

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR PERL ISLAND RANCH

THIS DECLARATION, made on the date hereinafter set forth by HARLEY D. HESS, STEPHEN W. ANDERSON, ERVIN K. TERRY and WALTER G. HANNI, hereinafter referred to as "DECLARANTS".

## W I T N E S S E T H:

WHEREAS, Declarants, are the owners of certain property located in the Kenai Peninsula Borough, State of Alaska, which is more particularly described as:

Tracts 1 and 2 Per Island Subdivision, a subdivision of U.S. Survey 4781, Seldovia Recording District, Third Judicial District, State of Alaska. (Containing approximately 156.70 acres.)

NOW THEREFORE, Declarants hereby declare 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 preserving insofar as possible, the present natural beauty, view and natural surroundings of the property, and to enable the owners to operate the property as a ranch, a hatchery, as well as for single family dwelling and recreational use. Declarants hereby declare that the property and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved and otherwise affected in any manner subject to the provisions of this Declaration, which is further declared to be for the benefit of the property and each and every owner thereof. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens to the Declarants, their successors and assigns, and all parties hereafter owning any interest in the property.

ARTICLE I.

DEFINITIONS

Section 1. "Declarants" means Harley D. Hess, a single man, of Homer, Alaska, and Stephen W. Anderson, Ervin K. Terry and Walter G. Hanni of Anchorage, Alaska, their 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 an undivided interest in the property, including contract sellers and contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to that certain real property hereinbefore described.

Section 4. "Committee" shall mean and refer to ranch committee created by these covenants and its successors.

Section 5. "Area Use Parcel" shall mean any parcel of property containing approximately forty thousand (40,000) square feet shown as a separate numbered parcel on the master ranch plan map in possession of Declarants and the Committee, and on which the owner will be entitled to build one single family dwelling.

Section 6. "Ranch Area" shall mean all of the real property owned by Declarants, except the Area Use Parcels, which said Ranch Area is for the common use and enjoyment of the owners and additionally said Ranch Area can be operated as a ranch, lodge and fish hatchery.

ARTICLE II.

RANCH COMMITTEE

Section 1. General Purpose. The Ranch Committee has been formed to perform functions as provided in this Declaration and to further the common interests of all owners of property which may be subject, in whole or in part, to any or all of

the provisions, covenants, conditions and restrictions contained in this Declaration. The committee shall be obligated to and shall assume and perform all functions and obligations imposed on it or contemplated for it under this Declaration and amendments thereto with respect to any property now or hereafter subject to this Declaration. The Committee shall have all powers necessary or desirable to effectuate these purposes. A majority vote of the Committee shall be binding.

Section 2. Membership. The Ranch Committee is composed of Stephen W. Anderson, Ervin K. Terry and Walter G. Hanni, of Anchorage, Alaska, and Harley D. Hess, of Homer, Alaska.

Section 3. Voting Rights. The owners shall have two classes of voting membership:

Class A. Class A members shall be owners with the exception of Declarants and shall be entitled to one vote for each undivided 1/35th interest in the property owned. When more than one person is an owner of an undivided 1/35th interest, all such persons shall be members. The vote for such undivided 1/35th interest shall be exercised as they among themselves shall determine, but in no event shall more than one vote be cast with respect to any undivided 1/35th interest.

Class B. The Class B members shall be the Declarants and shall be entitled to two (2) votes for each undivided 1/35th interest in the property owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in Class B membership.

It is intended by this section that Declarants shall be entitled to cast a majority of all votes entitled to be cast on any matter voted upon by the owners until Class B membership ceases.

Section 4. Term of office. Each member of the Ranch Committee shall serve as such until his successor is duly appointed or elected as hereinafter provided.

Section 5. Vacancies In the event of the death, resignation, incompetence or inability of a committee member to serve, the remaining committee members or member, if there be but one serving at the time, may fill such vacancies.

Section 6. Removal of Committee Member. A majority of the voting membership may at any time, with or without cause, remove any one or all of the committee members, and in the event such removal, may by a majority vote of the voting membership fill the vacancy resulting from such removal. Such action of the voting membership may be evidenced by recording a written instrument in the office where these covenants are recorded stating the action taken and the names and addresses of the new committee members.

ARTICLE III.

COMMON AREAS

Section 1. Owners' Enjoyment of. Every owner shall have a right of enjoyment in and to the Common Area insofar as it does not unreasonably interfere with the operation of the property as a ranch, fish hatchery and lodge, subject to the following provisions:

(a) The right of the Committee to charge reasonable assessments and other fees for the use of any facility situated upon the Common Area, except the potential lodge and fish hatchery.

(b) The right of the Committee to suspend the voting rights and right to use of the facilities by an owner for any period during which any assessment against his undivided interest remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

ARTICLE IV.

COVENANT FOR MAINTENANCE AND IMPROVEMENT ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarants, for each undivided interest owned within the property, hereby covenant, and each owner for any such undivided interest by acceptance of a deed or contract of sale therefor, whether or not it shall be so expressed in such deed or contract, including declarants, is deemed to covenant and agree to pay to the Committee:

- (1) Annual assessments or charges to be used for such things as, but not limited to, maintenance and repair of common areas and facilities located thereon, roadways, airstrips and other similar items, and
- (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees shall be a charge on the land and the improvements thereon and shall be a continuing lien against such property. Each such assessment, together with interest, costs 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 was made. Anyone purchasing an undivided interest in the property with a delinquent assessment shall be jointly and severally liable therefor, with the Seller, or owner of record.

Section 2. Purpose of Assessments. The assessments levied by the Committee shall be used exclusively to promote the recreation, health, safety, and welfare of the owners of the property and for the improvement and maintenance of the Common Areas, roadways, fences, airstrips, and structures and facilities situated upon the property.

Section 3. Special Assessment for Capital Improvements.

In addition to the annual assessments authorized above, the Committee may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any purchase, construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of a majority of the combined votes of both classes of membership entitled to vote and who are voting in person or by proxy at a meeting by the Committee or ten per cent (10%) of the owners for this purpose.

Section 4. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or any other action where approval of the owners is required shall be sent to all owners not less than ten (10) days nor more than thirty (30) days in advance of the meeting, which said meeting may be held on the property, any place in Homer, or Anchorage, Alaska, or at such other place in the State of Alaska as may be designated by the Committee. At such meeting called, the presence of members or of proxies entitled to cast fifty per cent (50%) or more of all the combined votes of both classes of membership shall constitute a quorum for any action authorized under Section 3 of this Article.

Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all undivided interests and may be collected on a monthly basis.

Section 6. Date of Commencement of Annual Assessments.  
Due Dates. The annual assessments provided for herein shall commence as to all owners and their undivided interests in

the property on the first day of the month following the levy. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the annual assessment and amount thereof shall be sent by the Committee to every owner subject thereto at least thirty (30) days in advance of the due date of such assessment. Due dates of such assessments shall be established by the Committee and so stated in the notice.

Section 7. Non-Payment of Assessments. Any assessment, whether annual or special, not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten per cent (10%) per annum. The Committee, as agent for all other owners, may bring an action at law against anyone personally obligated to pay the same, or foreclose the lien against the property, or may cancel the Area Use Lease, or take such other action as may be authorized by law or in equity. The owner may not waive or otherwise avoid liability for the assessments provided for herein by non-use of the ranch property or any part thereof or by abandonment of his interest in the ranch property.

Section 8. Subordination of the Lien to Mortgages or First Deeds of Trust. The lien for the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. The sale or transfer of any undivided interest in the ranch property shall not affect the assessment lien.

Section 9. Tax Assessments. Each holder of an undivided interest shall be responsible for his pro rata share of annual property tax as assessed from time to time by the local governmental taxing authority and as further determined and notified by the Ranch Committee. Any taxes assessed on the improvements made by any interest holder shall be the

sole responsibility of such interest holder and shall be paid along with the pro rata share of property tax as above explained. All such taxes as assessed and determined by the Ranch Committee as due and owing are final and are due and payable within thirty (30) days of notice thereof. Any unpaid taxes shall constitute a lien against that holder's undivided interest. Each owner shall notify the Committee by registered mail of any address change, return receipt requested.

ARTICLE V.

ARCHITECTURAL CONTROL

Section 1. Approval by Committee. No building, fence, wall or any structure shall be commenced, erected, or maintained upon the property, nor shall any exterior addition to or change or alteration therein be made, nor shall any excavating, alteration of any stream or clearing, removal of shrubs or trees or landscaping on any area use parcel within the property be done unless and until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Committee. If the 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. In order to obtain such approval, the owner must submit for consideration of the Committee such details and information with relation to the contemplated action as the Committee shall request.

Section 2. Variances. The Committee may, in its sole discretion, by an affirmative vote of a majority of the members thereof, allow reasonable variances as to any of the



covenants and restrictions contained in this instrument, on such terms and conditions as it shall require.

Section 3. Committee Not Liable. The Committee shall not be liable in damages to any persons submitting any plans for approval, or to any owner of the property, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such plans. Any person acquiring an interest in the property or any person submitting plans to the Committee for approval, by doing so shall be deemed to have agreed and covenanted that he will not bring any action or suit to recover damages against the Committee, its members as individuals, or advisors, employees or agents, for any action, failure to act, approval, disapproval, or failure to approve or disapprove any plans.

ARTICLE VI.

GAME CONTROL

Established by Committee. In the event of a bird, fish or game population existing on the property, whether natural, cultivated, or imported, the Committee shall be empowered to create rules and harvest limits for all owners, their guests and other persons on the property. All said rules and harvests will be subordinate to the current Alaska Department of Fish and Game Hunting and Fishing Regulations, as well as federal regulations.

ARTICLE VII.

GENERAL RESTRICTIONS ON PROPERTY

Section 1. Zoning Regulations. The property shall never be occupied or used by or for any building or purpose or in any manner which is contrary to the zoning regulations applicable thereto validly enforced from time to time.

Section 2. Land Use and Building Type. No area use parcel shall be used except for residential purposes, excepting use area number one (1) as described in Lodge Option Lease.

No building shall be erected, altered, placed or permitted to remain on any area use parcel other than one detached single-family dwelling not to exceed two stories in height and a private garage or carport for vehicles, airplanes or boats.

Section 3. Building. No residential building shall be constructed closer than fifty (50) feet to the side and rear lines of the area use parcel and no closer than twenty-five (25) feet to the front line, provided these restrictions shall not apply to overhanging eaves, open porches, steps, stairways or retaining walls.

Section 4. Sewage and Water System. No sewage disposal system or water system shall be constructed on any area use parcel which does not meet with the standards or requirements of state and local governmental entities and that do not meet with the approval of the Committee.

Section 5. Nuisances. No noxious or offensive activity shall be carried on upon any area use parcel, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any of the other owners.

Section 6. Temporary Structures. No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any area use parcel at any time as a residence, either temporarily or permanently. Such structures may be used as a residence temporarily during construction of a permanent residence with the approval of the Committee. No housetrailer, mobile home, camper, tent, shall be parked on any area use parcel except when it is authorized to be used as a temporary residence in accordance with the Covenants.

Section 7. Livestock. No animals may be kept on Ranch Property without the express written consent of the Committee. The Committee may allow some animals to be kept on Ranch

Property in accordance with rules and regulations that will be promulgated by the Committee. The rules will be designed to insure the safety and tranquility of the ranch.

Section 8. Oil and Mining Operation and Commercial Access.

No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted on the property without the written consent of the Committee. The granting of access onto or through the property for commercial purposes will require the written consent of the committee.

Section 9. Garbage and Refuse Disposal.

No part of the property including the area use parcels shall be used or maintained as a dumping ground for rubbish, garbage or trash without the approval and consent in writing of the Committee. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each owner shall be responsible for removing their own garbage or other waste regularly and to see that garbage and waste do not accumulate, all to the end that the ranch may be kept in a neat and sanitary condition.

Section 10. Maintenance of Property.

All area use parcels and all improvements on the same shall be kept and maintained by the owner thereof in clean, safe, attractive and sightly condition and good repair. In the event of a dispute regarding this section, the decision of the Committee is binding.

Section 11. No Hazardous Activities.

No activities shall be conducted on any area use parcel and no improvements constructed thereon which are or might be unsafe or hazardous to any person or property.

Section 12. Rules and Regulations.

No owner shall violate the rules and regulations for the use of the area

use parcels as adopted from time to time by the Committee. No such rules and regulations shall be established that violate the intention or provisions of this Declaration or which shall unreasonably restrict the use of such parcel by the owner thereof.

ARTICLE VIII.

LEASES

Section 1. Lodge Lease. The Committee is authorized on behalf of all existing owners and all persons hereafter acquiring an interest in the property to execute and deliver a Lodge Lease to the appropriate person for the purpose of that person operating the property as a Lodge insofar as that does not unreasonably interfere with the recreational use of the ranch by the owners. The initial Lodge Lease shall be granted to Declarant, Harley D. Hess. At the termination of said initial lease, the Committee is authorized and empowered on behalf of all owners of the property including Declarant, Harley D. Hess, to execute and deliver a Lodge Lease authorizing the Lessee, under reasonable terms and conditions to be fixed by the Committee, to operate that portion of the ranch property as a lodge, provided that such operation shall not unreasonably interfere with the recreational use of the property by the owners thereof.

Section 2. Fish Hatchery Lease. The Committee is authorized on behalf of all existing owners and all persons hereafter acquiring an interest in the property to execute and deliver a Fish Hatchery Lease to the appropriate persons for the purpose of those persons operating the property as a Fish Hatchery insofar as that does not unreasonably interfere with the recreational use of the ranch by the owners. The initial Fish Hatchery Lease shall be granted to Declarants, Harley D. Hess, Stephen W. Anderson, Ervin K. Terry and Walter G. Hanni. At the termination of said initial lease, the Committee is authorized and empowered on behalf of all

owners of the property including Declarants to execute and deliver a Fish Hatchery Lease authorizing the Lessee, under reasonable terms and conditions to be fixed by the Committee, to operate that portion of the ranch property as a Fish Hatchery, provided that such operation shall not unreasonably interfere with the recreational use of the property by the owners thereof.

Section 3. Area Use Lease. The owner or owners, if there be more than one, of each undivided 1/35th interest in the ranch property shall be entitled to a lease of one area use parcel containing approximately forty thousand (40,000) square feet for the purpose of constructing, maintaining and using a single family dwelling thereon. The Committee on behalf of all existing owners, including Declarants and all persons who may hereafter become owners of an interest in the ranch property is authorized and empowered and directed to execute on behalf of all such owners a lease in favor of each person or persons acquiring an undivided 1/35th interest for a primary term of fifty (50) years, with an option to renew for an additional fifty (50) year term. The Committee shall include in said lease such other reasonable terms and conditions, not inconsistent with these covenants as may seem to be to the best interests of the property and the owners thereof.

Section 4. Area Use Lease Appurtenant. Each Area Use Lease is deemed appurtenant to each undivided 1/35th interest in the ranch property and a transfer, sale or conveyance of such undivided interest carrier with it, whether stated in the instrument of transfer, sale or conveyance or not, the Area Use Lease. A transfer, sale or conveyance of either the undivided 1/35th interest or the Area Use Lease without a transfer, sale or conveyance of the other is hereby prohibited and declared null and void.

Section 5. No Division of Each Undivided 1/35th Interest.

There can be no division of or transfer, sale, or conveyance of anything less than each entire 1/35th interest in the ranch property, or, stated differently, a transfer, sale or conveyance of each undivided 1/35th interest in the ranch property must be of the entire 1/35th interest and no lesser or smaller portion thereof.

Section 6. Termination of Area Use Leases by Owners.

In the event six (6) years from the date of this declaration the ranch owners owning at least eighty per cent (80%) of the ranch property determine that there is a higher and better use available for it and direct the Committee in writing of such determination together with a request that all existing Area Use Leases be cancelled, the Committee shall forthwith give notice to all Area Use Lessees that such determination has been made by ranch owners owning at least eighty per cent (80%) of the undivided interest in the ranch property and that all Area Use Leases, the Hatchery Lease and the Lodge Lease are cancelled. In the event all Area Use Leases, the Lodge Lease and the Hatcherty Lease are so cancelled, Lessees shall be entitled to be paid the fair market value of all improvements placed on the demised premises and shall become a part of the ranch property.

Section 7. Appointment of Appraisers and Payment of Fair Market Value. In the event the parties shall fail or neglect to make an endeavor to agree or shall be unable to agree upon the fair market value for such improvements, the same shall be fixed or determined in the following manner:

The Committee shall pick three (3) appraisers held to be competent in their field, from which the lessee shall pick one and the results of that appraisal shall be binding on the parties.

The fees of the appraisers and the reasonable and

necessary costs and expenses incurred by or through them shall be defrayed one-half by the owners and one-half by the Lessee.

ARTICLE IX.

GENERAL PROVISIONS

Section 1. Enforcement. The Committee, or 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 hereafter imposed under the provisions of this Declaration. Failure by the Committee or by any owner to enforce any such restriction, condition, covenant, reservation, lien or charge shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of forty (40) 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 ranch property has been recorded changing said covenants in whole or in part.

Section 3. Severability. Invalidation of any one of these covenants by judgment or court order or otherwise shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 4. Amendments. At any time while any provision, covenant, condition or restriction contained in this Declaration or amendment thereto, is in force and effect, it may be amended or repealed by the recording of a written instrument specifying the amendment or repeal, executed by owners representing sixty-five percent (65%) of the combined votes of both classes of membership entitled to vote.

Section 5. Limited Liability. Neither Declarants, the Committee, or any member, agent or employee of any of the

same shall be liable to any part for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith.

DATED this 5<sup>th</sup> day of SEPTEMBER, 1978.

Harley D. Hess  
Harley D. Hess

Stephen W. Anderson  
Stephen W. Anderson

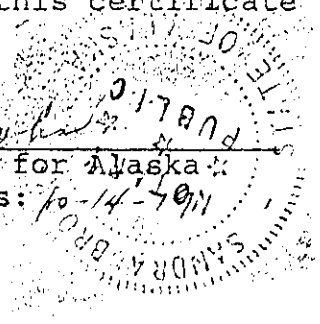
Ervin K. Terry  
Ervin K. Terry

Walter G. Hanni  
Walter G. Hanni

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 5<sup>th</sup> day of September, 1978, before me, the undersigned Notary Public in and for Alaska, personally appeared, HARLEY D. HESS, known to be the individual named in and who executed the above and foregoing Declaration of Covenants, Conditions and Restrictions for Perl Island Ranch, and he acknowledged to me the execution thereof as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

Andrea Brooker  
Notary Public in and for Alaska  
My commission expires: 10-14-80  


STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 5<sup>th</sup> day of September, 1978, before me, the undersigned Notary Public in and for Alaska, personally appeared STEPHEN W. ANDERSON, ERVIN K. TERRY and WALTER G. HANNI, known to be the individuals named

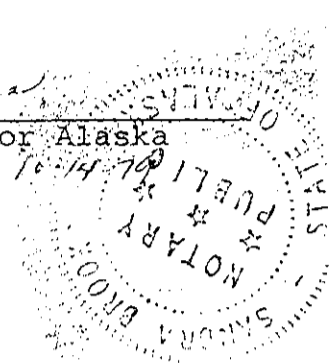


in and who executed the above and foregoing Declaration of Covenants, Conditions and Restrictions for Perl Island Ranch, and they acknowledged to me the execution thereof as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hercunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

*Arden K. ...*

Notary Public in and for Alaska  
My commission expires: *10-14-79*



*78-192*

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| Requested by <i>Hess for</i>     |
| Address <i>Hahn &amp; Jewell</i> |