

**SECOND SUPPLEMENT
 TO DECLARATION OF RESTRICTIVE COVENANTS AND
GRANT OF EASEMENTS
 THE RIVERBEND SUBDIVISION
 TAOS COUNTY, NEW MEXICO**

This Second Supplement to Declaration of Restrictive Covenants and Grant of Easements is dated this 6th day of NOVEMBER, 2008 (this "Second Supplement"), by Theodore W. Terry, a married resident of the State of New Mexico dealing with his sole and separate property, Owner of the Real Estate legally described on Exhibit "A" attached hereto and hereby made a part hereof, and is intended to further supplement and amend that certain Declaration of Restrictive Covenants dated December 15, 1993, filed in Book M - 163 at Pages 844-850, Records of Taos County, New Mexico, pursuant to reserved right to supplement contained therein, as amended by that certain Supplement to Declaration of Restrictive Covenants dated December 15, 1993, filed in Book M - 164 at Page 52, Records of Taos County, New Mexico (the "First Supplement"), and that certain Notice of Amendment to Declaration of Restrictive Covenants and Reservation of Land Use Easement, filed for record in Book M-170 at Pages 754-756 and in Book M-170 at Pages 794-797, Records of Taos County, New Mexico (collectively sometimes hereinafter referred to as the "Declaration, as Supplemented").

I. AMENDMENT:

Whenever any provision in this Second Supplement is in conflict with any provision of the Declaration, as Supplemented, the provision in this Second Supplement shall control. All terms defined in the Declaration, as Supplemented, shall bear the same definition in this Second Supplement. In all other respects, the Declaration, as Supplemented, remains unamended and in full force and effect.

II. GRANT OF EASEMENTS:

Declarant hereby grants to the respective Owners of Lots 1 through 17, both inclusive, of The Riverbend Subdivision, subject to all other easements of record, for the benefit of all such Lots, until a majority of the Lots have been sold, and thereafter, also to the Association, non-exclusive, perpetual easements for:

- A. access, ingress and egress to and from Los Cordovas Road (County Road 029) pursuant to Grant of Easement filed in Book M-177 at Pages 867-868, Records of Taos County, New Mexico, and to and through Riverbend Road, Tessa's Trail, and Rattlesnake Road, within their road rights-of-way, where indicated on the Riverbend Subdivision Plat (hereinafter defined);

- B. the use and underground placement and maintenance and repair of electric lines, natural gas lines and telephone lines and related apparatus, within the road rights-of-way, where indicated on The Riverbend Subdivision Plat;
- C. unrestricted emergency access, ingress and egress to the fire protection water storage tank hydrant and apparatus ("Fire Protection Facilities") and for the use, maintenance and repair thereof, at the beginning of Tessa's Trail, where indicated on the Riverbend Subdivision Plat;
- D. access, ingress, and egress to, use and installation, repair and maintenance of wells, storage tanks and water lines, in the locations indicated on the Riverbend Subdivision Plat. Declarant reserves the right to relocate the wells and easements servicing them, as required;
- E. access, ingress and egress to the Conservation Easement, where indicated upon the Riverbend Subdivision Plat; provided, however, Declarant agrees that no other trail easements shall be created within the Conservation Easement area nor the designated one hundred (100') foot setback areas where indicated on The Riverbend Subdivision Plat.

All of the foregoing easements shall run with the land, and shall be binding upon and inure to the benefit of the respective Lot Owners, their heirs, successors and assigns.

III. CONSTRUCTION:

- A. Declarant, at its own cost and expense, shall cause to be constructed, and has to date partially constructed, roads, with appropriate drainage culverts, within the road right-of-way easement indicated on the Riverbend Subdivision Plat, prepared by AGS Land Surveying, A.G. Stewart NMPS No. 11183, Job No. ⁴⁵³ dated April, 2004, filed in Plat Cabinet E at Page 160-A, Records of Taos County, New Mexico (the "Riverbend Subdivision Plat"). Said roadway construction shall meet current Taos County Type "C" Roadway construction requirements except that the road right-of-way within The Riverbend Subdivision shall be seventy (70') feet wide. The road right-of-way for Rattlesnake Road is fifty (50') feet wide.
- B. Declarant shall cause to be laid, and has to date partially laid, underground electric and telephone lines within the road right-of-way, where indicated on the Riverbend Subdivision Plat.

- C. Declarant shall cause to be constructed and installed a ten thousand (10,000) gallon water tank with proper hydrant attached for fire protection, within the easement designated therefor on the Riverbend Subdivision Plat.
- D. Declarant shall cause to be constructed all domestic wells required for the Subdivision. All wells shall be metered. Meter readings shall be supplied to the Office of the New Mexico State Engineer and to Taos County as may be required. Water usage for each Lots 1-16 shall be limited to .5 acre foot per year. Water usage for Lot 17 is limited to 3.0 acre feet per year.

IV. MAINTENANCE AND REPAIR:

The roads and easements and Fire Protection Facilities shall be maintained in reasonably passable, accessible and good condition by grading, crowning and graveling. Utilities shall be maintained in usable condition. Until a majority of Lots within The Riverbend Subdivision are sold, Declarant shall maintain and repair as necessary the roadways, culverts, electric lines, electric risers, electric transformers, gas lines, and phone lines and fire protection tank equipment and apparatus. Thereafter, maintenance and repair responsibility shall be borne by The Riverbend Subdivision Property Owners Association, a New Mexico Non-Profit Corporation to be formed by Declarant (the "Association"), in accordance with its Bylaws and Rules and Regulations. Members of the Association shall include, at least, the Owners of Lots 1-17 of The Riverbend Subdivision. The Association shall share responsibility for maintenance of the access road from Los Cordovas Road (Taos County Road 029) to Riverbend Subdivision.

V. MAINTENANCE COMMITTEE:

- A. RESPONSIBILITIES. The Association shall establish a three (3) member Maintenance Committee consisting of at least two (2) members of the Board of Directors of the Association which shall have responsibility to:
 - 1. Give notice of the annual meeting of the Association, set the time and place of the annual meeting, prepare and submit a proposed Maintenance Budget at the annual meeting and implement the decisions of the Association as made at any annual or special meeting.
 - 2. Consistent with this Second Supplement and the Maintenance Budget, determine the maintenance to be performed, award contracts, approve or reject the work of contractors and others and accordingly pay invoices

through receipts from land owners or from a fund to be established and maintained pursuant to a Maintenance Budget.

3. If necessary to implement the terms of the Declaration, as Supplemented, at any time during the calendar year, change the Maintenance Budget and reassess the Members accordingly.
 4. Establish and maintain bank accounts in the name of the Association.
 5. Issue estoppel certificates, make assessments, issue and file liens and notices of liens, bring and defend legal actions on behalf of the Association, including actions to foreclose liens.
 6. Contract for such professional services as it deems appropriate for the purposes of implementing the terms of this Declaration.
 7. Provide for such signage and/or traffic control measures as it deems appropriate to enforce a fifteen (15) mile per hour speed limit for the entire length of the Roadway.
 8. Take other actions, (or forbear from acting), as may be reasonably necessary to effectuate the purposes of this Declaration and/or the decisions of the Association.
 9. Contract for and obtain liability insurance and Directors and Officers Errors and Omissions insurance coverages.
- B. OPERATION. The Maintenance Committee shall act upon affirmative vote of a majority of its Members present at any meeting at which a quorum of not less than two (2) members is present and which has been duly noticed to all Committee Members. Except in the case of a bona fide emergency, not less than five (5) days advance notice of a meeting shall be given to each Committee Member. Notice shall be given in a method reasonably calculated to bring the meeting's occurrence to the attention of each Committee Member. Attendance at a Committee Meeting by a Committee Member shall constitute waiver of any claim of inadequate notice. All Committee Meetings shall be open to members of the Association. The powers of the Maintenance Committee shall be liberally construed to implement the terms of this Declaration.

VI. ASSESSMENTS:

A Maintenance Budget sufficient to pay for all of the monetary responsibilities of the Association shall be established by the Maintenance Committee each year. Members shall be assessed in advance for shares of the Maintenance Budget as set forth below. Payment is due from each Member sixty (60) days after billing, and, pursuant to Section VII hereof, interest shall accrue from the date of billing if not paid within that time period.

- A. To establish a reserve and pay for Basic Maintenance, the Owner of each Lot shall pay an annual fee to be established from time-to-time by the Association.
- B. Where it is determined that Major Maintenance is required or that establishment of a greater reserve is necessary, each Lot shall be equally reassessed.

VII. MAINTENANCE BUDGET:

That total annual estimated sum for maintenance of the Roadway, Fire Protection Facilities, and utilities as determined pursuant to Sections VII A, B, and C hereinafter. At the discretion of the Maintenance Committee, the Maintenance Budget may also include reserves for futures expenses and amounts for professional fees, administrative expenses, insurance and other expenses incurred consistent with this Second Supplement. The Maintenance Budget shall also include funds for the purchase of liability insurance, with coverage for members of the Maintenance Committee, as well as for the Officers and Directors of the Association.

- A. Basic Maintenance shall include regular grading, maintenance of bar ditches, replacement of base course and other surface materials on a limited basis (i.e. areas of regular or critical wear), clearing snow and moderate repairs and maintenance of gas, electric and telephone utility lines and apparatus and Fire Protection Facilities. Basic Maintenance shall include, but is not limited to, annual grading, snow removal, and upkeep of the road surface and said utility lines, to a maximum expenditure of \$200 per year per Lot (the "Basic Maintenance Limit"). Commencing in 2009, the Basic Maintenance Limited shall increase by the same percentage increase over the preceding calendar year as the "Consumer Price Index, All Statistics, United States Government (the "CPI"). Increases in the CPI are defined as increases over the preceding calendar year (i.e. effective January 1, 2009, the Basic Maintenance Limit shall be increased by the same percentage increase in the CPI from January 1, 2008 through December 31, 2008). In the event that the Bureau of Labor Statistics shall cease to publish

the CPI, the Association shall substitute an alternate index which reasonably approximates the overall increase in living expenses in the region.

- B. Major Maintenance shall include all expenditures beyond the Basic Maintenance Limit and, for example, replacing the existing roadway surface, substantial re-grading of the surface and/or sub-surface materials, replacement or installation of new culverts, drainage devices, gas, telephone and electric utility lines and apparatus and Fire Protection Facilities and other substantial repairs and upgrades.
- C. Emergency Maintenance shall include repairs that are necessary due to correct a sudden and unexplained deterioration in the Roadway, said utility lines and/ or the Fire Protection Facilities which prevents or substantially limits access and/or negatively affects utility services to any Lot or Lots. The Owner(s) of said Lot(s) may undertake to repair the road without the consent of the Maintenance Committee, if, despite reasonable good faith efforts, a meeting of the members of that Committee cannot be convened. The cost of reasonably necessary repairs shall be considered maintenance expenses, reimbursable to the Owner contracting for them, upon submission to the Maintenance Committee of an invoice for same. Any dispute as to the necessity or reasonability of the repairs shall be resolved by arbitration as set forth in Section XI hereof.

VIII. DEFAULT OF MEMBER OBLIGATIONS; LIENS AND SUBORDINATION:

- A. In the event a default of any payment obligation established hereunder shall continue uncured for a period of fifteen (15) days from the due date, a second written notice will be sent to the nonpaying owner. If payment is not received within thirty (30) days of the second notice, the Maintenance Committee may, by affirmative vote of its Members, record a lien against the Lot of the nonpaying Property Owner. Any lien of the Association shall be subordinate to any bona fide first mortgage from a commercial lender upon the subject Property and improvements thereon. Any obligation unpaid as established hereunder, whether or not a lien is recorded, shall bear interest at the rate of one and one-half percent (1½%) per month from the date of billing until paid.
- B. After a waiting period of sixty (60) days following filing of a lien, the Maintenance Committee may elect to bring suit to foreclose the lien under the procedures provided for the foreclosure of mortgage liens pursuant to NMSA 1978, as amended, 39-5-1 et.seq. Suit shall be brought in the name of the Association in the Eighth Judicial District Court of the State of New Mexico (or any successor to

that court). All costs and expenses of the suit shall be treated as maintenance expenses, payable from Association funds. Provided, however, that in the event that the Association prevails on substantially all issues presented, in addition to such other relief as the court may order, the Association shall be entitled to collect all amounts owed, interest from the date of any original assessment, costs of suit and reasonable attorneys fees.

- C. In the event that a lien is recorded against a Lot, there shall be a minimum charge of \$50.00 to remove same. Unless and until a Judgement of Court is obtained and recorded in the Records of the County of Taos, access to the Lot of any Owner shall not be denied. Any Member who is in default of the obligations established in the Declaration, as Supplemented, by more than thirty (30) days shall be denied the right to vote at Association meetings.

IX. ARCHITECTURAL REVIEW BOARD/ COVENANTS COMMITTEE:

The Declarant has previously designated initial Members of the Architectural Review Board in the First Supplement. After the first (1st) Lot in The Riverbend Subdivision has been sold and the Association has been formed, the Association shall elect three (3) Members to the Architectural Review Board/Covenants Committee, two of whom shall be Directors. The Architectural Review Board/Covenants Committee shall be charged with responsibility for enforcing the Architectural requirements of Section M of the Declaration, as Supplemented, and the Covenants contained in Section 1A through 1M, both inclusive, of the Declaration, as Supplemented.

X. LOT 17:

Declarant has retained Ownership of Lot 17 of The Riverbend Subdivision. Declarant has reserved the right to split Lot 17 into up to eight (8) additional Lots no smaller than three (3) acres each in size, in accordance with applicable law. Once Lot 17 has been subdivided, each Lot thereof shall be and become subject to the provision of the Declaration, as Supplemented, as further supplemented by this Second Supplement, and each Lot Owner:

- A. shall become a Member of the Association;
- B. shall share the benefits and burdens of the Easements granted to the Association;
- C. shall bear allocable maintenance expenses; and,
- D. shall abide by these covenants.

XI. DISPUTES:

Except for actions to foreclose liens and collect amounts due, all disputes arising under the Declaration, as Supplemented, as further Supplemented by this Second Supplement, including but not limited to, the reasonability of actions of the Committees, the level of maintenance provided, allocation of costs or the necessity or reasonability of costs of Emergency Repairs, shall be submitted to binding arbitration pursuant to the New Mexico Arbitration Act. Any Member may demand arbitration by submitting a written demand to all members of the relevant Committee. The Association may demand arbitration against a Member by written demand issued by the relevant Committee. Within thirty (30) days of the issuance of a demand for arbitration, the parties shall each submit to the other a list of five proposed arbitrators, who shall be neutral and disinterested. Within ten days thereafter, the parties shall confer to choose an arbitrator. In the event that the parties are unable to agree, a person whose name appears on both lists and who is willing to serve shall be deemed the arbitrator. If more than one name appears on both lists, the arbitrator shall be chosen among them by a random method. If no names appear on both lists, the parties shall apply to the presiding judge of the Eighth Judicial District Court to appoint an arbitrator for them. The disputing Lot Owner(s) shall pay one-half of the expenses of the arbitrator and the Association shall pay the other one-half as a maintenance expense. Each party shall be responsible for their own attorney fees except that the arbitrator may award attorney fees to a party that prevails on substantially all issues if the arbitrator finds that the non-prevailing party has been unreasonable in its position or has acted unreasonably in the arbitration process. Arbitration shall be held within thirty (30) days of selection of arbitrators and within Taos County.

XII. OTHER:

- A. Liability of Association, Directors, Officers and Committee Members. With respect to all actions taken pursuant to the Declaration, as Supplemented, provided that they shall have acted in good faith and in a fashion which they reasonably believe is consistent with the best interests of the Association, Members of the Association, Directors, Officers and Committee Members shall have rights of indemnification and contribution from the Members to the extent of insurance coverages therefor. Further, with respect to any claim by a Member, individual members of the Board, Officers and Committees shall enjoy the same protections from liability as Directors of not for profit corporations under NMSA §53-8-25.2 (1978), as amended, and each Member hereby waives all other claims against those individuals except as would be allowed against the Directors of a New Mexico nonprofit corporation.

- B. Responsibility of Property Owners. Nothing in this Declaration, as Supplemented, is intended to relieve any Lot Owner from responsibility to repair damage to the Easements caused by such Lot Owner or their agents, guests or invitees. Without limitation, a Lot Owner shall be responsible to return the Easements to prior condition following any excavation work, accident or other negligent or intentional activities causing damage beyond normal wear and tear.
- C. Powers Ceded to Association. Individual Lot Owners may make improvements to the Easements only with the consent of the Maintenance Committee. Such work shall not be deemed to relieve that Lot Owner from responsibility to pay the assessment applicable to their Property without the express consent of the Maintenance Committee. Individual Lot Owners shall not construct traffic control devices or otherwise act to restrict the flow of traffic on the Easements without the consent of the Maintenance Committee.
- D. A new subsection 1(N)(7) is hereby added to the Declaration, as Supplemented:

“N. No guesthouse may be constructed on any Lot in The Riverbend Subdivision which is larger than 1,000 interior square feet in size.”

Dated this 6th day of November, 2008.

Theodore W. Terry
 Theodore W. Terry
 (“Declarant”)



STATE OF NEW MEXICO)
)SS:
 COUNTY OF TAOS)

On this 6th day of November, 2008, before me personally appeared Theodore W. Terry, Declarant, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his own free act and deed.

Carlene W. Fudak
 Notary Public

My Commission Expires: 4-26-09



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