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DECLARATION  
OF EASEMENTS, COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
THE ORCHARD SUBDIVISION  
TAOS, NEW MEXICO

This Declaration, made on the date hereinafter set forth by Manzana Properties, LLC, a New Mexico Limited Liability Company, referred to as "Declarant."

Declarant is the owner of certain real property in the Town of Taos, Taos County, State of New Mexico, which is more particularly described on Exhibit "A" attached hereto and hereby made a part hereof (the "Property" and/or "The Orchard Subdivision").

Declarant hereby declares that 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 Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof, and which are intended to create mutual equitable servitudes and reciprocal rights amongst all of the Owners of the Property.

ARTICLE 1 - DEFINITIONS

- **Association:** The Orchard Subdivision Homeowners Association, a New Mexico Non-profit corporation, its successors and assigns.
- **Owner:** the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract Purchasers, but excluding those having such interest merely as security for the performance of an obligation.
- **Property:** that certain real property hereinbefore described.
- **Lot:** any plot of land shown upon the recorded Subdivision Plat (and any amendment(s) thereto) of the Property, with the exception of the Easements and the roadway.

SCOTT H. SANGER, ATTORNEY-AT-LAW, P.C.  
5434 NDCBU  
630 PASEO DEL PUEBLO SUR - SUITE 160  
TAOS, NEW MEXICO 87571

**Declarant:** Manzana Properties, LLC, a New Mexico Limited Liability Company, its successors and assigns.

**Subdivision Plat:** The Orchard Subdivision Plat filed in Plat Cabinet D at Page 85-B, Records of Taos County, New Mexico.

## ARTICLE 2 - PROPERTY RIGHTS

### Section 2.1 Owners' Easements of Enjoyment.

a) There exist certain recorded Easements, Covenants, Conditions, and Restrictions already recorded against and affecting the property which are listed as follows:

- I. Reservations as contained in the patent from the United States of America to the Fernando de Taos Grant dated February 25, 1909, including but not limited to water rights, claims of title to water and any easements for ditches appurtenant thereto, and all interest in oil, gas and other minerals, if any, recorded in Book 28, Pages 318-320, Records of Taos County, New Mexico.
- ii. Reservations as contained in the patent from the United States of America to the Cristoval de la Serna Grant dated January 19, 1903, including, but not limited to, water rights, claims of title to water and any easements for ditches appurtenant thereto, and all interest in oil, gas and other minerals, if any, recorded in Book A-16, Pages 324-344; re-recorded in Book M-28, Pages 33-44, Records of Taos County, New Mexico.
- iii. Right-of-Way Easement notarized June 22, 1979 from John M. Brenner to Kit Carson Electric Cooperative, Inc., filed for record in Book M-71, Page 63, Records of Taos County, New Mexico.
- iv. Road Easement described in Warranty Deed dated December 4, 1972 from R. Howard Brandenburg etux to John M. Brenner, filed for record in Book A-127, Pages 680-682, and subsequent Deeds filed for record in Book A-127, Pages 683-685, Book A-127, Pages 686-688, all records of Taos County, New Mexico.
- v. Terms, conditions and provisions of Certificate of Association of Randall Reservoir and Ditch Association, filed for record January 15, 1991 in Book M-141, Pages 154-157, Records of Taos County, New Mexico.

The Orchard Subdivision  
Declaration of Easements, Covenants,  
Conditions, and Restrictions  
Page 2

- vi. Easement as reflected on Survey Plat for "James M. Brandenburg and R. Howard Brandenburg", dated September 22, 1972, prepared by Kenelm C. Winslow, NMPE&LS No. 4369 and Survey Plat for "John Brenner", dated May 30 to June 6, 1973 (revised November 14, 1979), prepared by Kenelm C. Winslow, NMPE&LS No. 4369.
- vii. Easements or claims of easement for existing utility lines serving the wells on the property described herein and serving the R.H. Brandenburg, Johnson, J.M. Brandenburg, and Yost tracts adjacent to the west.
- viii. Easement Agreement dated June 30, 1997 by and among R. Howard Brandenburg and Helen Z. Brandenburg, William Adkinson and Sharon Adkinson, Clifford J. Johnson and Elizabeth B. Johnson, James M. Brandenburg and Claire W. Brandenburg, William A. Yost, III and Katherine L. Yost, and Heritage Trust Company of New Mexico, as Trustee of the John M. Brenner and Barbara B. Brenner Charitable Remainder Unitrust, filed in Book M-19 at Pages 842-856, Records of Taos County, New Mexico.
- ix. Declaration of Restrictive Covenants by Manzana Properties, LLC, a New Mexico Limited Liability Company, filed for record in Book M-196, Pages 856-861, Records of Taos County, New Mexico.
- x. The Orchard Subdivision Plat filed in Plat Cabinet D at Page(s) 85-B, Records of Taos County, New Mexico;
- xi. This Declaration of Easements, Covenants, Conditions and Restrictions of The Orchard Subdivision (the "Declaration").
- xii. Easement Agreement dated as of May 1, 1995 filed in Book M-195 at Pages 306-333, Records of Taos County, New Mexico.

The following Easements, Covenants, Conditions and Restrictions are intended to supplement the foregoing.

b) Every Owner shall have a right and easement of enjoyment in and to the Easements which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to dedicate or transfer all or any part of the Easements to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the

The Orchard Subdivision  
 Declaration of Easements, Covenants,  
 Conditions, and Restrictions  
 Page 3

Association. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the voting members of the Association agreeing to such dedication or transfer has been recorded.

### **Section 2.2 Delegation Of Use.**

Any Owner may delegate, in accordance with the Bylaws of the Association, as amended from time to time, his right of enjoyment to the Easements to the members of his family, his tenants, or contract purchasers who reside on a Lot.

### **Section 2.3 Uses.**

Each Lot shall be used consistent with the requirements of the various documents listed at Section 2.1(a) hereinabove.

In addition, no structure of a temporary character, be it tent, shack or other building shall be used on any Lot at any time as a residence, either temporarily or permanently. Temporary buildings, recreational travel trailers, motor homes, etc. shall be permitted for uses incidental to construction and work on the Property, but may not be used as a permanent residence. No building or structure of any kind shall be moved onto any of the Property without the prior written approval of the Design Review Committee of the Association (referred to in Article 5 hereinafter). No mobile homes, manufactured, modular, panelized or double wide homes shall be used as a permanent residence on any Lot at any time. No old, used, or second-hand buildings shall be moved onto any Lot at any time. Removal of any buildings which have been placed on a Lot contrary to the provisions of this Declaration shall be removed at the Lot Owner's expense. Declarant and the Association shall have the right, at their discretion, to cause to be removed any building or structure from the Property that does not comply with these restrictions.

No refuse, trash, garbage or other unsightly substance, including but not limited to, non-running vehicles, may be stored openly about the Property. No noxious, offensive or nuisance activities shall be conducted upon the Property. No firearms may be discharged on the Property. No open fires shall be ignited on the Property.

Any new construction on a Lot must conform with The Orchard Subdivision Design Guidelines adopted by the Association as the same may be amended from time to time. There shall be no disturbance of designated Archeological sites. During development of the Subdivision and sale of the Lots, Declarant, and/or its successors, agents and/or assigns, may display one or more larger signs as they may determine.

**Section 2.4 Utility Easements.** The utility easements indicated on the Subdivision Plat, are hereby granted to the Association by the Declarant to be used as perpetual easements for the underground placement, maintenance and/or repair of utility services for the benefit of each Lot in The Orchard Subdivision. All utilities shall be permanently installed underground.

**Section 2.5 Road Easement.** An easement for access, ingress, and egress across the Orchard Road indicated on the Subdivision Plat is hereby granted by the Declarant to the Association as a perpetual easement for the benefit of each Lot in The Orchard Subdivision, the repair and maintenance expense of which shall be allocated amongst each Lot pursuant to Article 4 hereinafter.

**Section 2.6 Repair and Maintenance of Easements.** The costs of maintenance and repair of the easements created pursuant to Sections 2.4 and 2.5 shall be allocated amongst the Lot Owners, and shall be billed and collected via the assessment process, as provided in Article 4 hereinafter.

### **ARTICLE 3 - MEMBERSHIP AND VOTING RIGHTS**

#### **Section 3.1 Formation of the Association.**

Within thirty (30) days of the sale by Declarant of the first Lot in The Orchard Subdivision, The Orchard Subdivision Homeowners Association shall be formed.

#### **Section 3.2 Assessment.**

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 the ownership of any Lot.

#### **Section 3.3 Voting Rights.**

The Association shall have two (2) classes of voting Membership:

**Class A -** Class A Members shall be all owners of Lots within the Subdivision and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall constitute the Class A Member. The vote for such Lot shall be exercised as they amongst themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**Class B -** The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to

Class A Membership when the total votes outstanding in Class A equals at least eighty (80%) percent of the total votes.

## **ARTICLE 4 - COVENANT FOR MAINTENANCE ASSESSMENT**

### **Section 4.1 Creation Of The Lien And Personal Obligation Of Assessments.**

The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- annual assessments or charges, and
- special assessments for capital improvements, and fines for violation of any provision of this Declaration, such assessments and fines to be established and collected as hereinafter provided.
- The annual and special assessments and fine(s), 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 until payment. Each such assessment and fine(s), together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot(s) at the time when the assessment fell due. Any such lien(s) shall be foreclosed in a manner consistent with mortgage foreclosure procedures currently applicable in Taos County. The redemption period following foreclosure sale is shortened to thirty (30) days.
- The personal obligation for delinquent assessment(s) shall not pass to successors in title unless expressly assumed by them, and, in any such event, same shall be paid at the time of transfer of title of such Lot(s).

### **Section 4.2 Purpose of Assessments.**

The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents of the Property and for the improvement and maintenance of the Easements (including, but not limited to, payment for repairs, maintenance and casualty and liability insurance premiums), and shall be for the benefit of the Lot Owners.

### **Section 4.3 Maximum Annual Assessment.**

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Twenty and no/100 (\$120.00) Dollars per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(b) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

#### **Section 4.4 Special Assessment for Capital Improvements.**

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement within the Easements, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

#### **Section 4.5 Notice And Quorum For Any Action Authorized Under Sections 4.3 And 4.4.**

Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.3 and 4.4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At any such meeting called, the presence of members or of proxies entitled to cast two-thirds (2/3) of all the votes of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and quorum requirements. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

#### **Section 4.6 Uniform Rate of Assessment.**

Both annual and special assessments must be fixed at uniform rates for each Lot in the Subdivision, and may be collected on calendar quarterly basis.

#### **Section 4.7 Date Of Commencement Of Annual Assessments: Due Dates.**

The annual assessments provided for herein shall commence as to all Lots on the first day of the

month following recording of this Declaration and the sale of the first lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner. The due dates shall be established by the Board of Directors. The Association shall upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

**Section 4.8 Effect 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 until the date paid in full at the rate of five percent (5%) per annum above the Base Rate of Interest then being charged by Peoples Bank - Taos to its largest and most credit-worthy Commercial Borrowers such rate to be adjusted on the first (1st) day of each month. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot(s). No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his or her Lot.

**Section 4.9 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 assessment thereafter becoming due or from the lien thereof.

**ARTICLE 5 - ARCHITECTURAL CONTROL**

There shall be an Design Review Committee (the "DRC") consisting of the three (3) members of the Board of Directors of the Association. The DRC shall have the responsibility of reviewing and approving or denying, in writing, all plans for improvements to any Lot in the Subdivision. Plans and Specifications must be submitted to the DRC for approval in accordance with the provisions of all Covenants, Conditions and Restrictions recorded against the Property prior to the commencement of any construction activities. The approval or denial of any plans submitted to the DRC shall be based upon the plan's harmony of exterior design and location in relation to the existing structures in the Subdivision.



No building, fence, wall or other structure shall be commenced, constructed, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made 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 harmony of external design and location in relation to existing structures in the Subdivision by the DRC. The DRC shall implement and enforce all Covenants, Conditions and Restrictions recorded against the Property, as amended from time to time.

## **ARTICLE 6 - WATER AND LIQUID WASTE DISPOSAL**

### **Section 6.1 Water Use - Domestic.**

All water fixtures and piping shall be low-flow to conserve water use.

### **Section 6.2 Liquid Waste Disposal.**

Each Lot in The Orchard Subdivision shall have its own Liquid Waste disposal system to be constructed and used consistent with applicable New Mexico Environment Department Regulations.

## **ARTICLE 7 - GENERAL PROVISIONS**

### **Section 7.1 Enforcement.**

The Association, and/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 by the provisions of this Declaration (specifically including but not limited to the right to require the removal of any improvement which does not conform to The Orchard Subdivision Design Guidelines, and/or is disapproved by the DRC). Failure by the Association and/or by any Owner to enforce any covenant, condition, or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. This Declaration of Easements, Covenants, Conditions and Restrictions shall be construed in accordance with the Laws of the State of New Mexico.

### **Section 7.2 Severability.**

Invalidation of any one of these covenants, conditions, or restrictions by judgement or court order

shall in no way affect any other provisions which shall remain in full force and effect.

**Section 7.3 Amendment.**

The covenants, conditions, and restrictions of this Declaration, as amended, 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 upon agreement of a majority of the members of the Association. All Easements shall be perpetual. Other than the foregoing sentence related to Easements, the provisions of this Declaration may be amended by the Declarant for eighteen (18) months following the sale of the first Lot provided that no such amendment shall materially negatively affect the value of The Orchard Subdivision thereafter. Any amendment must be signed by all necessary parties and filed for record with the Taos County, New Mexico, Clerk and Recorder.

**Section 7.4 Annexation.**

Additional residential property may be annexed to The Orchard Subdivision with the consent of two-thirds (2/3) of the Members, and only with such permission granted by the Town of Taos and/or State of New Mexico, as may be necessary.

**Section 7.5 FHA/VA Approval.**

As long as Declarant retains ownership of any Lots within the Subdivision, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration if either or both shall hold mortgage positions on any Lot(s): Annexation of additional properties; and Amendment of this Declaration of Easements, Covenants, Conditions, and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 12 day of January, 1999.

MANZANA PROPERTIES, LLC,  
A New Mexico Limited Liability Company,  
"DECLARANT"

By Don Pennington  
Don Pennington, Managing Member

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

On this 27 day of January, 1998, before me personally appeared Don Pennington, Managing Member of Manzana Properties, LLC, a New Mexico Limited Liability Company, 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 on behalf of said limited liability company.

Arac Howard Sanger  
Notary Public

My Commission Expires: 9/23/02



EXHIBIT "A"

Original In  
Poor Condition

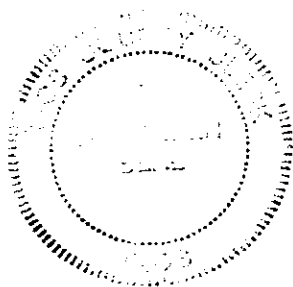
PROPERTY DESCRIPTION

A certain tract of land in Cañon, Taos County, New Mexico; partly within the Cristoval de la Serna and the Fernando de Taos Grants; located within projected Sections 20 and 21, Township 25 North, Range 13 East, NMPM; described as Tract 61 and part of Tracts 6, 7 and 8, Map 2, Survey 1, of the 1941 Taos County Reassessment Survey; and more particularly described by metes and bounds as follows;

BEGINNING at a 1/2 in. rebar set, from whence triangulation station "Bosque", a 1973 State Engineer Office brass cap monument found, bears; S 08° 16' 10" E, 2111.15 ft. distant, thence;

- S 29° 39' 37" W, 401.74 ft. to a 1/2 in. rebar set, thence;
- S 54° 00' 26" W, 36.66 ft. to the SE corner of this tract, a 1/2 in. rebar set on the northerly side of Cruz Alta Road, thence along said road;
- N 28° 49' 00" W, 210.34 ft. to the SW corner of this tract, a 1/2 in. rebar found, thence leaving said road;
- N 27° 48' 21" E, 297.87 ft. to a 1/2 in. rebar found, thence;
- N 27° 41' 43" E, 600.78 ft. to a 1/2 in. rebar found, thence;
- N 27° 46' 55" E, 703.58 ft. to a 1/2 in. rebar found, thence;
- N 27° 47' 29" E, 136.54 ft. to a 1/2 in. rebar found, thence;
- N 27° 47' 40" E, 545.54 ft. to the NW corner, a 1/2 in. rebar found, thence;
- S 59° 27' 32" E, 242.16 ft. to the NE corner, a 1/2 in. rebar found, thence;
- S 29° 20' 02" W, 340.49 ft. to a 1/2 in. rebar found, thence;
- S 52° 10' 59" E, 177.87 ft. to a point in a ditch, from whence a 1/2 in. iron pipe found as a witness corner, bears; S 55° 49' 24" E, 9.05 ft. distant, thence;
- S 55° 49' 24" E, 179.30 ft. to a 1/2 in. rebar set, thence;
- S 28° 50' 09" W, 313.05 ft. to a 1/2 in. rebar set, thence;
- S 29° 04' 06" W, 249.24 ft. to a 1/2 in. rebar found, thence;
- S 29° 52' 40" W, 559.11 ft. to a 1/2 in. rebar set, thence;
- S 28° 14' 40" W, 315.49 ft. to a 1/2 in. rebar found, thence;
- S 83° 05' 40" W, 107.96 ft. to a 1/2 in. rebar set, thence;
- N 69° 24' 20" W, 65.38 ft. to a 1/2 in. rebar set, thence;
- N 78° 38' 20" W, 200.57 ft. to the POINT AND PLACE OF BEGINNING.

This tract contains 24.000 acres, more or less.



TAOS COUNTY, N.M. 188

I hereby certify that this instrument was filed for record on the 24th day of February, 1999 at 1:23 o'clock P.M. and was duly recorded in book M-212 page 561-572 of the records of Taos County,

Witness my Hand and Seal of Office  
Jeannette G. Rael  
County Clerk, Taos County, N.M.

Deput.,

000572