

11-170331  
12-10-93  
4:07

DECLARATION OF RESTRICTIVE COVENANTS

and

RESERVATION OF LAND USE EASEMENT

THEODORE TERRY, married dealing in his separate property, owner of the 152.53-acre tract of Taos County realty more particularly described in Exhibit A hereto (hereinafter "Declarant") hereby declares and imposes the following restrictive covenants upon a portion of the Exhibit A tract, and hereby gives notice of his intent in the event of sale of all or part of the Exhibit A tract to create the following scenic and conservation land use easement across a portion of the Exhibit A tract, as follows:

1. Restrictive Covenants. The portion of the Exhibit A tract up to 100 feet from the edge of the rim overlooking the Rio Pueblo de Taos is hereby restricted as follows:

A. No garbage, refuse, rubbish or cuttings shall be deposited on any street, road or entrance, except in proper containers on collection days.

B. No clothes lines, drying yards, service yards, wood piles or storage areas shall be so located as to be visible from a street, road, or adjacent properties.

C. Any exterior lighting shall either be indirect or of such controlled focus and intensity as not to disturb the residents of other property. No lights shall be installed that are over 8' high.

D. Owners and occupiers of residences upon the land shall exercise extreme care not to disturb other owners, occupiers and residents of adjacent properties with excessive noise, including but not limited to, motor vehicle noises, motor noises, radios, musical instruments, amplifiers and speakers, noises from fire and burglar alarm systems, barking dogs, honking geese, and other excessive animal or bird noises. Permitted animals, subject to the foregoing restriction against excessive noise, are horses, dogs, cats, and fowl. No pigs and no commercial animal activity are permitted.

E. No tent structure, camper, recreational vehicle, motorcycle, trail bike, snowmobile, boat, trailer, motor coach or mobile home of any kind (or structure which was once a motor coach or mobile home but has had wheels removed) or any prefabricated house or structure of any kind shall be parked, placed erected or used upon the property. No trucks, or commercial vehicles (other than pick-ups) shall be parked or maintained on the land; however, this restriction shall not restrict trucks from driving upon the land, nor shall this restriction restrict trucks or commercial vehicles within the land which are necessary for the maintenance of the property and adjacent properties. Motorcycles, recreational vehicles, trail bikes, snowmobiles, boats, trailers and motor coaches may be parked upon the subject property as long as they are in an enclosed, fenced area.

F. No unused automobiles or other unused vehicles shall be parked or repaired on the land, except within the fenced area.

G. The native growth on the property shall not be destroyed or removed from said property, except such native growth as it may be necessary to remove for the construction and maintenance of roads, driveways and improvements.

H. Any tanks for use in connection with any single family dwelling, including tanks for the storage of liquified petroleum gas and fuel oil, gasoline or oil, or water must conform to state regulations and be buried, or screened sufficiently to conceal them from the view of contiguous properties.

I. All electrical, telephone, cablevision and other utilities or communication lines shall be underground, including all such lines constructed or erected between improvements on the land; gas-driven generators are prohibited.

J. No brush, trash or other material shall be burned on the land.

K. No signs shall be erected or permitted on any lot, except a sign or signs giving the name and address of the owner or occupant, and relator's signs and "for sale" signs not exceeding six (6) square feet in size.

L. The described property shall be for single-family dwelling purposes only including such guest houses and outbuildings as are incident to such single family living purposes. The main structure shall be a minimum of 1,500 square feet, excluding portals, courtyards, garages, ramadas, and other outbuildings. No more than one such residence and one guest house shall be constructed within a building zone delineated by Declarant pursuant to paragraph M below.

M. No improvement shall be placed upon the land except within building zones to be specifically delineated by Declarant in his conveyance(s) of all or any portion(s) of the Exhibit A tract.

N. Recommended architectural styles are to provide a sense of New Mexico's rich and varied architectural history. The following styles are recommended, not mandated. All architectural plans must be submitted to an architectural review board to be appointed by Declarant in the event of sale of all or a portion of the Exhibit A tract to owner(s) who desire to build. Plans must be submitted at the preliminary design phase and again upon completion of construction documents. Any change orders submitted to contractors or builders shall also be submitted to the architectural review board. Colors used should be desert tones; some atmospheric colors not to be excluded, subject to approval of review board.

I encourage individual research and involvement in architectural and historical period details. These architectural covenants are not intended to inhibit the creative process but rather to provide guidelines and set the tone and flavor for the entire project. These guidelines are as follows:

1. Territorial Style - Greek revival; influenced by Thomas Jefferson and Monticello; the style arrived with the Cavalry in the 1850's; motifs include square columns, colonnades, brick parapets, triangular and rectilinear pediments over doors and windows lentils and flat roofs.

2. Spanish Pueblo Revival - Taken from Indian and early Spanish in New Mexico; motifs include adobe or adobe covered walls, flat roofs, sloping buttresses, irregular massing, rough-hewn wood lintels, round log columns, vigas, corbels, wooden canales, hewn column capitals, ladders and grills.

3. New Mexico Gabled Vernacular - Simple native structures enhanced by a combination of different architectural elements from many styles; often including Queen Anne and Gothic revival; motifs included spindles and columns, capitals and corbels, gables, and scroll-cut gingerbread; all of these lending an air of playfulness to the structure. Pitched roofs were a result of the availability of tin and other metals brought in by the railroad.

4. Landscape design should include native grasses, plants indigenous to the area; low maintenance, low water requirements for plant material; all designs subject to approval of architectural review board. All fences and gates are not to exceed six (6) feet in height; chain link fences are prohibited. Fencing must comply with historical architectural concepts and must be approved by review board.

5. Any outbuilding must follow same architectural guidelines as other structures, no prefabricated structures shall be allowed; all buildings must be approved by review board.

6. Energy efficiency requirements shall be a minimum of six (6) inches insulation in walls and twelve (12) inches in ceilings. I encourage vapor barriers and house wraps. Passive solar and photo voltaic systems are acceptable. Insulated glass, low volume toilets, high quality wood windows are required.

Architectural review board fee is \$360.00. This includes review of preliminary and construction documents. Any additional reviews, i.e., fencing, landscape design, outbuildings shall be billed at an hourly rate of \$40.00, not to exceed four (4) hours.

The foregoing restrictions run with the land, burdening such portion(s) as Declarant may sell and benefitting other portion(s) either sold or retained by Declarant as well as benefitting Declarant personally. In addition to supplemental restriction as to size and location of building sites provided for in subparagraph M above, Declarant reserves the right to further supplement the foregoing in such ways, for example, as location of interior access roads and driveways and parking areas and imposition of roadway and utility line construction and/or maintenance agreements. In the event of an action to specifically enforce, enjoin violation of, and/or for damages for breach of, one or more of the foregoing restrictions, the prevailing party shall additionally be entitled to a reasonable attorney fee.

2. Land Use Easement.

Declarant hereby gives notice of his intent, in the event of sale or other transfer of all or a portion or portions of the Subplot A tract, to reserve a scenic and conservation land use

easement across the portion of the Exhibit A tract not restricted by the restrictive covenants contained in paragraph 1 above, namely the portion of the Exhibit A tract lying between the northwesterly boundary that is the approximate centerline of the Rio Pueblo de Taos up to 100 feet beyond the edge of the rim overlooking said river, as follows:

A. Said easement, which shall be perpetual, shall reserve the rights to Declarant, exclusively for the purposes of conserving, enhancing, rehabilitating, and forever maintaining the current natural, scenic, and open character and wildlife habitat of said easement area:

1) to prohibit within the easement area a) construction of any structures or other man-made improvements whatsoever, such as by way of example only buildings, fences, utilities, impervious surfaces, roadways, and forts, b) cutting or otherwise damaging any timber, flora, or fauna, c) hunting, d) mining, or any other kind of commercial activity, e) dumping or accumulation of any kind of refuse, f) other removal, rearrangement, disturbance, defacing of any natural material such as rim rock, and g) any other activity inconsistent with the foregoing purposes;

2) to limit human use of the easement area exclusively for fishing, nature walks, scenic observation, picnicking, swimming, sunbathing, and other similarly passive and benign activities consistent with the foregoing purposes; and


3) to allow Declarant as holder of such reserved easement to designate and improve certain walkways as access down the rim area to the river area and along the top of the rim area, and to reintroduce or supplement such wildlife and/or flora and fauna as he may determine is consistent with rehabilitation or rejuvenation of the easement area's fully natural, scenic, open and wild nature.

B. In the event of Declarant's sale or other transfer of the entire Exhibit A tract, Declarant reserves the right either to reserve the foregoing scenic and conservation land use easement as an easement in gross for the benefit of himself, or to grant the foregoing scenic and conservation land use easement to a nonprofit corporation, nonprofit association, or nonprofit trust the purposes and powers which include retaining and protecting natural and open space values of real property pursuant to the New Mexico Land Use Easement Act, or to reserve the easement in gross for the benefit of himself with however Declarant's right subsequently to grant same as a land use easement under said Land Use Easement Act.

C. In the event of Declarant's sale or other transfer of a portion or portions of the Exhibit A tract, Declarant reserves the right to reserve the foregoing scenic and conservation land use easement as an easement appurtenant to and benefitting and burdening both the sold portion(s) and the unsold portion with however Declarant's right subsequently to assign same as a land use easement under the New Mexico Land Use Act. In the event of sale or other transfer of a portion or portions of the Exhibit A tract the owner(s) of each sold portion(s) would according have the right to the specified use and enjoyment of the full easement area, including on the unsold portion(s) and on other sold portions, and Declarant as owner of the unsold portion(s) would similarly have the reciprocal right to the specified use and enjoyment of the full easement area including on the sold portion(s). Declarant presently has no plan to sell or otherwise transfer any specific number of portions of the Exhibit A tract nor to limit the size of such portions to any certain size or configuration.

D. Upon formalization of the foregoing easement rights, whether by reservation or grant, whether in gross, appurtenant, or a land use easement as defined in the New Mexico Land Use Easement Act, and whether upon sale or other conveyance of whole or part(s) of the Exhibit A tract, Declarant may in his discretion supplement or alter the foregoing specified uses and limitations of the easement including by way of adopting rules and regulations relating to administration and enforcement thereof.

DATED December 10, 1993.

  
\_\_\_\_\_  
THEODORE TERRY  
Declarant

STATE OF NEW MEXICO        )  
  ) ss  
COUNTY OF TAOS            )

The foregoing instrument was acknowledged before me this 10 day of December, 1993, by Theodore Terry.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

August 7, 1994

