

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
KAPUSHION SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of this 3 day of April, 1995, by Ruth M. Kapushion ("Declarant").

ARTICLE 1.

GENERAL

1.1 Property. Declarant is the owner of that certain parcel of land located in the County of Gunnison, Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by reference, which is defined in this Declaration as the "Property."

1.2 Lots. The Property has been subdivided into 33 residential lots (sometimes referred to herein as the "Lots" or a "Lot") for sale for single-family detached homes by the Declarant, and public park and other public areas, and approved by the Town of Crested Butte, the Plat of the resulting Kapushion Subdivision being recorded at Reception No. 459077 in the records of the Clerk and Recorder of Gunnison County.

1.3 Purposes of Declaration. This Declaration is executed (a) in furtherance of a common and general plan for the Property; (b) to protect and enhance the quality, value, aesthetic, desirability and attractiveness of the Property; and (c) to define certain duties, powers and rights of owners of lots within the Property.

1.4 Declaration. In accordance with the foregoing, Declarant, for themselves, their successors and assigns, hereby declares that the Property and each Lot shall, for the duration hereof, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, all of which are declared to be part of and in furtherance of, a common and general plan for the development, improvement, enhancement and protection of the Property. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with the terms hereof, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the property comprising the Property and each Lot thereof; (b) Declarant and their successors and assigns; and (c) all persons or entities having or acquiring any right, title or interest in or to the Property or any Lot thereof or any improvement thereon and their heirs, personal representatives, successors and assigns.

1.5 Town Ordinances. The limitations and restrictions herein are in addition to those set forth in the 1987 Crested Butte Municipal Code, which code provisions only shall be enforced by the Town of Crested Butte (the "Town"), except as otherwise set forth in the Kapushion Annexation Agreement recorded at Reception No. 459053 in the records of the Clerk and Recorder of Gunnison County.

1.6 Enforcement by Town of Crested Butte. For the purposes set forth in this Article 1.6, the Town of Crested Butte shall be deemed to be a third party beneficiary of this Declaration. The Town shall have the right to enforce the provisions of Articles 1.4, 2.16, 2.24, 2.25, 2.26, 2.27 and 2.28 of this Declaration as though the Town were an owner of a Lot.

ARTICLE 2.

GENERAL RESTRICTIONS APPLICABLE TO PROPERTY

All real property within the Property shall be held, used, and enjoyed subject to the following limitations and restrictions.

2.1 Maintenance of Property. No property within the Property shall be permitted to fall into disrepair and all property within the Property, including any improvements and landscaping thereon, shall be kept and maintained in a clean, attractive, and sightly condition and in good repair. Maintenance, repair, and upkeep of each dwelling unit within the Property shall be the responsibility of the owner of such dwelling unit.

2.2 Property Uses. All Lots located within the Property shall be used for private single-family residential purposes, duplexes and accessory dwellings. Notwithstanding the foregoing, business activities associated with the sale of a Lot or residence constructed thereon shall be allowed. In addition, in-home businesses permitted by the zoning regulations of the Town of Crested Butte and not involving the servicing of customers or employees shall be allowed, provided such activities are conducted solely within the residence and do not create or result in any unreasonable, unwarranted, or unlawful use or interference with public rights, including, but not limited to, unreasonable or unwarranted use or interference with public streets, rights-of-way, or sidewalks, or in any other offensive or noxious activities.

2.3 Construction Type. Any building or structure originally constructed as a mobile dwelling or structure may not be moved onto a Lot located within the Property.

2.4 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any property within the Property, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to others.

2.5 Annoying Sounds or Odors. No sound or odor shall be emitted from any property within the Property which is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property within the Property.

2.6 No Hazardous Activities. No activity shall be conducted on and no improvement shall be constructed on any property within the Property which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon any property within the Property and no open fires shall be lighted or permitted on any property within the Property except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace designed to prevent the dispersal of burning embers.

2.7 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects, and conditions shall be enclosed within a structure, including snow removal equipment and garden or maintenance equipment, except when in actual use.

2.8 Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub, tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any lot within the Property except within an enclosed structure or when appropriately screened from view, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up.

2.9 Animals. No animals, live stock or poultry of any kind shall be raised, bred or kept on any Lot within the Property except that domesticated birds or fish and other small domestic animals will be allowed. No other animals, except an aggregate of not more than three domesticated animals (e.g., two cats and one dog) will be permitted within the Property; provided that they are not kept, bred, or maintained for any commercial purpose. All household pets shall be controlled by their owner and shall not be allowed off such owner's Lot except when properly leashed and accompanied by the owner of such pet or such owner's representative. Each owner of a household pet shall be financially responsible and liable for any damage caused by said household pet.

2.10 No Temporary Structures. No tent, shack, temporary structure, or temporary building shall be placed upon any property within the Property.

2.11 Restriction on Pipes, Utility Lines and Transmitters and Lights. Pipes for water, gas, sewer, drainage, or other purposes, wires, poles, aerials, satellite dishes and other facilities for the transmission or reception of audio or visual signals or electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent reasonably possible, underground or within an enclosed structure. Outdoor light fixtures shall require shielding so that light emanates downward only.

2.12 Restrictions on Signs and Advertising. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within the Property so as to be evident to public view, except signs, posters, billboards or any other type of advertising device or display erected by Declarant incidental to the development, construction, promotion, marketing, or sales of Lots within the Property. Notwithstanding the foregoing, a sign advertising a Lot for sale or for lease may be placed upon a Lot within the Property.

2.13 Restrictions on Mining or Drilling. No property within the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

2.14 Maintenance of and Access to Drainage. There shall be no interference with the established drainage pattern over any property within the Property. The "established drainage pattern" shall mean the drainage pattern which exists at the time the overall grading of any property is completed and shall include any established drainage pattern shown on any plans developed by Declarant. No fences or other structures shall be built, nor shall any shrubs or trees be planted, upon any drainage easement located on the Property, and the Town shall have access to the drainage easements for maintenance purposes.

2.15 Compliance with Laws. Nothing shall be done or kept on any property within the Property in violation of any law, ordinance, rule, or regulation of any governmental authority having jurisdiction over the Property.

2.16 Further Subdivision of Sites. The owner of a Lot within the Property shall not further subdivide such Lot.

2.17 Restrictions on Sewage Disposal Systems. No cesspool, septic tank, or other sewage disposal system shall be installed within the Property.

2.18 Restoration in the Event of Damage or Destruction. In the event of the damage or destruction of any improvement on any Lot within the Property, the owner thereof shall cause the damaged or destroyed improvement to be restored or replaced to its original condition prior to such damage or destruction, or the owner thereof shall cause the damaged or destroyed improvement to be demolished and the Lot to be suitably landscaped so as to present a pleasing and attractive appearance.

2.19 Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of an improvement.

2.20 Vehicle Repairs. No dismantling or repainting of any type of vehicle, boat, machine, or device may be carried on, except within a completely enclosed structure which screens the sight and sound of the activity from the street and from other lots within the Property.

2.21 Storage of Gasoline and Explosives, Etc. No Lot shall be used for the storage of explosives, gasoline, or other volatile and/or incendiary materials or devices. Gasoline or fuel for an owner's lawn mower, snowblower, and the like may be maintained on a Lot on an incidental basis.

2.22 Trailers, Campers and Junk Vehicles. No boat, camper (on or off supporting vehicles), trailer, tractor, truck, industrial or commercial vehicle (both cabs or trailers), towed trailer unit, disabled, junk, or abandoned vehicles, motor home, mobile home, recreational vehicle, or any other vehicle, the primary purpose of which is recreational, sporting, or commercial shall be parked or stored in, on, or about any Lot or street within the Property, except within an attached garage or unless such vehicles are otherwise concealed from view. For the purposes of this covenant, any 3/4-ton or smaller vehicle, commonly known as a pickup truck, or operable passenger car ("Personal Vehicles") shall not be deemed a commercial vehicle or truck.

2.23 Air Conditioning and Heating Equipment. No heating, air conditioning, or refrigeration equipment shall be placed, allowed, or maintained anywhere other than on the ground; provided, however, that solar units meeting all governmental guidelines for residential uses may be located on the roof if such solar unit is built into and made an integral part of the roof flashing or the structure of any house constructed on such Lot within the Property.

2.24 Width of Houses. No house on a Lot located within the Property shall have a width of greater than thirty-five (35) feet as measured across the front lot line.

~~2.25~~ Affordable Housing Lots. Lots 6, 7, 20, 21, and 22 of the Kapushion Subdivision have been designated as Owner Occupied Affordable Housing Lots and are subject to the Town of Crested Butte 1995 Affordable Housing Guidelines, as they may be amended, and to a recorded Affordable Housing Covenant.

2.26 Sewer Line Maintenance. Lots 1 and 2; 3 and 4; 22 and 23; 24 and 25; 26 and 27; 28 and 29; 30 and 31; and 32 and 33; and Lot 5 and the Town park share common sewer connector line. The owners of said Lots, once developed, shall equally share all costs of maintenance, repair, and replacement of said sewer connector line, except damage caused by any negligent or intentional acts of either party shall be repaired by that party.

2.27 Measuring Heights. The elevation of each Lot, when the Declarant has finished installing utilities and grading, will be the elevation used by the Town when measuring the height of structures.

2.28 Maintenance of and Access to Utility Easements. No structures, other than fences, shall be built upon any utility easement located on the Property. Any fences or plantings within such easements may be removed for maintenance purposes. The Town or utility company maintaining a utility shall be liable only for returning the disturbed area to substantially the same grade as that existing prior to the disturbance.

ARTICLE 3.

DECLARANT'S RIGHTS AND RESERVATIONS

3.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain, and reserve certain rights as hereinafter set forth with respect to the property within the Property from the date hereof, until (a) the time that the last Lot within the Property has been sold and conveyed by Declarant to persons other than Declarant; or (b) the date which is ten (10) years from the recordation of this Declaration whichever event occurs first. The rights and reservations herein set forth shall be deemed excepted and reserved in each conveyance of property by Declarant whether or not specifically stated therein and in each deed or other instrument by which any property within the Property is conveyed by Declarant. The rights, reservations, and easements hereinafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other subsequent amendment.

3.2 Declarant's Rights to Use Property in Property in Promotion and Marketing of Property. Declarant shall have and hereby reserves the right to use those Lots which Declarant owns within the Property in connection with the promotion and marketing of the Property. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of such property such signs as Declarant may reasonably deem necessary or proper in connection with the promotion, development and marketing of real property within the Property. Declarant further reserves the right to permit prospective purchasers on such properties at reasonable times and in reasonable numbers.

3.3 Declarant's Rights to Complete Development of Property. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to: (a) complete the development of the property within the boundaries of the Property; or (b) construct or alter improvements on any property owned by Declarant within the Property. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals of any owner of a Lot within the Property to excavate, cut, fill or grade any property owned by Declarant or to construct, alter, demolish, or replace any improvements on any property owned by Declarant.

3.4 Declarant's Rights to Grant and Create Easements. Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements for access, utilities, drainage, water, and other purposes incident to development and sale of the Property located in, on, under, over, and across Lots owned by Declarant.

ARTICLE 4.

ENFORCEMENT

The Declarant and/or each owner of a Lot within the Property shall have the power to enforce the provisions of this Declaration. Without limiting the generality of the foregoing, Declarant and each owner of a Lot within the Property shall have the power to enforce the provisions of this Declaration by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration by mandatory injunction or otherwise or by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration. In any action or proceeding to enforce the provisions of this Declaration, the prevailing party in such action or proceeding shall be entitled to recover its costs and expenses in connection therewith including reasonable attorneys' fees.

ARTICLE 5.

MISCELLANEOUS

5.1 Term of Declaration. Unless amended as herein provided, each provision contained in this Declaration shall continue and remain in full force and effect for 20 years from the date of execution hereof, and thereafter shall be automatically extended for successive periods of ten (10) years each unless terminated by the vote of lot owners representing at least sixty-seven percent (67%) of the lots within the Property, and agreement of the Town. In the event this Declaration is terminated, the termination of this Declaration shall be evidenced by a termination agreement ("Termination Agreement"), or ratification thereof, executed by the requisite number of Owners. The Termination Agreement shall specify a date after which the Termination Agreement will be void unless recorded before such date. The Termination Agreement shall be recorded and the termination of this Declaration shall be effective upon such recording.

5.2 Amendment of Declaration by Declarant. Until all Lots subject to this Declaration have been conveyed by Declarant by a recorded deed, any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination, and with the consent of the Town for any amendment to those provisions of Article 1.4, Article 2, and Article 5.1.

5.3 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given their written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any

certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last lot within the Property owned by Declarant has been sold and conveyed by Declarant or within ten (10) years of the recordation of this Declaration, whichever event occurs first.

5.4 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction, and equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any person or entity entitled to enforce the provisions of this Declaration.

5.5 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Property, or any improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a separate writing.

5.6 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

5.7 Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado.

5.8 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

5.9 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine, or neuter genders shall each include the masculine, feminine, and neuter genders.

5.10 Captions for Convenience. The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

5.11 Disclaimer Regarding Safety. DECLARANT HEREBY DISCLAIMS ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE Property. ANY OWNER OF PROPERTY WITHIN THE Property ACKNOWLEDGES THAT DECLARANT IS ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN AND THAT DECLARANT IS NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE Property.

Exhibit A: Legal Description

A tract of land located in the S1/2, SE1/4, Section 34, T13S, R86W, 6th P.M., in the Town of Crested Butte, Gunnison County, Colorado, described as follows: beginning at a point on the South Line of said Section 34 (also the North R-O-W of Butte Ave. in the Town of Crested Butte) from whence the Southeast Corner of said Section 34 bears South 89 degrees 45 minutes 31 seconds East 1052.82 feet; thence North 00 degrees 01 minutes 42 seconds West 158.03 feet; thence North 86 degrees 26 minutes 05 seconds West 818.00 feet; thence North 00 degrees 01 minutes 42 seconds West 324.23 feet; thence South 89 degrees 58 minutes 18 seconds West 370.00 feet; thence South 00 degrees 01 minutes 42 seconds East 301.62 feet; thence North 86 degrees 26 minutes 05 seconds West 422.99 feet to the West line of said S1/2, SE1/4; thence South 00 degrees 59 minutes 56 seconds West 250.90 feet to the S1/4 Corner of said Section 34; thence South 89 degrees 45 minutes 31 seconds East 1604.31 feet to the point of beginning, containing 10.19 Acres more or less.

d:kapush30

LAND TO BE RETAINED BY RUTH KAPUSHION
(TRACT 1)

A Tract of land being part of the SE 1/4 of Section 34, T13S, R86W, 6th. P.M., Gunnison County, Colorado further described as follows:

Beginning at a point on the West boundary of said SE 1/4 whence the South 1/4 corner of said Section 34 bears S 00°59'56" E 250.90 FT.; Thence N 00°59'56" W 2578.98 FT. to the C1/4 of said Section 34; Thence N 89°19'58" E 778.20 FT. along the North boundary of said SE 1/4; Thence S 01°30'49" E 2062.00 FT.; Thence S 89°58'18" W 370.00 FT.; Thence S 00°01'42" E 301.62 FT.; Thence N 86°26'05" W 422.99 FT. to the point of beginning, containing 40.00 Acres.



M. H. Smith P.L.S. 10738



EXHIBIT A

AUG 30 1995
Photo Copy - No Original Signature
On Document When Received

*Kapushon
Revised
Easement
Survey*

