

KERNAN CREEK RANCH

DECLARATION OF PROTECTIVE RESTRICTIONS AND ARTICLES OF ASSOCIATION OF AN UNINCORPORATED ASSOCIATION REFERRED TO AS THE KERNAN CREEK RANCH HOMEOWNERS ASSOCIATION

Declaration made this 15th day of June, 1995, by Lex S. Hanson of the County of Montezuma, State of Colorado, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of a certain tract of land in the County of Montezuma, State of Colorado, which is described *in the Kernan Creek Ranch Plat Map filed for record in the office of the County Clerk and Recorder of Montezuma County, Colorado, at 1:15 pm on the 16th day of October, 1995, and duly filed under reception number 451104, Plat Book 12, page 126. as follows:*

~~A tract of land which is the North Half (N1/2) of Section 19, Township 36 North, Range 14 West, N.M.P.M., being more particularly described as follows:~~

~~Beginning at the NE Corner of Section 19, Township 36 North, Range 14 West, N.M.P.M.; thence North 88°00'33" West a distance of 2676.22 feet to the North quarter Corner of said Section 19; thence North 87°25'38" West a distance of 2608.96 feet to the NW Corner of said Section 19; thence South 00°15'27" West a distance of 2693.67 to the West quarter Corner of said Section 19; thence South 88°02'30" East a distance of 5325.05 feet to the East quarter Corner of said Section 19; thence North 00°37'16" West a distance of 2665.69 feet to the point of beginning.~~

~~County of Montezuma
State of Colorado.~~

WHEREAS, it is the desire and intention of Declarant to sell the property described above and to impose on it mutual, beneficial restrictions under a general plan or scheme of improvement for the benefit of all the lands in the tract and the future owners of those lands;

NOW, THEREFORE, Declarant hereby declares that all of the property described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and Improved subject to the following limitations, restriction, conditions and covenants, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the lands and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the lands and every part thereof. All of the limitations, restrictions conditions and covenants shall run with the land and shall be binding upon all parties having or acquiring any right, title, or interest in the described lands or any part thereof.

ARTICLE I

Section I. Uses of Property

- a. The property covered by this Declaration shall be used for residential, agricultural or recreational purposes only, including the tilling of the soil, the raising of crops, animals and horticulture.
- b. No building or structure shall be erected on any building site or upon any portion of the property covered by this Declaration which shall be used, designed or intended to be

used for any purpose other than for a single family dwelling, subject, however, to the provisions hereinafter contained as to community facilities, easements, roads, barns, stables and appurtenant structures.

- c. A guest house shall be allowed in addition to the main residence.
- d. No such dwelling house, inclusive of garage, porches, verandas, porte cocheres and other similar projections or other buildings of any character whatsoever shall be erected, placed or suffered to remain on any parcel within fifty (50) feet of any side line thereof, nor within one hundred (100) feet of the front line thereof.
- e. No such dwelling house shall be occupied by more than one (1) family and guests.
- f. No trailer, mobile home, modular home, shack, out-building, gas or oil derrick, advertising sign, billboard, or other advertising device or temporary living quarters of any structure or building other than the said dwelling house shall be erected, placed or suffered to remain on any parcel except the following:
 - i. A stable, providing it is of a size not greater than reasonably necessary to accommodate the number of animals permitted by these restrictions. Such stable shall not be erected, placed or suffered to remain on any parcel nearer than one hundred (100) feet to any public highway or any roadway or any front, side or rear parcel line. Nothing herein contained shall be construed to prevent the construction and use of sleeping or living quarters in connection with such stable for bona fide help employed in the care of such stable, dwelling house or grounds.
 - ii. A house, shed or coop for chickens or other fowl, providing, however, that no such building shall be erected, placed or suffered to remain on any parcel nearer than fifty (50) feet to the said dwelling house or nearer than one hundred (100) feet to any front, side or rear parcel line.
 - iii. Trailers and recreational vehicles (RVs) may be used as temporary dwellings during construction and for guests, so long as they are placed out of sight of main roads and located at least one hundred (100) feet from property boundaries.
- g. Any device or activity which shall endanger the health or unreasonably disturb the peace and quiet of the owners, tenants, or lessees within said Tract shall be deemed a nuisance and shall not be permitted.
- h. No outside parking or storage of equipment used in an owners trade or business. No accumulation of automobiles, trucks or equipment that would detract from the appearance of a single residence neighborhood.
- i. The requirements with respect to front or side line setbacks or fixed dimensions specified in Paragraphs c and e above may be modified as to any parcel by written consent of the Kernan Creek Ranch Homeowners Association hereinafter provided for, if the enforcement of such requirement would work an undue hardship and if such modification would not, in said Associations judgment result in material damage to any other parcel. Permission shall be in writing and be kept in the permanent file of the Association.

- j. No rubbish or debris shall be placed or permitted to accumulate upon any portion of said property and no odor shall be permitted thereon or to arise therefrom so as to render such portion unsanitary, unsightly, offensive or detrimental to any of the property in the vicinity thereof or to the occupants thereof, and no nuisance shall be permitted to exist or operate upon any portion of said property which is offensive or detrimental to any property in the vicinity thereof or to its occupants.
- k. Sewage systems shall be constructed with design approval by the Montezuma County Health Department and shall comply with all plumbing codes.
- l. No building or structure upon any building site or parcel covered by this Declaration shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and be adequately painted.
- m. No obstruction, diversion or confining of existing channels upon, under and/or across any portion of said property through which water in time of storm or otherwise naturally flows or through which water has been caused to flow artificially by Declarant in the development of said property shall be made by any person without the written consent first obtained from Declarant.

The restrictions hereof shall not preclude Declarant, as an incident to the development of the entire property, to change existing channels for the natural flow of water and also to create channels and means of artificial drainage and water flow.

- n. Not more than one horse, one pony, one cow, one sheep or other similar domesticated animal for each two acres of land shall be kept or harbored on any parcel. Any unusual kind of domesticated animal may be kept or harbored on any parcel upon the written consent of the Board of Directors of the Association. All animals must be fenced into the property.
- o. House sites shall remain fifty (50) feet back from canyon rim unless a variance is granted by the Kernan Creek Homeowners Association and an engineer.
- p. No hunting.
- q. No sodium vapor night lighting, as this creates night glare pollution.

Section 2. Approval of Signs and Alterations

- a. No billboard, poster or sign of any character shall be erected, maintained or displayed upon or about any part of said property without the approval in writing of Declarant, and any billboard or sign not so permitted or approved may be summarily removed and destroyed. All name signs and address signs shall be the same as those designed and provided by the Declarant to the original purchasers.
- b. No part of the property covered by this Declaration shall be subdivided or re-subdivided in parcels of less than ten (10) acres. No lot line may be adjusted unless approved by Declarant or the Board of Directors of the Association.
- c. During reasonable hours Declarant or any agent of Declarant shall have the right to enter upon and inspect any building site or parcel embraced within said property for the

purpose of ascertaining whether or not the provisions of this Declaration are being complied with and shall not be deemed guilty of trespass by reason thereof.

Section 3. Easements and Rights of way

Easements and rights of way are hereby expressly reserved for the creation, construction and maintenance of utilities, such as gas, water, telephone, telegraph, electricity, sewers, public, quasi-public and private. Easements and rights of way are further expressly reserved covering any area ten (10) feet in width on each side of all property lines established by Declarant, excepting where said property lines are immediately contiguous with or adjoining road frontage boundary lines. Declarant reserves sole and exclusive authority to enter into, execute and dedicate, as grantor, any said easements and right of way for the construction, creation and maintenance of the aforesaid utilities on the above ten (10) feet easements and on the right of way on the recorded street frontage.

ARTICLE II

Section 1.

KERNAN CREEK RANCH HOMEOWNERS ASSOCIATION, a community Association and a nonprofit association organized under the laws of the State of Colorado, shall have the right and power, subject to the other provisions of this Declaration and any limitations Imposed thereby, to do and perform each and every one of the following acts for the benefit, maintenance and improvement of the property covered by this Declaration, to-wit:

- a. To purchase, construction ~~on~~ (*sic*) and maintain public buildings, swimming pools, parks, parkways, playgrounds, gates, recreation areas, bridle trails, tennis courts, golf courses, club houses, airports, roping arenas, places of amusements, riding stables and other facilities of a like natures, all for the use and benefit of the owners of said property, and to charge for the use thereof.
- b. To hold easements for and/or to improve, maintain streets, roads, bridle paths, courts and similar improvements; to construct, pave, grade repair and improve such streets, roads, walks and bridle trails as the Board of Directors of the Association deems to be of use or value to the property subject to the jurisdiction of the Association; to care for, plant trees, shrubs or other plants on streets, parks, playgrounds and upon any property over which it may have jurisdiction; to construct, improve and/or maintain sewer systems, water lines and facilities and drains upon its easements and properties; to provide for the collection and disposition of garbage, rubbish and the like and to make and collect charges therefor.
- c. To fix, establish, levy and collect annually or otherwise charges and/or assessments upon each and every building site, lot or parcel and the improvements thereon embraced within the property subject to the jurisdiction of this Association; provided that the amount of each such charge or assessment shall be determined and provided by the Board of Directors of this Association.
- d. To provide, insofar as it may lawfully do so, for community fire and/or public protection, for the protection of all or any part of the property under the jurisdiction of the Association and/or the owners and residents thereof, and to do and perform any and all acts which may be necessary or proper for the peace, health, comfort, safety and/or general welfare of the owners of the property subject to the jurisdiction of the Association.

- e. To remove, clean up and/or burn grass and weeds and to remove any unsightly or obnoxious things from any building site, lot or parcel under its jurisdiction.

Section 2.

The first Directors and officers of this Association shall consist of the Declarant and four (4) owners of parcels covered by this Declaration who shall be appointed by the Declarant. The membership of this Association shall consist of all owners of record of the property subject to this Declaration and the qualifications for memberships in the Association shall be subject to all provisions and conditions contained by the bylaws of the Association provided, however, that:

- a. In all matters coming before this Association three (3) of its members shall constitute a quorum for the transaction of any and all of its business and a majority of those present and voting shall control decisions. When the Declarant no longer owns any property in said Tract or prior thereto if the Declarant elects to relinquish his rights hereunder, the four (4) owners appointed pursuant to the above Section 2 may appoint one (1) member to the Association to succeed, but such appointee shall in any event and at all times during membership on said Association, be record owners of title of parcels in said Tract. Thereupon said Association shall call a meeting of record owners of title of parcels in said Tract, or, on their own initiative, any seven (7) of such owners may call said meeting, for the purpose of approving and adopting by a majority vote of all such owners duly called and present and voting at such meeting, a Code of Regulations to govern the proceedings and perpetuation of said Association.
- b. The ownership of legal, and/or equitable title of record to any parcel embraced within the property covered by this Declaration shall be required before a person may qualify for membership in the Association.
- c. The ownership of title to any parcel held as security for the payment or performance of an obligation or act shall not be the basis for membership in the Association.
- d. In no event shall more than one membership be issued based on the ownership of any one parcel, regardless of any difference in the ownership of legal title and equitable title, or because of the ownership of such parcel being in joint tenancy, tenancy in common or in any other undivided interest.
- e. There is hereby granted to and vested in said Association the right and authority to exercise such discretion; to give and to refuse to give such consents; and to do all such things as are permitted by or required of it to be done under the provisions of the foregoing restrictions, rights and easements.

Section 3.

Each parcel and/or portion of property covered by this Declaration except property in the improvements owned by the Association or designated by the Board of Directors of the Association as being devoted to public or semi-public use, and property and improvements owned by Declarant and held for road purposes or community facility purposes shall be subject to a continuous maintenance lien securing payment of an annual charge or assessment to be fixed, established and collected from time to time as herein provided. The Association shall have sole authority to fix and establish annually the amount of such annual charge of assessment (together with the penalties and costs of collection thereon) which charge or assessment shall be limited with respect to amount as hereinafter set forth.

~~All such annual charges and assessments shall be made at a rate fixed by the Board of Directors of the Association based upon \$50.00 per lot and an additional \$400.00 which shall commence with the construction of a house. Provided, however that said assessment rate may be increased by and to the extent agreed upon by the owners of record of not less than three quarters (3/4) in area of all lands subject to the jurisdiction of the Association, excluding lands still owned by the Declarant which are subject to such charges and/or assessments, by written consent signed by such proportion of said owners duly recorded.~~

- a. Notwithstanding the foregoing, the annual charge or assessment herein above referred to shall not be made, set, collected in the nature of a maintenance lien for a period of one (1) year from date of execution of this Declaration.
- b. Each and every one of the charges and/or assessments provided for in this Declaration, subject to the limitation period above set forth, shall be fixed on or about the first Monday of October, 1996, for the fiscal year beginning July 1, 1997, and annually thereafter on or about the first Monday of October of each year for each succeeding fiscal year (which shall run from July 1 to June 30, inclusive), and each such charge and/or assessment shall be paid annually in advance to the Association on or before the first Monday in November in each year beginning in November, 1996, on which date each such charge and/or assessment shall become delinquent and shall be enforceable against the parcel and the improvements thereon (if any) against which same have been assessed, and shall continue until such charge and/or assessment, together with all costs, penalties and interest provided for have been paid.
- c. Damages shall not be deemed adequate compensation for any breach or violation of a restriction. Any party to a proceeding who succeeds in enforcing a restriction or enjoining the violation of a restriction against another owner of any property covered by this Declaration may be awarded a reasonable attorney's fee against the violating owner.
- d. Declarant, as to the property covered by this declaration and each parcel embraced therein, has established and does hereby establish, reserve and impose a lien thereon securing each charge- and each assessment provided for by this Declaration, together with said costs, penalties and interest, and Declarant does hereby assign said lien to the Association, together with the right to collect and enforce the collection of the same.
- e. Each and every lien, charge and/or assessment, together with any cost, penalties or interests established, reserved or imposed under this Declaration shall be subordinate to any valid bona fide mortgage or deed of trust (and the lien and/or title thereof) which has been or may hereafter be given in good faith and for value on any building site or parcel of property covered by this Declaration; provided, however, that any subsequent owner of any such parcel or site shall be bound by the restrictions, conditions, covenants, reservations, liens and charges set out in this Declaration whether obtained by foreclosure or trust of deed sale, or otherwise, not including, however, any lien, charge or assessment arising prior to any sale under any such mortgage or deed of trust.

ARTICLE III

Section 1.

All of the restrictions, conditions, covenants, reservations, liens and charges set forth in this Declaration shall continue and remain in full force and effect at all times against said properly covered by this Declaration, subject to the right to amend, change, modify and terminate provided for hereinafter, until January 1, 2026. All of said restrictions, conditions, covenants, reservations, liens and charges in this Declaration contained which are subject to expiration shall, as the same are in force immediately prior to such expiration, be continued automatically without further notice from that time for a period of ten (10) years each without limitation, unless within six (6) months prior to January 1, 2026, or within six (6) months prior to the expiration of any successive ten year period thereafter, a written agreement executed by the then record owners of more than two-thirds (2/3) of the area of all lands covered by this Declaration, exclusive of community facilities and property owned by the Association be recorded, by the terms of this agreement any of said restrictions, etc., are changed, modified or extinguished in whole or in part in the manner and to the extent therein provided.

- a. Amendment, change, modification or termination of all or any of the restrictions, conditions, covenants, reservations, liens or charges set forth in this Declaration may be made and effected from time to time written instrument duly executed and recorded:
 - i. As to all or *any* property covered by this Declaration then owned by Declarant, or any portion thereof, by the Association and Declarant; and
 - ii. As to all or any part of any other property then covered by this Declaration, by the Association, Declarant and the owners of record of two-thirds (2/3) in area of all lands covered by the restrictions, conditions, covenants, reservations, liens or charges which are to be so amended, changed, modified or terminated.

Provided, however, that in neither case shall any such amendment, change, modification or termination as to any property be made without the written consent, duly executed and recorded, of the owners of record of not less than two-thirds (2/3) in area of all lands held in private ownership.

ARTICLE IV

Section 1.

Each Grantee and each owner hereafter of any site or parcel included in said properly covered by this Declaration or holder hereafter of a contract of sale or lease covering any site or parcel accepts the same subject to all of the restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers of the Association and Declarant provided for in this Declaration.

Section 2.

All of said restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together; but if it shall at any time be held that any one or more of said restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, is invalid or for any reason becomes unenforceable, no other restriction, condition, reservation, lien or charge or any part thereof, shall be thereby effected or impaired.

Section 3.

Any and all rights and/or powers of Declarant provided for in this Declaration may be

delegated, transferred, assigned or conveyed in whole or in part by Declarant to the Association or to any person or entity other than the Association.

Section 4.

All easements and rights of way herein reserved to Declarant shall be described in a Declaration of Easements hereafter executed by Declarant and recorded subsequent to the recording of this Declaration. In addition thereto, Declarant may also reserve further and additional easements and rights of way as Declarant may deem proper in a deed or conveyance covering any site or parcel embraced within said property covered hereby, except those parcels that have been sold.

Section 5.

Anything in this Declaration to the contrary notwithstanding, no gate or obstruction which blocks or interferes with ingress or egress or passage over or along any road or street or bridle trail upon said property or any part thereof shall be constructed maintained or permitted unless the same and the location thereof is expressly approved by Declarant; provided, however, that subject to all rights of ingress, egress and passage of all persons legally entitled to the same, a gate or gates may be constructed, maintained and operated by Declarant upon the property covered by this Declaration.

Section 6.

Certain areas, lots or parcels embraced within the property covered by this Declaration may from time to time be designated by Declarant for use for some or all of the community facilities herein above referred to.

IN WITNESS WHEREOF, LEX S. HANSON, the owner of KERNAN CREEK RANCH, has affixed his signature the day and year first above written.

Dated: Oct. 16 1995

LEX S. HANSON, Declarant

[Changes indicated by strike through and italics for new text, as approved by the Declarant on 4 December 2004 and recorded by Robert Marion, President, Kernan Creek Homeowners Association, with the Office of the Clerk and Recorder, Montezuma County, Colorado, on 16 December 2004.]