

00222341 Bk 0417 Pg 0643  
CRAIG J. SPERRY, JUAB COUNTY RECORDER  
2000 DEC 15 14:55 PM FEE \$49.00 BY DPZ  
FOR: KAY ENTERPRISES INC

NORTH CANYON ESTATES  
DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by Kay Enterprises, Inc., hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Juab, State of Utah, which is more particularly described as:

See Exhibit "A" for description of property.

NOW THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties of any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

00222341 Bk 0417 Pg 0644

**ARTICLE I**  
**DEFINITIONS**

**Section 1.** "Association" shall mean and refer to NORTH CANYON ESTATES HOMEOWNERS ASSOCIATION, its successors and assigns.

**Section 2.** "Owner" 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 a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 3.** "Property or Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 4.** "Common Area Shared Water System" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area Shared Water System to be owned by the Association at the time of the conveyance of the first lot is described as the water well and associated easements as shown on the recorded subdivision plat along with all equipment, lines, meters and other appurtenant parts of the water distribution system to from the well to and including the meter for each lot. The Common Area Shared Water System shall also include 3/4 acre foot of well water for cullinary purposes for the use of each Lot and one share of North Canyon irrigation water for the use of each lot.

00222341 Bk 0417 Pg 0645

**Section 5.** "Lot" shall mean and refer to any plot of land shown upon any recorded final plat map of the Properties with the exception of the Common Area Shared Water System.

**Section 6.** "Declarant" shall mean and refer to Kay Enterprises, Inc., its successors and assigns.

**Section 7.** "Building Area" shall mean and refer to the only portion of the Lot on which a home may be constructed.

## ARTICLE II

### PROPERTY RIGHTS

**Section 1. Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area Shared Water System which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a. The right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Common Area Shared Water System.

b. The right of the Association to suspend the voting rights and right to the use of the facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days

00222341 Bk 0417 Pg 0646

for any infraction of its rule and regulations as set forth in this Declaration and as may be published by the Board of Directors of the Association.

c. The right of the Association to dedicate or transfer all or any part of the Common Area Shared Water System to any public agency or authority for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded.

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area Shared Water System and facilities to the members of his family who reside on the property, his tenants, or contract purchasers who reside on the property.

**Section 3. Parking Rights.** Vehicle parking shall be confined to each Lot.

### ARTICLE III

#### EXTERIOR MAINTENANCE

**Section 1.** The exterior maintenance of each building and Lot shall be the responsibility of the individual Owner. Maintenance shall include paint, repair, replace and care for roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, walks, drives and other exterior improvements.

0022341 Bk 0417 Pg 0647

**Section 2.** In the event an Owner fails to maintain the exterior of his buildings and the appearance of his Lot in a manner satisfactory to the Board of Directors, then, after a resolution passed by at least two-thirds (2/3) of the Board, the Association shall have the right, through its agents and employees, to require such Owner to repair, maintain and restore such Private Areas to a standard consistent with the Development.

**Section 3.** Those Owners, having Lots on the perimeter of the development must conform with County Fire regulations respecting fuel break of minimum 100 feet. In event of failure of such Owners to maintain fuel break requirements, Association shall have the right to effect conditions of such County requirements and charge the defaulting Owner(s) for such costs.

**ARTICLE IV**

**DESCRIPTION OF PROPOSED PROJECT**

**Section 1.** LAND USE AND BUILDING TYPE. No lot shall be used except its primary purpose shall be for residential purposes within an agricultural setting. No building shall be erected, altered, placed or permitted to remain on any lot, other than a single-family dwelling and its accompanying garage and outbuildings. No commercial activity shall be permitted unless approved by the Lot Owners Association.

0022341 BK 0417 Pg 0648

**Section 2.** Maps. See Exhibit "A" for detailed site plan.

## ARTICLE V

### ENVIRONMENTAL CONSEQUENCES OF PROPOSED PROJECT

**Section 1.** Soil Erosion and Control of Erosion. The following steps shall be required to minimize the soil erosion potential on the development.

- a. Any vertical slope cuts for building pads shall be limited to a maximum of ten (10) vertical feet.
- b. All vertical slope cuts shall be either cribbed or revegetated with natural soils and planted with grasses.

**Section 2.** Waste Disposal Facilities. Liquid waste will be disposed of through the means of individually approved septic systems, holding tanks, or sewer connection for each Lot not serviced by sewer.

## ARTICLE VI

### RESTRICTIONS

**Section 1.** Size of Homes and Buildings. All single family dwellings must be a minimum of 1200 square feet of living space on the main level for two story homes, and 1800 feet for rambler style homes (exclusive of porches, patio, and garages). All barns and outbuildings must be designed to be compatible to the development. All

00222341 Bk 0417 Pg 0649

building plans, elevations, and materials are subject to review and approval of the Architectural Control Committee.

**Section 2. Residential Use.** Each Lot shall be occupied and used by its Owner only as a private residence dwelling for the Owner, his family, tenants and social guests and shall further conform to applicable zoning ordinance requirements of Juab County.

**Section 3. Building.** All home construction will be subject to a county building permit. Upon the request for a building permit, builders will submit a plan, approved by the Architectural Control Committee, to the Juab County Building Department. No mobile homes or manufactures homes shall be allowed. All buildings, including barns and outbuildings must have prior written approval of the Architectural Control Committee and are subject to approval and building permit of the Juab County Building Department. No dwelling or outbuilding shall be more than two stories above ground. All dwellings must be placed on a permanent concrete foundation and must have permanently attached steps or porch. The roofs of all dwellings must have at least 4/12 pitch and 12" eaves that extends horizontally outward from the side wall of the building. All dwellings must have a garage. Access to the garage shall be achieved by a concrete, paved or equivalent driveway with a minimum width of 10 feet. The garage may not exceed a capacity for three vehicles. The exterior finish of all residences and garages constructed on said lots shall be of earth tone colors.

**Section 4. Setbacks.** The Owner will follow the County Ordinance in its

requirement of setbacks from roads and property lines. In no event, however, shall setbacks be less than 50 feet on the front, 20 feet on sideyards, and 50 feet on the back.

**Section 5. Parking.** All permanent parking will be confined to the individual Lots, not on road right-of-ways or Common Area Shared Water System.

**Section 6. Solid Waste.** Initially solid waste shall be removed from each individual Lot Owner by delivering solid waste to centrally located waste bins. This procedure shall continue until such time as the Association shall elect to commence pickup at each individual property frontage, to be picked up on a scheduled basis by a designated waste disposal company. All solid waste shall be placed in containers approved of by the Association. Solid waste left around individual Lots or piled in an unsightly manner is not allowed.

**Section 7. Utility Lines.** All utilities, of whatever nature, must be constructed underground on any Lot. Utility poles are not permitted. Yard light poles are permitted if they can be turned off and on. No automatic lights are permitted.

**Section 8. Weed Control.** The Owner must prevent overgrowth on each Lot, and must conform with Juab County regulations. The Owner shall take all action as is necessary to prevent noxious weeds from spreading to adjacent property.

**Section 9. Unsightly Storage and Materials.** So as to preserve and protect the appearance of the development all unsightly objects such as trash piles, broken



00222341 BK 0417 Pg 0651

or unfinished buildings, worn-out unused vehicles, broken or inappropriate fencing, and or any other unsightly objects which devalue the surrounding area are not allowed. Individual Lots are not to be used as storage areas.

**Section 10. Alteration.** No Owner shall make structural alterations or modifications to his Lot and dwelling or other exterior attachments, antennas, (other than regular TV antennas), signs, (except property for sale signs), or advertising devices without the prior written approval of the Architectural Committee. The Committee shall not approve any alterations, decorations or modifications which would jeopardize or impair the soundness, safety or appearance of the development.

**Section 11. Inproper Activities.** No unlawful activities shall be carried on in any Lot or upon the Common Area Shared Water System, nor shall anything be done which may be a nuisance to the Owners. No Owner shall store any dangerous explosives or inflammable materials either in his dwelling, on his Lot, or upon the Common Area Shared Water System, or permit anything to be done or to keep or permit to be kept in his dwelling, on his Lot, or on the Common Area Shared Water System anything that will increase risk within the development.

**Section 12. Use of Common Area Shared Water System.** The Common Area Shared Water System shall not be used for storage of supplies, personal property or trash or refuse of any kind. No building shall be constructed on the Common Area Shared Water System.

**Section 13. Animals.** Owners desiring to keep animals on their Lots must be

00222341 Bk 0417 Pg 0652

approved by the Architectural Control Committee as to the number and types of animals they wish to keep. Guidelines established by the developer are as follows: No wild or dangerous animals shall be kept within the development. No swine or goats are allowed. A maximum of four large (defined as 100 pounds or more) and fifteen small domestic animals may be kept on each lot. A maximum of two dogs may be kept on each lot. Aggressive breeds of dogs are expressly prohibited. Dogs, cats or other household pets must meet licensing requirements of Juab County.

Watering facilities for animals shall be located within the area of the Lot and approved by the Architectural Control Committee. In approving water facilities the Committee shall determine that the proposed watering facility has a water control feature to prevent overflow and is located on a concrete base surrounded by a gravel area of not less than 10 feet.

Barbed wire fences shall not be used on any fences fronting the access road to any lot. The storage of hay shall be restricted to an area behind residences of at least 10 feet from neighboring Lot lines.

**Section 14. Temporary Housing.** No temporary residential housing of whatever nature shall be permitted. No structures such as trailer, basement house, tent, shack, garage, barn or other outbuilding shall be used at any time as a residence, either temporarily or permanently. No old or second-hand structures shall be moved onto any of said lots, it being the intention hereof that all dwellings and other buildings erected on said lots, or within said subdivision shall be of new

00222341 Bk 0417 Pg 0653

construction of good quality workmanship and materials.

## ARTICLE VII

### MEMBERSHIP VOTING RIGHTS

**Section 1.** Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 2.** The Association shall have two classes of voting membership.

Class A. Class A member(s) shall be all Owners with the exception of the Developer and shall be entitled to one vote for each Lot owned. When more than one person holds a interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determined, but in no event shall more that one vote be cast with respect to any Lot. The name of the person selected to exercise the vote for a Lot shall be advised to the Association in writing immediately upon such selection and at least two (2) weeks prior to any meeting where voting may take place.

Class B. Class B member(s) shall be the Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier.

00222341 Bk 0417 Pg 0654

- a. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- b. On December 31, 2002.

**ARTICLE VIII**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.**

The Declarant, for each Lot owned within the Properties, 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 to the Association assessments that are approved by the Homeowners Association, such assessments to be established and collected as hereinafter provided. The usage fees, operating assessments, assessments for reserves and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, cost, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fee is due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. The lien shall pass and run with the land.

**Section 2. Purpose of Assessment. The assessments levied by the**

00222341 Bk 0417 Pg 0655

Association shall be used exclusively to:

- a. Promote the recreation, health, safety, and welfare of the residents in the Development;
- b. For the improvement and maintenance of the Common Area Shared Water System; and
- c. To pay the cost for asphalt on one-half of the road north of the property, as may be required by Juab County. Each lot shall bear 1/5 of said cost.

**Section 3. Assessments.** Each lot owner is obligated to pay and discharge all assessments and charges levied by the Association as set forth below:

a. Monthly Usage Fee. A monthly Usage Fee shall be assessed based upon water usage. The Lot Owners Association shall agree upon an individual or individuals to read the meters each month and bill each lot owner for the pumping expenses according to usage.

b. Operating Assessment. The Lot Owners Association shall have the authority to assess an additional fee for operating expenses including but not limited to assessments payable on water shares owned by the Association and professional services. The operating assessment shall be in such amount and payable at such times as determined by a majority of the Lot Owners. Until January 1 of the calendar year immediately following the conveyance of the first lot to an owner, the monthly assessment shall be \$25.00 per lot. Thereafter, the monthly assessment may be

00222341 Bk 0417 Pg 0656

increased or decreased each calendar year beginning with the 1st day of January by the majority vote of the Lot Owners Association.

c. Special Assessments. Special assessments for capital improvements that are approved by the Lot Owners Association or for improvement of the road north of the property as may be required by Juab County.

d. Reserve Fund A Reserve Fund shall be established to provide for the payment of all estimated expenses growing out of the repair and maintenance of the common area shared water system and for the payment of fees and costs associated with the enforcement of these restrictive covenants. The assessment for the Reserve Fund shall be suspended upon said Fund reaching the amount of Ten Thousand Dollars (\$10,000.00), and shall continue upon said Fund falling below said amount. The ceiling for the Reserve Fund may also be increased or decreased each calendar year beginning with the 1st day of January by the majority vote of the Lot Owners Association.

**Section 4. Effective 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 assessments provided for herein by non-use of the Common Area Shared Water System or abandonment of his Lot.

00222341 BK 0417 Pg 0657

**Section 5. Subordination of the Lien to Mortgages.** 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 proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become 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 IX

#### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, material and location of the same shall have been submitted to and approved in writing as to harmony or external design and location by the Lot Owners Association of said subdivision and the Zoning Committee of Juab County. In the event the Association, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

00222341 Bk 0417 Pg 0658

**ARTICLE X****INSURANCE**

**Section 1. Types of Insurance.** The Association shall obtain from insurance companies licensed to do business in the State of Utah and shall keep in full force and effect at all times the following types of insurance covering the Common Area Shared Water System and shall pay the premiums thereon as a Common Expense:

a. **Casualty Insurance.** The Association shall obtain a policy or policies of insurance on the Common Area Shared Water System and facilities of the project in such amounts as shall provide for the maximum insurable replacement thereof in the event of damage or destruction. Such insurance shall include, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

b. **Public Liability and Property Damage Insurance.** The Association shall obtain a broad form of comprehensive liability insurance coverage, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death, and property damage. Coverage shall include without limitation liability for operation of automobiles on behalf of the Association and all activities in connection with the ownership, operation, maintenance, and other use of the Common Area Shared Water System or any portion



00222341 Bk 0417 Pg 0659

thereof.

## ARTICLE XI

### GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, and management policies, and reservations, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or 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 2. Severability.** Invalidations of any one of these covenants and restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (80%) of the Lot Owners, and thereafter by an instrument signed by not less than sixty percent (60%) of the Lot Owners. Any amendment must also be approved by the Board of County Commissioners, and must be recorded in the office of the County Recorder before such amendment shall become effective.



EXHIBIT A

BOUNDARY DESCRIPTION

Beginning at a Point on the Westerly Right of Way of Old Highway 91 which is  $N89^{\circ}49'52''W$ , 26.36 feet along the Section line from the North Quarter Corner of Section 20, Township 11 South, Range 1 East, Salt Lake Base and Meridian; Thence as follows:  
 $N89^{\circ}49'52''W$ , 409.27 feet along the North line of said Section 20,  
 $S00^{\circ}05'16''E$ , 660.01 feet to a point which is 660.00 feet perpendicular from the North line of said Section 20,  
 $S89^{\circ}49'52''E$ , 320.00 feet paralleling said North line to the Westerly Right of Way of Old Highway 91,  
 $N07^{\circ}37'11''E$ , 666.62 feet along said Right of Way to the point of beginning.  
 Containing an Area of 6.525± Acres.

Basis of Bearing=  $N89^{\circ}49'52''W$ , The North line of the NW¼ of Section 20, T.11S., R.1E., S.1B. & M.

SITE PLAN

