2/3's

majority of the then Owners of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or part. An amendment may be made at any time during the existence of this Declaration.

IN WITNESS WHEREOF, the undersigned being the Owners of record herein, have set their hands and seals this 12 day of December, 1995.

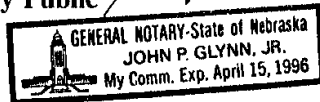
<b>OWNER:</b>	<b>OWNER:</b>	<b>OWNER-DEVELOPER:</b>
ASPEN, a general partnership.	TRUAX HOMES, INC., a corporation.	KREIN REAL ESTATE, INC., a corporation.

By: <u>William G. Krein</u> Its Partner	By: <u>Allen R. Truax</u> Its President	By: <u>William G. Krein</u> Its President
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STATE OF NEBRASKA            )  
                                          ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me on the 12 day of December, 1995, by William G. Krein, President of Krein Real Estate, Inc., a corporation, on behalf of the corporation.

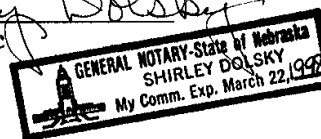
John P. Glynn, Jr.  
Notary Public



STATE OF NEBRASKA            )  
                                          ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me on the 12 day of December, 1995, by Allen R. Truax, President of Truax Homes, Inc., a corporation, on behalf of the corporation.

Shirley Dolsky  
Notary Public



STATE OF NEBRASKA            )  
                                          ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me on the 12<sup>th</sup> day of December 1995, by William G. Krein, a Partner of Aspen, a Nebraska general partnership, on behalf of the partnership.

John P. Glynn, Jr.  
Notary Public

