

## DECLARATION OF PROTECTIVE COVENANTS

### ROSITA HILLS, LTD

KNOW ALL MEN BY THESE PRESENTS:

That, WHEREAS the Declarant, ROSITA HILLS, LTD, hereinafter sometimes called Rosita Hill Property Owners Association, is the OWNER of all the following described property situate in the County of Custer and State of Colorado, to-wit:

#### **ROSITA HILLS Subdivision No. 1**

NOW THEREFORE, in consideration of the acceptance hereof by the several purchasers and grantees (his, her, their or its heirs, executors, administrators, personal representatives, successors and assigns, and all persons or concerns claiming by, through or under such grantees) of deed to tracts in ROSITA HILLS Subdivision No. 1, hereinafter called ROSITA HILLS, hereby declares to and agrees with each and every person who shall be or who shall become owner of any of said tracts that said tracts, in addition to the ordinances of the County of Custer, Colorado, shall be and are hereby bound by the covenants set forth in these presents and that the property described in these restrictions shall be held and enjoyed subject to and with the benefit and advantage of the following restrictions, limitations, conditions and agreements, to wit:

1. **Building Type and Use:** All tracts shall be known and described as western ranch tracts and shall be used for ranches, residential homes and country estate/leisure-time homes except that one or more tracts may be used for the erection of a country club, community center or other similar establishments for the benefit of all owners of tracts in ROSITA HILLS, except tracts 98-112 which may also be used for condominiums, and except tracts 31-35 which may also be used for mobile homes. Only dwellings not to exceed three (3) stories in height and a private garage and/or carport shall be erected, altered, converted, placed or permitted to remain on ROSITA HILLS. Appropriate ancillary buildings with no minimum dimensions, in keeping with the architecture of the existing house, shall be permitted subject to approval by the Architectural Committee.

2. **Dwelling Size:** The ground floor area of the main structure exclusive of open porches, garages and basements, shall be not less than 600 square feet for a one-story dwelling, nor less than 500 square feet for a dwelling of more than one story.

3. **Building Location:** No building shall be erected nearer than thirty (30) feet to any boundary along a street, or so that any part of said building is closer than twenty-five (25) feet to any of the other boundary lines of said premises. In case of single ownership of more than one tract, this restriction shall apply to the parcel as a whole. For the purpose of this covenant, eaves, steps and open porches shall be considered as a part of the building. Should building setback requirements of Custer County exceed the above stated distances, the requirements of the County shall prevail except that a property owner may seek a variance from the County to reduce these requirements to those stated above in this paragraph.

4. **Exceptions to Setback Restrictions:** Terraces, walls, fences, low platforms or steps, swimming pools and similar low, unroofed and unscreened construction may be erected outside the setback lines, provided that such construction shall not interfere with the exposure or view or

reasonable privacy of adjoining or facing properties as shall be determined by the Architectural Committee and shall be in compliance with the prevailing zoning regulations. No construction of this type may be erected without written approval of the Architectural Committee. No structure, wall, fence or hedge over five (5) feet in height shall be constructed, erected, placed, planted, set out, maintained or permitted upon any tract within twenty-five (25) feet of any boundary line thereof which extends along any street or other public way, except that this restriction shall not apply to any portion of said dwelling house, the location of which shall be governed by the provisions of Restriction 3 above.

5. **Temporary Residences:** Except as hereinbefore provided, no structure of temporary character, mobile home, camper, trailer, basement, tent or accessory building shall be used on any tract as a residence, temporarily or permanently; provided, however, Rosita Hill Property Owners Association may grant a permit for such use and location during the construction phase of the permanent dwelling, and for vacation camping and vacation use, such permit to be in writing and with a time limitation.

6. **Time of Construction:** Once construction shall have been initiated on any structure, including walls, fences, residences, ancillary buildings or any other structure which has been previously approved by the Architectural Committee, construction of that particular structure, wall, fence, residence, ancillary building, or other structure, shall be completed within one (1) year of the time such construction was initiated, except that Rosita Hill Property Owners Association may extend the time of construction for additional periods under unusual circumstances. Such time extensions shall be in writing.

7. **Easements:** Easements for installation and maintenance of utilities, roadways, bridle paths, hiking trails and such other purposes incident to development of the property are reserved as shown on the recorded plat. Such easements will be kept open and readily accessible for use, service and maintenance.

8. **Obstructions to Vision at Intersections:** No fence, wall, hedge, tree, or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner tract within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property line extended. The same sight-line limitation shall apply on any tract within ten (10) feet from the intersection of a street property line with the edge of a driveway or access road on any tract.

9. **Nuisances:** Nothing shall be done or permitted on any tract which may be or become an annoyance or nuisance to the neighborhood. No noxious or offensive activities shall be carried on upon any tract.

10. **Refuse and Rubbish:** Rubbish, junk, garbage or other waste shall be kept and disposed of in a sanitary manner. Containers or other equipment for the storage or disposal of garbage, trash, junk, rubbish or other refuse shall be kept in a clean, sanitary condition. All garbage or trash containers shall not be visible from adjoining properties or from public streets. No trash, litter/junk shall be permitted to remain exposed upon the premises and visible from public roads or adjoining or nearby premises.

11. **Clothes Drying Area:** Outdoor clothes drying will be permitted only in the rear yard and in the case of corner lots must be not closer than sixty (60) feet from the side street line.

12. **Signs:** All signs displayed upon any of the premises or tracts must be first approved by Rosita Hill Property Owners Association or by the Architectural Committee. This covenant does not preclude the display of builders or realty-type signs, or small professional signs, not to exceed one (1) square foot in area per side. Rosita Hill Property Owners Association reserves right, however, to require modification or removal of such signs if deemed not in keeping with the area and subdivision décor.

13. **Water and Sewage:** All water wells and sewage disposal systems placed upon any tract shall comply with the requirements of the State of Colorado Health Department. No septic tank or field system shall be nearer than fifty (50) feet to any tract line except with the consent of the appropriate health official or the State, and no sewage, waste water, trash, garbage or debris shall be emptied, discharged, or permitted to drain into any body of water in or adjacent to the subdivision. No outside toilets or privies shall be permitted on any tract. All toilet facilities must be a part of the residence or garage and shall be of a modern flush type and connected with a proper septic tank system yielding at least 80% clean effluent.

14. **Animals:** No animals or livestock of any kind shall be housed, raised or kept on any tract or property either temporarily or permanently, except that commonly accepted domestic pets may be kept provided they are not kept or maintained for any commercial purposes and except that one horse for each 1.5 acre of land owned may be kept for recreational purposes. No stables, corrals, or any structure for the housing or feeding of horses shall be located or placed closer than fifty (50) feet to any adjoining lot line nor closer than sixty (60) feet to a public street. All stables, corrals, or any structure for the housing or feeding of horses shall be approved as to location and design by the Architectural Committee and shall be maintained in compliance with all lawful sanitary regulations. In case of single ownership of more than one tract then the setback restrictions of this covenant concerning horses shall apply to the parcel as a whole.

15. **Clearing of Trees:** There shall be no removal of trees from any lot except that which must be removed in connection with construction on the property, landscaping or that which is consistent with good conservation practices. In no event shall more than 60% of the trees on any tract be cut down, cleared or killed without approval of the Architectural Committee.

16. **Rights of Property Owners Association:** The Rosita Hills property Owners Association, incorporated in the state of Colorado and having received assignment by the Rosita Hill Property Owners Association of all the Rosita Hill Property Owners Association's rights pertaining to the subdivisions for which these covenants are recorded, shall have the right to amend or revoke any of these covenants in accordance with the following procedures:

- a. All amendments and/or changes must be approved by the vote of two thirds of those members of the Rosita Hills Property Owners Association who are in good standing with respect to dues and/or assessments as defined by the By Laws of the Association and who attend the annual membership meeting or any special membership meeting called in accordance with the By Laws of the Association or who send their proxy to the Secretary of the Association on or before the date of said meeting, and,
- b. The Secretary of the Association shall have sent written notice of proposed amendments or changes via the U.S. Postal Service postmarked not less than thirty (30) days prior to the meeting date, and,
- c. Upon approval by the membership as described above, the Secretary of the Association shall submit said amendments or changes for recording by the proper governmental entity.

17. **Term of Covenants:** These covenants and restrictions are to run with the land and shall remain in full force and effect for twenty (20) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the tracts has been recorded, changing said covenants in whole or part.

18. **Architectural Committee:**

- a. **Purpose:** To assure, through intelligent architectural control of building design, placement and construction, that ROSITA HILLS shall become and remain an exclusive, attractive residential community, and to uphold and enhance property values.
- b. **Membership:** The Architectural Committee is composed of five (5) persons appointed by Rosita Hills Property Owners Association, provided, however, that after the erection of five (5) complete dwelling units within the ROSITA HILLS the owners of said units may, at their option, elect three (3) members of said committee. Term of membership on the committee is two years, after which time re-elections are held. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor except that Rosita Hills Property Owners Association will be represented on the committee until ninety (90) percent of the tracts in ROSITA HILLS are sold and until five (5) complete dwellings have been erected. Neither the members of the committee or its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.
- c. **Authority:** No structure, including walls and fences, shall be erected, converted, placed, added to or altered on any tract until the construction plans and specifications to include materials to be used and exterior color and a plan showing the location of the structure have been approved in writing by the Architectural Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to other structures planned, to topography and to finished grade elevation. Disapproval of plans and specifications may be based on any ground including purely aesthetic grounds. The Architectural Committee shall collect fees established by the membership of the Rosita Hills Property Owners Association to be charged for a review of plans submitted by property owners in compliance with the provisions of these covenants. The Architectural Committee shall keep a record of all fees collected and shall turn the fees together with a listing of them over to the Treasurer of the Rosita Hills Property Owners Association for deposit into the Association's general fund on or before the last day of each month. Members of the Architectural Committee shall have the right of entry onto all property in these subdivisions and/or into any dwelling under construction as may be necessary in fulfillment of their functions. No building shall be considered as completed until it has been inspected for compliance with plans and specifications previously approved by the Architectural Committee.
- d. **Procedure:** The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within sixty (60) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants herein requiring approval by the Architectural Committee shall be deemed to have been fully complied with, provided that all other covenants herein have been properly observed.

19. **Enforcement:** Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. Rosita Hills Property Owners Association further reserves the right, whenever there shall have been an obvious violation of one or more of the provisions of these covenants, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner and such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction herein contained shall not in any way affect any of the other restrictions but they shall remain in full force and effect.

All costs and expenses including reasonable attorney's fees incurred by the Rosita Hills Property Owners Association in enforcement of the provisions of these covenants shall be reimbursed by the property owner(s) determined to be in violation of these covenants by a Court of Law within the State of Colorado.

Such reimbursement shall be paid in legal tender, money order or certified check to the Treasurer of the Rosita Hills Property Owners Association within sixty (60) days or less from date of judgment or decree of the Court. If reimbursement is not received within said time period, the Rosita Hills Property Owners Association shall have the right to file a lien against the real property involved in the enforcement action.

20. **Subdivider May Assign:** ROSITA HILLS, LTD may assign any and all of its rights, power, obligations and privileges under this instrument to any corporation, association or person. In accordance with this paragraph, the Subdivider has assigned its rights, powers and privileges to the Rosita Hills Property Owners Association by written declaration dated Dec 30, 1982 and recorded with Custer County Recorder, State of Colorado Reception No. 131837 Book No. 185 Page No. 977.

[signed]

[notarized]

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