

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
ELK CROSSING RANCH
FILING FOUR (4)**

THIS DECLARATION is made this 20 day of Sept 1999, by Hakkore, Inc., a Colorado corporation, (hereafter "Declarant").

Declarant is the owner of the following described real property in the County of Chaffee, State of Colorado: Elk Crossing Ranch, Filing Four (hereafter "Subdivision"). The Subdivision has been subdivided into Lots 1-9 ("Lots"). The Declarant intends by this Declaration to impose upon the Lots mutually beneficial restrictions for the benefit of all Owners of Lots.

Declarant hereby declares that all Lots shall be held sold and conveyed subject to the following restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of the Subdivision and which shall run with the land and bind and benefit all parties having any right, title or interest in the Subdivision or any part thereof, their heirs, successors and assigns.

1. Administrative Provisions.

1.1. **Owner.** Owner shall mean and refer to one (1) or more persons including Declarant who hold the record title to any Lot within the Subdivision but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee Owner) will be considered the Owner. If a Lot is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then the lessee (rather than the fee Owner) will be considered the Owner.

1.2. **Voting.** With respect to decisions determinable by the Owners herein, each Owner shall have one vote and, absent an express provision herein requiring a greater vote, a majority vote shall control any decision. A majority vote is the concurring vote of the Owners of at least five (5) Lots.

1.3. **Term.** The covenants and restrictions of this Declaration shall run with and bind the Subdivision and Lots therein for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change this Declaration, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

1.4. **Amendment.** Declarant may unilaterally amend the provisions hereof prior to the conveyance of the first Lot to any Owner other than the Declarant. In all other

circumstances except those specified in paragraph 1.3, the provisions hereof may be amended only by a vote or agreement of Owners of at least six (6) Lots. All amendments shall be in writing and executed by the party or parties whose approval thereof is required. Any such amendment shall become effective when recorded in the records of the Clerk and Recorder of Chaffee County. Notwithstanding any other provision herein, no amendment shall be effective to create or increase the number of Lots or change the boundaries of any Lot. If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority to so consent and that there is no contrary provision in any mortgage or contract between the Owner and a third party that will affect the validity of such consent.

1.5. **Notice.** Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly given when mailed, postage prepaid, to such Owner at his address in the Subdivision.

1.6. **Owner Consent.** Each Owner of a Lot, by accepting his deed thereto, binds himself, his personal representatives, heirs, successors and assigns, to perform, honor and adhere to the covenants, conditions and restrictions contained herein and to pay all assessments determined and levied upon his or her Lot as and when the same become due.

1.7. **Elk Crossing Ranch Homeowners Association, Inc.** The Declarant agrees to form Elk Crossing Ranch Homeowners Association, Inc. ("Association") when requested to do so by the owners of one-third (1/3) of the lots in Elk Crossing Ranch Filing Two, Elk Crossing Ranch Filing Three, Elk Crossing Ranch Filing Four and Elk Crossing Ranch Filing Five (collectively the "Association Subdivisions"). Until the Declarant has received such approval, the Association will not be formed. The Association, when formed, shall be governed by the provisions of paragraph 2 hereof together with its Articles of Incorporation and Bylaws.

1.8. **Enforcement.** Any Owner who believes another Owner is violating the provisions of this Declaration is authorized to bring such action as he or she deems appropriate to compel compliance with the Declaration or to recover damages for any violation or both. Any Owner complained against has the right to have the controversy resolved by arbitration in Chaffee County according to the rules of the American Arbitration Association. The prevailing party in any litigation or arbitration shall be entitled to his or her reasonable attorney fees as determined by the court or the arbitration.

2. **Elk Crossing Ranch Homeowners Association, Inc.** The Association, if and when formed, shall be a Colorado non-profit corporation and shall have as its sole purpose the maintenance of private roads and perimeter fences and the adoption of rules and regulations governing the use of easements within the Association Subdivisions for the collective benefit of the Owners and the owners of lots in the Association Subdivisions. Such owners are hereafter referred to as "Association Owners" and their lots are referred to as "Association Lots". The term "private roads" refers to Schoger Road, Old Ranch Loop Road and Hideout Lane Road, all as shown on the plat attached hereto as Exhibit A, being a plat showing the location of the

Subdivisions and the lots contained therein. The term "perimeter fence" means the fence along the outer boundaries of the Association Subdivisions originally constructed for the purpose of keeping livestock from adjacent ranches and open ranges surrounding the Subdivision from trampling upon and entering into the Subdivisions. The Association, if formed, shall be governed by the following provisions:

2.1. **Membership.** Every Association Owner shall become a member of the Association.

2.2. **Duties.** The Association is obligated to maintain, repair and improve all private roads and perimeter fences as necessary to promote the public interest in the Association Subdivisions. The Association is authorized to adopt rules and regulations relating to the use of easements in the Association Subdivisions and to enforce the same.

2.3. **Assessments.** In order to pay expenses incurred by the Association in the performance of its obligations, the Association shall assess against every Association Lot in the Association Subdivisions a uniform annual assessment not to exceed \$100 per year unless additional amounts are determined to be necessary and are approved by the vote or written consent of members of the Association holding two-thirds (2/3) of the voting power, provided the Board of Directors is authorized without approval from the members to assess an emergency assessment of not more than \$100 per Association Lot in any given calendar year to respond to emergencies created by acts of nature. Any assessment shall be paid by the member of the Association on or before the date established by the Board of Directors of the Association. Notice of the assessment and the due date thereof shall be mailed by the Association to each member.

2.4. **Unpaid Amounts.** All assessment amounts unpaid by the due date shall bear interest at the rate of eighteen percent (18%) per annum.

2.5. **Lien.** Any assessment not paid within thirty (30) days from the established due date shall be in default. Every assessment in default shall constitute a lien on the Association Owner's Lot in favor of the Association until paid and such lien may be foreclosed upon in the same manner as a mortgage lien. The Association is authorized to file a notice of lien after any such default by recording with the Clerk and Recorder of Chaffee County a notice of lien specifying the particular Association Lot involved and the amount of assessment unpaid. Such lien, when filed, shall become a first and prior lien against the Association Lot. The Association shall be entitled to recover its reasonable attorney fees and legal costs incurred in collecting the unpaid assessment by foreclosure or otherwise.

3. **Covenants, Conditions and Restrictions.**

3.1. **Residential Use.** All Lots shall be restricted to residential use and all structures thereon shall be single family dwelling structures. So far as reasonably possible, each Owner agrees to possess and improve his Lot in a manner consistent with maintaining the natural setting and seclusion provided by such Lot and associated and residential use.

3.2. **No Division.** No Lot in the Subdivision shall be further subdivided.

3.3. **Improvements.** Not more than one dwelling shall be erected or placed on any Lot. No dwelling shall be erected or placed on a Lot unless such dwelling has a ground floor area of not less than 1,000 square feet exclusive of garages, carports, open porches, patios or court areas. Auxiliary buildings normally appurtenant to a residence may be erected. No building of any kind shall be erected within 75 feet of any property line. All modular homes must be new and erected or placed on any Lot within one (1) year of the date of the purchase of said new modular home.

3.4. **Construction with Due Diligence.** Once an Owner commences construction of a residence on his or her Lot, such construction must be completed within eighteen (18) months thereafter.

3.5. **Temporary Housing.** No basement, shed, tent, trailer, trailer house or structure of a temporary nature may be used as permanent living quarters. This restriction does not prevent an Owner from lawfully camping in tents, trailers or campers provided such temporary quarters are not visually unattractive and are used only during the construction of a permanent residence.

3.6. **Damage to Improvements.** No improvement which has been partially or totally destroyed by fire, earthquake or otherwise shall be allowed to remain in such state for more than six (6) months from the time of destruction without removal or restoration.

3.7. **No Obstruction.** No Owner shall take any action to obstruct, alter or prevent the natural flow of drainage from or through the Lot.

3.8. **Commercial Activities.** No mining, drilling, or other commercial activities shall be conducted on the Lot at any time. No business, profession or commercial enterprise which involves any solicitation, advertising or invitation to members of the general public shall be conducted on the Lot or within the Subdivision or within any residence located thereon.

3.9. **No Rubbish.** No Lot shall be used or maintained as a dumping ground for rubbish, garbage, trash or other waste. Trash, garbage or other waste resulting from residential use in the ordinary course shall be kept in sanitary containers and regularly disposed of. All equipment for the storage or disposal of trash and garbage shall be kept in a clean and sanitary condition. Slash and trash shall be disposed of off the Subdivision. No hazardous substances as defined by federal law will be stored or disposed of on the Subdivision.

3.10. **Open Fires.** Open fires for the purpose of burning refuse shall not be permitted.

3.11. **Sewage.** Each Owner is responsible for the design, construction and maintenance of his own sewage disposal system. No individual sewage disposal system shall be installed on a Lot unless the system has been designed, located and constructed according to the requirements of the Board of County Commissioners of Chaffee County

and the Chaffee County Board of Health. No sewage or waste water shall be discharged or permitted to drain on to any other Lot. No outside toilets or privies shall be permitted on a Lot. All toilet facilities must be included within improvements on the Lot, comply with existing codes and be of a modern flush-type variety connected to the Owner's sewage disposal system.

3.12. **Water.** Each Owner shall supply his or her personal water needs by a water well lawfully drilled on his or her Lot. All water wells shall comply with the requirements of the State of Colorado and Chaffee County. Each Owner is responsible for the drilling, construction, and maintenance of his or her own water system.

3.13. **Hunting.** No hunting shall be allowed on the Subdivision and no firearms may be discharged within the Subdivision.

3.14. **Fireworks.** The use and discharge of fireworks of any kind within the Subdivision is forbidden.

3.15. **No Nuisance.** No noxious, illegal or offensive activity shall be carried on upon the Lots nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person. There shall be no noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding Lots. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such a Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye. No substance shall emit foul or obnoxious odors. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as to diminish or destroy the enjoyment of the Lots.

3.16. **Generators.** Gas powered generators, except as necessary for actual construction of a permanent residential structure, are not allowed, unless fully contained within a structure or buried in underground vaults pursuant to applicable codes and adequately muffled to eliminate the sound to surrounding Lots.

3.17. **Sightliness.** All Lots and any improvements thereon, whether occupied or unoccupied, shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of the accumulation of trash, rubbish, or debris. Each Owner shall be responsible to prevent the development of any unclean, unhealthy, or unsightly condition on his or her Lot. The pursuit of hobbies or other activities, including specifically the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly or unsightly conditions, shall not be undertaken on the Lots.

3.18. **Prohibited Vehicles.** Inoperable vehicles and mobile homes shall not be parked on any part of a Lot unless enclosed by a suitable barrier shielding their view from surrounding Lots.

3.19. **Signs.** No sign of any kind shall be erected on the Lots, except entry and directional signs installed by Declarant and except one sign per Lot of the common size

and design used by Realtors giving notice that the Lot upon which the sign is located is offered for sale.

3.20. **Perimeter Fence.** Until the Association is formed, each Owner owning a Lot with a perimeter fence existing at the time of acquisition must maintain such fence as necessary to keep out cattle and other livestock from entering the Subdivision. If ingress and egress to a Lot is necessary through a fence to a County road, it is the Owner's responsibility to install a gate or cattle guard in order to maintain the integrity of the perimeter fence. A perimeter fence is a fence adjacent to property which is not included in the Association Subdivisions.

3.21. **New Fence.** Owners are authorized to fence the boundaries of their Lots provided all fencing must be set back fifteen (15) feet from adjacent Lot lines and thirty (30) feet from boundary lines bordering property not included within the Subdivision. Fencing around residences for yards, gardens and corrals is permitted as long as said fencing is aesthetically pleasing. Fencing must be five strand barbless high tensile wire or wood construction of sufficient strength and construction to turn ordinary livestock.

3.22. **Animals.** An Owner may keep on his or her Lot of eight (8) acres or more a maximum of four (4) animals within the category of horses, mules, burros, donkeys or llamas. All livestock shall be confined to pens, corrals, or fenced areas. In addition, each Owner shall be permitted to have no more than three (3) dogs and three (3) cats provided they are not held for commercial or breeding purposes. All dogs and cats must be confined within appropriately fenced areas or on leashes. No animal shall be allowed to run at large.

3.23. **Grazing.** Owners will use their land in an environmentally healthy manner and not in a manner which constitute overgrazing as that term is normally understood.

3.24. **Easements.** There are shown on the plat easements for utility, equestrian and hiking. These easements consist of a fifteen (15) foot easement on each Lot line adjacent to other Lots within the Subdivision and a thirty (30) foot easement with respect to Lot lines adjacent to property not included within the Subdivision. The easements shall not be obstructed or gated by any Owner. The easements are for hiking, walking, jogging and the riding of horses, mules, burros and llamas and shall not be used for motorized vehicles. Common sense and trail etiquette shall be observed by all users of the easements. Easement use is limited to Owners and their guests.

3.25. **Utility Easements.** All utility easements shown on the plat of the Subdivision shall be kept open and readily accessible for use, service and maintenance by all Owners. All utilities placed in the utility easements must be placed underground and have markers showing their location.

3.26. **Roadways.** Until the Association is formed, each Owner shall be responsible for maintaining and plowing private roadways used by such Owner.

Declarant shall have no responsibility to maintain or plow roadways nor shall any such responsibility be implied.

3.27. **Culverts.** Each Owner must install at his road entrance driveway in every instance where proper drainage could be obstructed otherwise, a culvert in size prescribed by Chaffee County but not less than one (1) foot in diameter.

3.28. **Driveways.** All driveways from public roads across a Lot to the Owner's residence shall be constructed and maintained by the Owner.

3.29. **Storage.** No Lot shall be used for the storage of property in the open except that building materials intended for the erection of any residence or auxiliary structure on a Lot may be kept in the open during the construction period not to exceed eighteen (18) months. No motor vehicle of any type shall be permitted to remain on a Lot in a non-operating condition for more than thirty (30) days in any calendar year. Any vehicle which does not display current and valid license plates shall be deemed to be in a "non-operating condition".

3.30. **Chimneys.** All chimneys and fireplaces shall have a protective shield inside the chimney near the top or other type of spark arrester to prevent burning particles from escaping the chimney.

DECLARANT:

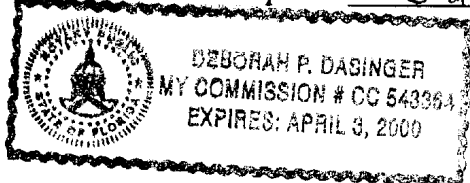
ELK CROSSING RANCH NATHROP, INC.

By: 

Florida
STATE OF ~~COLORADO~~)
Escombia) ss.
County of ~~Chaffee~~

The foregoing instrument was acknowledged before me this 20 day of Sept., 1999 by DENNIS G. SCHOGGER as President of Hakkore, Inc., a Colorado corporation.

My Commission expires: 4-3-2000



Deborah P. Dasinger
Notary Public

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