

(Recompiled 2017)
DECLARATION OF COVENANTS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR
BEAR CREEK
A CONEJOS COUNTY SUBDIVISION
(As Amended in 1992, 1993, 1995 and 2001)

[Originally recorded July 12, 1991 at 10:20 A.M. #20106 in Book 346, Pages 584-610 by Andrew E. Perea, Recorder. Amendments made in 1992, 1993 1995, and 2001 are shown in red and explained in footnotes. The Original Declaration, because of its line spacing and font, was 27 pages long. In this recompilation, page transitions in the recorded Declaration document are shown with the original page number and the recorded page in brackets, i.e. {1/584}. **This Recompilation includes all amendments and is intended only for use on the Association's Website and for the benefit and use of the members of the Association. Originals of the Recorded Declaration and the Amendments may be inspected, or copies obtained by contacting the Secretary of the Association.**]

THIS DECLARATION is made this 12th day of July, 1991, BEAR CREEK LAND COMPANY, A COLORADO GENERAL PARTNERSHIP, having its principal place of business at P.O. Box 125, Antonito, Colorado 81120.

Declarant is the owner of the real property located in the County of Conejos, State of Colorado, described as follows:

See Attached, Last Page [Originally recorded in Book 346 at Page 610]

Declarant desires to create on the property a Residential Subdivision community with open spaces and other common facilities for the benefit of said community (Bear Creek). Declarant, for itself, its successors and assigns desires to provide for the preservation of the values and amenities in said community, and for the development, installation, {2/585} extension, operation and maintenance of services, private roads, recreational lands and amenities, open spaces and other common facilities and amenities, and to this end desires to subject the Property, together with such additions as may hereinafter be made thereto to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each Owner thereof and the Homeowners Association created herein. Declarant will exercise the powers of ownership, operations, maintenance and administration and enforcement of the covenants and restrictions herein created until such time the Common Property is conveyed to said Homeowners Association, at which time the Homeowners Association will exercise such powers. Declarant will not convey said common property to any other entity other than the Homeowners Association.

In consideration of the acceptance hereof by the several purchasers and their grants, heirs, executors, administrators, personal representatives, successors and assigns, and all persons or concerns claiming by, through or under such grantees of deeds to lots in said Subdivision, BEAR CREEK LAND COMPANY, hereby declares to and agrees with {3/586} each and every person who shall be, or shall become, owners of any of said Lots, in addition to the ordinances of the County of Conejos and the laws of the State of 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.

ARTICLE I DEFINITIONS

Section 1. The following words, when used in this Declaration or any supplemental declaration hereto, shall, unless the context otherwise prohibits, have the meaning set forth below:

- A. "Association" shall mean and refer to the Homeowners Association, a Colorado nonprofit corporation.
- B. "Owner or Lot Buyer" 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 part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of {4/587} an obligation. Each owner shall be a member of the Association.
- C. "Property" shall mean and refer to certain real property hereinbefore described.
- D. "Common Property" shall mean and refer to certain areas of land as shown on the site plan by platted tract designation. Areas created as Common Properties by virtue of a platting shall also mean personal property belonging to the Association.
- E. "Lot" shall mean and refer to any plot of land shown on any recorded subdivision map of the property with the exception of common

properties.

- F. "Declarant" shall mean and refer to BEAR CREEK LAND COMPANY and assigns.
- G. "Final Plat" shall mean the plat of the Subdivision as approved by the Board of County Commissioners of Conejos County on **June 21, 1991**¹.
- H. "Residence" shall mean and include family dwellings.

{5/588}

ARTICLE II

GENERAL PURPOSE OF COVENANTS

The real property described above is subject to the conditions, covenants, restrictions, reservations and easements hereby declared to ensure the best use and most appropriate development and improvement of each building site; to protect the Owners of said building Lots against improper use of surrounding sites as well depreciate the value of their Property; to preserve so far as practical the natural beauty of such Property; to prevent the erection thereon of poorly designed structures and structures built of improper or unsuitable materials; to encourage and secure the creation of attractive dwellings thereon, with appropriate location thereof, on building Lots; to secure and maintain adequate free space between structures; and in general to provide for a high quality development.

ARTICLE III

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all of that certain plot, piece or parcel of land situated, {6/589} lying and being in the County of Conejos and State of Colorado heretofore more particularly described.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Platted Roads. All platted roads in the Subdivision are owned in common

by the various Owners of Properties within the platted area and are private roads for access to all lots within the Subdivision by Owners and guests and emergency vehicles and public agencies. The public may also have access to these roads. No cost of road maintenance shall be borne by Conejos County of any roads developed within the boundaries of the Subdivision unless and until such roads are dedicated to Conejos County.

Section 2. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Property which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- A. The right of the Association to suspend the voting rights and right to sue the recreational facilities by an Owner for any period during which any assessment against his (her) Lot remains unpaid; and for a period not to exceed sixty (60) {7/590} days for any infraction of its published rules and regulations.
- B. The right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purpose and subject to such condition as may be agreed to by the members. No such dedication or transfer shall be effective unless approved by two-thirds of all of the members.

Section 3. Dedication of Use. Any Owner may delegate his right of enjoyment of the Common Property and facilities to the members of his family, his tenants or contract purchasers who reside on the Property.

Section 4. Title to Common Property. When the Declarant conveys legal title or any interest to the Common Properties now or thereafter developed and installed, whether by it or the Association, to the Association, such conveyance shall be subject to these covenants, restrictions, easements, charges and liens.

Section 5. Extent of Owners' Easements. The right and easements of enjoyment created hereby shall be subject to the following: {8/591}

- A. The right of the Association to suspend the enjoyment rights of any Owner for

nonpayment of any amount due the Association or for any infraction of its published rules and regulations.

- B. The right of the Declarant and of the Association to grant and reserve easements and right-of-way, in, through, under, over and across the Common Properties, for the installation, maintenance and inspection of lines and appurtenances for public or private water, electric, sewer, drainage, telephone, cable television, gas and other utility purpose and the right of the Declarant to grant and receive easements and rights-of-way in, through, under, over, upon, and across the Common Properties for the completion of the Declarant's work or other purpose.

ARTICLE V

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Member. Every Owner of a Lot shall become a member of the Association upon acquisition of said lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Vote. Each member 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 {9/592} such Lot shall be exercised as they among themselves may determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations of Assessments. The Declarant, for each Lot owned within the property, hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- A. Annual assessments or charges;
- B. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided;

- C. Reserve account assessments to be paid upon the sale of any Lot by the purchaser of such Lot.

The annual, special and reserve account assessments, together with interest, cost and reasonable attorneys' fees shall be a continuing lien on the Property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal {10/593} obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for the delinquent assessment shall not pass to his (her) 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 common area; to operate and maintain the sewage, water and road systems of the Subdivision; to establish a reserve account for the maintenance of the Common Property and utilities.

Section 3. Maximum Annual Assessments. The Board of Directors of the Homeowners Association may determine the maximum annual assessment.

Section 4. Special Assessment For Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of capital improvement {11/594} upon the Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each member who is entitled to vote, either in person or by proxy, at a meeting duly called for this purpose.

Section 5. Notice and Quorum For Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized by Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the

required quorum is not present, another meeting may be so called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half the required quorum of the preceding meeting.

Section 6. Date of Commencement of Annual Assessments. The annual assessment provided for herein shall commence as to all Lots on **August 31, 1993ⁱⁱ**. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of {12/595} the Association 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 of the Association. 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. Additionally, upon the sale of any Lot, the purchaser of such Lot shall pay to the Association a sum equal to one year's annual assessment to be held by the Association in a reserve account.

Section 7. Effect of Nonpayment of Assessments; 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 eighteen percent (18%) per annum. The Association may bring an action of 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 assessment provided herein by nonuse of the common area or abandonment of his Lot.

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Section 8. Subordination of the Lien to the Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any other 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 VII
EASEMENTS

Section 1. Easements. Declarant does hereby establish and create for the benefit of the Association and for all Owners from time to time for the benefit of the Common Properties, and does hereby give, grant and convey to each of the aforementioned, the following easements, licenses, rights, and privileges:

- A. Rights-of-way for ingress to and egress from the properties in, through, over, under and across the streets, roads, trails and walks that provide access thereto and the common properties as may be built or relocated in the future { 14/597 } for all purposes and, if the Association fails to maintain the same, the right to maintain and repair the same;
- B. Right to connect with and make use of electric and telephone lines, wires, pipe, conduits, cable television lines, drainage lines and water lines which may from time to time be in or along the streets and roads or other areas of the Properties subject to the regulations, charges, and assessments of the Association and, if the Association neglects to keep them adequately maintained, the right to maintain and repair the same.
- C. Declarant hereby conveys to the public rights of ingress and egress allowing public access from U.S. Forest Service property and to the roads, hiking trails, and fishing easements within this Subdivision. Provided, however, that said public is subject to the rules, regulations and restrictions of this Subdivision.

Section 2. Reservation of Easements. Declarant and the Association reserve the easements, licenses, rights, and privileges of a right-of-way in, through, over, under and across any easement shown on the plat of this Subdivision, for the purpose of completing their work and, toward this end, the right to grant and reserve easements and rights-of- { 15/598 } way in, through, under, over and across the Common Properties and the easements within the Property for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, electric, telephone, drainage, cable television, gas and other purposes and for any other materials or services necessary for the completion of the work or other purpose. Declarant and the Association also reserve the right to connect with and make use of the water and sewer

lines and systems, utility lines, wires, pipes, conduits, cable television, drainage lines which may from time to time be in or along the streets and roads and other areas of the Property.

ARTICLE VIII
GENERAL RESTRICTIONS ON ALL PROPERTIES,
ZONING REGULATIONS

Section 1. No lands within the Subdivision shall ever be occupied or used by or for any structure or purpose, or in any manner which is contrary to the zoning regulations of Conejos County, Colorado, validly in force. No Lot shall be altered or changed from the use which is designated on file with the Conejos County Clerk and Recorder.

Section 2. Signs. No signs or any kind shall be displayed to {16/599} the public view on the building site, except one sign of not more than two square feet advertising the Property for sale or rent.

Section 3. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, nor should any unlawful use be made of any of the Properties and all valid laws, zoning ordinances and regulations shall be observed.

Section 4. Animals. No animals, including riding horses, shall be raised, bred or permanently be kept on any lot, with the exception of ordinary household pets, provided that they are not kept, bred or maintained for any commercial purposes. Ordinary household pets shall be subject to all control provisions for such animals as enacted and enforced by Conejos County, Colorado, from time to time, but shall in any event be kept on a leash or under the control of the owner at all times. No more than two house pets will be allowed per site. Horses may be kept on a temporary basis for a period not to exceed 12 hours. The riding of horses on roadways and other common areas will be permitted. The owners of said riding horse(s) are responsible for cleanup and sanitary maintenance.ⁱⁱⁱ *Only two horses per household will be allowed. No permanent corrals may be constructed. Prefabricated panels may be used, which*

can be dismantled and removed upon departure. A hitching rail is permissible. Horses are not permitted in Bear Creek overnight. A temporary corral must be at least 30 feet from any property line.^{iv}

Section 5. Fences. There shall be no construction of wire fences on any of the properties. All fences shall be less {16/599} than four feet high and built from pole, pipe, or wood products. This will allow free migration of deer and elk across the properties without hazard.

Section 6. Water Rights.

- A. Springs. Springs located on the Property shall not be impaired or impeded in any manner whatsoever.
- B. Water. Water supply is subject to the terms and conditions of the Augmentation Plan approved by the District Court, Water Division 3, Alamosa, Colorado, and of record in the office of the Clerk and County Recorder, Conejos County, Colorado, The Declarant and the Homeowners Association shall be empowered to enforce the terms and conditions of the Augmentation Plan and court decree and instructions and directions from the State Water Engineer. No water shall be used for irrigation of lawns and gardens.

Section 7. Site Access. The Property Owners and their successors in title and the public shall be entitled to use the designated access road to and from Colorado Highway No. 17 for the purposes of ingress and egress to and from such Property.

Section 8. Setback Lines. Except as provided herein, all {18/601} setback requirements shall be governed by the Conejos County Zoning Ordinance Residential 2.7(D), or as the same may be amended or changed.

Section 9. Firearms. No hunting or discharge of firearms shall be allowed within the Subdivision.

Section 10. Garbage and Refuse Disposal. No Property shall be used or maintained as a dump ground for rubbish. Trash, garbage or other waste material shall be kept in sanitary containers. No trash, garbage or rubbish shall be burned on the Lot, and all rubbish and trash shall be removed from all Properties and shall not be allowed to accumulate.

Section 11. Clearing of Trees. There shall be no removal of living trees from the Property except that which must be removed in connection with construction, landscaping or that which is consistent with good conservation practices. All debris from construction and landscaping shall be removed and chipped.

Section 12. Vehicles and Use Thereof. No unlicensed road Vehicles shall remain on a Lot for more than ninety (90) days. Trail bikes, snowmobiles, all-terrain vehicles, {19/602} scooters and the like will be used on designated roads and trails only. Drivers of motor vehicles shall obey speed and traffic control signs as posted by the Association.

Section 13. River and Forest Property. Property Owners of Lots which abut rivers or forest shall not, at any time, cut off access or use of the river or national forest. The river shall be open for public use at all times. The plat has been designed to give access to the national forest and the river for the enjoyment of all Property Owners in the Subdivision.

Section 14. Sewage. Disposal of sewage on the Property shall only be by individual-septic tank and leaching field systems. Each Lot Owner is responsible for obtaining a permit to install and construct such septic tank system from Conejos County, Colorado. Said system will be constructed in strict compliance with Conejos County Regulations and the requirements of this Subdivision. Said system shall be properly maintained and kept in good repair.

{20/603}

Section 15. Mining. In compliance with Article 2, Conejos County Zoning Ordinance, and in strict adherence with representations made by the Declarant to the State of Colorado Real Estate Commission and to the Office of Interstate Land Sales Registration of the United States Government, there shall be no mining, drilling, exploration, or excavation of minerals of any

kind or type whatsoever by any person within the boundaries of this Subdivision. Declarant hereby reserves mineral rights and same will not be conveyed to Lot Buyers.

Section 16. Radon. The Declarant makes no representation to Lot Buyers as to the existence or non-existence of radon in the soil within the boundaries of the subdivision; nor does it make any guarantees with respect to same. Each Lot Buyer upon commencement of construction or during the course of with construction of a dwelling upon said Lot shall conduct such tests for the existence of radon therein. Each Lot Buyer shall employ such construction techniques for ventilation of radon as appropriate.

{21/604}

Section 17. Wetlands. That lots designated by the plat as wetlands and riparian areas shall be non-development and non-construction common areas and no development, construction or building sites shall occur thereon.

Section 18. Commercial Use. No commercial uses of any kind whatsoever shall be permitted within the boundaries of this Subdivision, including the use of the proposed clubhouse.

Section 19. State or Colorado Division of Wildlife Agreements. Existing agreements with the State of Colorado Division of Wildlife restricting fishing on the Conejos River to fly fishing only are hereby ratified and made a part of this Declaration. Further, the Declarant agrees to cooperate with the Division of Wildlife relative to any future amendments or agreements which are reasonably necessary for the preservation of wildlife. The Division of Wildlife shall not be held liable for damages for loss of life, personal injury, or damage or destruction to real or personal property by wildlife within this subdivision.

Section 20. Temporary Buildings. That trailers, mobile homes and temporary buildings and shacks should not be allowed.

ARTICLE IX RESTRICTIONS ON RESIDENTIAL TRACTS

Section 1. Number and Location of Buildings. No buildings or structures shall be placed, erected, altered or permitted to remain on any Residential Lot other than: {22/605}

- A. One Residential home;
- B. One attached or detached garage or storage building.

No building or other structure shall be constructed or allowed to remain on any location which blocks any road or right-of-way within the Subdivision, or which will block stream access or cause extreme or undue inconvenience to any other Owner within the Subdivision. All existing roads and rights-of-way shall be left open for Owners and the public for purposes of ingress and egress.

Section 2. Dwelling Home to be Constructed First. No garage, storage shed or other building shall be constructed on any residential Lot until after commencement of construction of the dwelling house on the same residential Lot. All construction and alteration work shall be prosecuted diligently and each building, structure or improvement which is commenced on any Residential Lot shall be entirely completed within eighteen (18) months after commencement of construction. ^vAny and all building or construction, whether it be a new building or remodeling, shall be approved in writing by the Homeowners Association Architectural Committee and done in compliance with that approval and in accordance with a building permit secured from Conejos County.

Section 2 (a). Approval of Plans. For the purpose of further insuring the construction and/or alteration of all building structures to high standards, the Architectural Committee reserves the power to control the building, structures and other improvements placed on each lot, as well as to make exceptions to these Restrictions as the Architectural Committee deems necessary, appropriate or proper. An exception(s) to these Restrictions made by the Architectural Committee shall not establish a precedent or implied approval to a new application as the Architectural Committee deems each lot unique to other lots in the Subdivision.

Section 2 (b). Refusal to Approve. Refusal to approve plans and specifications by the Architectural Committee may be based on any ground, including purely aesthetic grounds which, in the sole judgement and uncontrolled discretion of the Architectural Committee shall seem sufficient.

Section 2 (c). Failure to Approve or Disapprove. If the Architectural Committee shall fail to approve or disapprove the plans and specifications within forty-five (45) days after written request, then approval shall not be required; provided that no building or structure shall be erected which violates any of the Covenants or Amendments thereto.

Section 2 (d). Composition of Committee. The Homeowners Association Architectural Committee shall be composed of not less than three (3) nor more than five (5) members and shall be responsible to the Board of Directors of the Association. The members of the Architectural Committee shall not be entitled to any compensation for services performed pursuant to this Declaration.

Section 2 (e). Services of Architect. The Architectural Committee shall, however, have the authority to use the services of an architect as consultant and charge a sum to the submitting Lot Owner, not to exceed one hundred fifty dollars (\$150.00), for each set of plans and specifications submitted to it for approval to defray the fees of the consultant. The consultant shall not have the right to vote in passing on the plans and specifications.

Section 2 (f). Successors and Election. Until Declarant sells or conveys all lots owned by Declarant, Declarant shall have the right to appoint two (2) members (or their successors) to the Committee in the event that the Committee is composed of three (3) members and shall appoint three (3) members in the event that the committee is composed of five (5) members. The member(s) not so appointed by the Declarant shall be elected by the members of the Homeowners Association. Upon the sale of all lots owned by Declarant, all members of the Architectural Committee shall be elected on an annual basis by the Association and all members shall be members of the Association. In the event of death or resignation of any member of the Architectural Committee, the remaining members shall have the authority to designate a successor until the next regularly scheduled annual meeting.

Section 2 (g). The Architectural Committee. The Architectural Committee shall designate a chairperson who shall be responsible for the day to day administration of the Committee and represent the Committee at the Homeowners Association Board Meeting.

{23/606}

Section 3. Building Specifications. Any and all structures built on any residential lot shall be in a kind, shape, height, material, location and harmony with surrounding structures and topography. The elevation of the lowest floor level of each structure shall be built one foot above the one hundred year plain level.

Section 3(a) No one story buildings shall be constructed with a fully enclosed first floor area of less than 1050 square feet, exclusive of carport, garage, and open porches or decks. No two story building shall be constructed with a fully enclosed first floor area of less than 900 square feet.

Section 4. Used or Temporary Structures. No used or previously erected or temporary house, structure, house trailer, mobile homes or nonpermanent outbuilding or shacks shall ever

be placed, erected or allowed to remain on any residential Lot, except during the construction period, and no dwelling house shall be occupied in any manner prior to its completion. In no event shall a trailer or motor coach or camper be used for and in place of a permanent dwelling unit.

Section 5. Engineered Foundations. Each Lot containing a building site with a slope of 15% or greater will require engineered foundations and leach fields thereon.

Section 6. Obstructions. All exterior lights and light standards on residential lots shall be for the purpose of safety and convenience only and shall not interfere with or cause a nuisance to any other lot owner in the Subdivision. {24/607} All miscellaneous obstruction, including but not by way of limitation, towers, antennae or tanks used for the storage of gas, fuel oil, gasoline or water shall be located and used in such a manner so as not to cause undue hardship or nuisance to any other Lot Owner.

Section 7. Garbage Disposal and Sanitation Systems. Each dwelling house shall have toilet facilities and shall be obligated to dispose of any and all other types of garbage and waste in a manner approved by or in accordance with specifications of all public health agencies of the State of Colorado and County of Conejos, and in no event shall any type of garbage or waste material be dumped or openly disposed of on Subdivision Property or in any other surrounding property, whether privately or publicly owned.

Section 8. Buffer Zone. The buffer zone for the protection of the Peregrin shall be maintained.

Section 9. Fire-proof Shingles. All structures constructed within Bear Creek shall have fire-proof shingles.^{vi}

ARTICLE X

GENERAL PROVISIONS

Section 1. Tap Fees. The individual Property Owner shall be required to pay tap fees,

and said fee shall be established by the Declarant, its successors or assigns.

{25/608}

Section 2. Enforcement. 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 hereinafter imposed by the provisions of this Declaration. Failure 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 3. Severability. Invalidation of any one of these covenants or restrictions by court order shall in no way affect any other provision which shall remain in full force and effect. The Declaration shall run with and bind the land for a term of twenty years from the date of this Declaration, after which time it shall automatically extend for successive periods of ten (10) years each. This Declaration may be amended during any period by a majority vote of the Owners of the Lots. Any amendment hereto must be recorded.

Section 4. Covenants to Run. All of the covenants contained in this instrument shall be a burden on the title to all of the lands of the Subdivision, and the benefits thereof shall inure to the Owners of all of the Lots in said Subdivision, including the Association and the benefits and {26/609} burdens of all or said covenants shall run with the title to all Lots in said Subdivision.

Section 5. Paragraph Headings. The paragraph headings in this instrument are for convenience only and shall not be construed to be a part of the covenants contain herein.

Section 6. Deed Restrictions. Any covenant, restriction, easements, and rights-of-way, not specified in this Declaration but contained in the Deed by which Declarant obtained ownership and title to this Subdivision shall be incorporated herein and made a part of this Declaration.

IN WITNESS WHEREOF, the undersigned, the Declarant herein has hereunto set their hand and seal this 12th day of July, 1991.

BEAR CREEK LAND COMPANY,
a Colorado General Partnership

By _____ //S//
Michael C. Quinlan, President
Quinlan Group, Inc., General Partner

ATTEST:

[Recorded Original was not attested]
Wayne E. Quinlan, Vice President

LEGAL DESCRIPTION

BK. 346
PG. 610

All of tract 48 and a portion of tract 49, located in Sections 22, 26, and 27, Township 33 North, Range 6 East N.M.P.M., as shown on the plat thereof on file in the Office of the Clerk and Recorder of Conejos County, Colorado, under Reception No. 148083.

Formerly described as follows: (SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26, Township 33 North, Range 6 East N.M.P.M., and SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, Township 33 North, Range 6 East N.M.P.M.)

Said Tract 48 and a portion of Tract 49, located in Sections 22, 26 and 27, Township 33 North, Range 6 East N.M.P.M., Conejos County, Colorado, is more particularly described as follows:

Beginning at AP 1, a G.L.O. brass cap, set for the upper northeast corner of said Tract 48;

Thence along the boundary of said Tract 48 for the following nine courses:

Thence South 660.00 feet to AP 14;
Thence East 990.00 feet to AP 13;
Thence South 660.00 feet to AP 12;
Thence East 1981.98 feet to AP 11;
Thence South 1320.00 feet to AP 10;
Thence West 1321.32 feet to AP 9;
Thence South 660.00 feet to AP 8;
Thence N 89°58'43" W 2310.00 feet to AP 7;
Thence North 660.00 feet to AP 6, on the South line of said Tract 49;

Thence S 89°51' W 1647.36 feet to AP 5, a G.L.O. brass cap, set for the lower Southwest corner of said Tract 49;

Thence North 1320.00 feet along the lower West line of said Tract 49 to a G.L.O. brass cap set for the Southwesterly inner corner of said Tract 49;

Thence N 89°51' E 1318.02 feet across said Tract 49 to AP 3, a G.L.O. brass cap, set for the upper Southwest corner of said Tract 48;

Thence North 1320.00 feet on a line between said Tracts 48 and 49 to a point for the Northwest corner of said Tract 48 and the Northeast corner of Tract 49;

(AP2, TR 48, AP 1, TR 49,)

Thence East 988.68 feet along the North line of said Tract 48 to the Place of Beginning.

Less and except that portion of the above described tract lying within the right-of-way of Colorado State Highway No. 17. The description of said right-of-way is recorded in Book 217, Pages 443-454-A of the deed records of Conejos County, Colorado, containing 9.702 Acres, more or less.

(27)

{27/610}

ⁱ In the original recorded Declaration the date is left blank. See bottom of page 4 {587}. June 1, 1991 was inserted because (a) it is the date on which the first plat for Bear Creek was recorded in the Conejos County Records, and (b) it is the date used in the unrecorded Declaration – see Secretary’s Note below.

ⁱⁱ **On October 30, 1993 this Section of the Declaration was amended** by the Declarant (Bear Creek Land Company), which at the time owned a majority of the lots in the subdivision. The amendment deleted “upon conveyance of the Common Area” and replaced it with “on August 31, 1993.” This amendment was recorded on February 24, 1994 at Reception No. 94000371.

ⁱⁱⁱ **On October 3, 1995, this Section of the Declaration was amended.** Originally, lot owners could keep horses on their property. This amendment, upon a special vote of the Landowners Association members at large taken on August 12, 1995, removed this right. The amendment was documented and signed on October 3, 1995 and recorded on October 5, 1995 at Reception No. 95002330. As recorded, this amendment referred to Article VII, rather than Article VIII. Article VII does not have six sections. Article VIII, Section 4 related to “animals.” In this Recompiled Declaration, the amendment has been placed in Article VIII, where it belongs.

^{iv} At the **July 28, 2001 Annual Meeting** by a vote of the members, this amendment to Article VIII was passed. Like the mistakenly designated Article in the October 3, 1995 amendment the verbal motion referred to Article VII rather than Article VIII, and the amendment was not incorporated into a formal amendment and recorded.

^v **On May 30, 1992 this Section of the Declaration was amended**, Sections 2 and 3 of Article X of the Declaration were amended by the Declarant (Bear Creek Land Company), which, at the time, owned a majority of the lots in the subdivision. The language in red replaced the following: “Any and all building or construction, whether it be a new building or remodeling, if necessary and when applicable, shall be first approved and done in accordance with a building permit secured from Conejos County, Colorado and the requirements of the Homeowners Association Architectural Committee.” Sections 2(a) through 2(g) were added, and the second sentence of Section 3 was deleted and 3(a) was added. The Amendment was recorded on October 23, 1992 in Book 351 at Pages 37-39 under Reception Number 203648, but it did not include a legal description. The same amendment was recorded a second time on May 10, 1995 at Reception No. 95000375 with a legal description attached. Both amendments referred to the pagination in the original Declaration and made changes at page 22 by inserting pages 22(a) and 22(b).

^{vi} **On July 28, 1995**, at the annual meeting of the members of the BCLOA, this amendment was passed unanimously. It was not, however, reduced to the form of an amendment, signed and recorded as required by Colorado law. In this complied version, the compiler placed this amendment at the end of Article IX, which contains restrictions on residential tracts.

Secretary’s Note: At some point early in the history of Bear Creek, someone retyped the Declaration, and in doing so reduced the number of pages from 27 to 13. The person mistakenly typed in the upper left hand corner of the first page “BK 349, PG. 584,” and on each page thereafter “BK346, Page 584.” They attached to this version of the Declaration an unsigned signature page with May 21st, 1992 as a date and at the bottom a page (3). This version was not recorded. At around the same time, the the May 30, 1992 Amendment was retyped to reflect the page at which the amendment should appear in the unrecorded version of the Declaration. This unrecorded Amendment had no page numbers assigned, was not signed, and had no recording information on it.

The unrecorded versions of the Declaration and the May 30, 1992 Amendment were probably provided by the Bear Creek Land Company sales office personnel to prospective Buyers. They were the only versions of the Declaration and the May 30, 1992 Amendment found in the files in the office in the Maintenance Building in 2017. The unrecorded Declaration and May 30, 1992 amendment made their way into the Association’s records and were provided to the website developer to post on the Association’s website. In June of 2017 when a past secretary of the association could not locate the official Corporate Record book for the Association, a search of the records at the Conejos County Court House revealed the information contained in this Recompilation. ***This Recompiled Declaration has not yet been approved by a majority of the members of the Association, and it is intended only for the benefit and use of the BCLOA Board and members of the Association. Copies of the Original recorded Declaration and the amendments listed in the footnotes can be obtained from the Association Secretary.***