

SANDIA CANYON ROAD MAINTENANCE AGREEMENT

This SANDIA CANYON ROAD MAINTENANCE AGREEMENT ("Agreement") is made as of the 5<sup>th</sup> day of November, 2013, by and among certain property owners served by the roads within the Sandia Canyon Subdivision ("the Roads"), as further defined below.

**WITNESSETH**

WHEREAS, the Roads are private roads located in Arroyo Hondo, Taos County, New Mexico, located within the Sandia Canyon Subdivision as depicted on that survey plat entitled "Sandia Canyon" by James D. Crowl, NMPS #5213, Job No. S2134A, approved by the commissioners of Taos County on September 11, 1990, and recorded in Cabinet C, Page 113-B of the records of Taos County, New Mexico, a reduced version of which is attached hereto as Exhibit "A."

WHEREAS, the owners of certain properties served by the Roads wish to set forth their agreement for the sharing of costs for certain improvements to and maintenance of the Roads.

NOW, THEREFORE, it is hereby agreed as follows:

**ARTICLE I**  
**DEFINITIONS**

"Properties" are those real properties described on Exhibit "B" attached hereto that have been made subject to this agreement and those real properties described in any subsequent ratification of this Agreement as provided herein.

"Lot" is any single parcel of land located within the "Properties" and created under the subdivision laws of the State of New Mexico and Taos County, New Mexico.

"Owner" is the record owner, whether one or more persons or entities, of the fee simple title to any Lot, or a person or entity who is an owner by virtue of a contract of purchase of record of a Lot, but excluding those having such interest merely as security for the performance of an obligation.

"Roads" are the existing roads within the Sandia Canyon Subdivision, the approximate locations of which are depicted on that survey plat entitled "Sandia Canyon" by James D. Crowl, NMPS #5213, Job No. S2134A, approved by the commissioners of Taos County on September 11, 1990, and recorded in Cabinet C, Page 113-B, a reduced version of which is attached hereto as Exhibit "A." Roads shall include a reasonable portion of lands alongside existing roadways that are used for existing and reasonably foreseeable utilities.

"Association" is the Sandia Canyon Association, Inc., a New Mexico nonprofit corporation, its successors and assigns.

"Member" is any person or entity holding a membership in the Association by virtue of its execution or ratification of this Agreement.

"Maintenance" is all reasonable maintenance, repairs, improvements, and snow removal work performed upon the Roads.

"Assessment" is the annual amount levied by the Association to each Lot for costs related to Maintenance and administration.

## ARTICLE II

### **SANDIA CANYON ASSOCIATION, INC. MEMBERSHIP, AUTHORITY & DUTIES**

**Section 1.** The Sandia Canyon Association, Inc. is incorporated as a New Mexico nonprofit corporation under the Nonprofit Corporation Act, NMSA 1978, Sections 53-8-1 to 53-8-99. Each Owner, upon execution or ratification of this Agreement, automatically becomes a Member of the Association and binds its Lot and its Lot's successive owners to the rights and obligations hereunder.

**Section 2.** The Board of Directors of the Association is authorized and shall be obligated to perform all reasonable Maintenance, administrative, and collection actions, subject to the bylaws of the Association, as may be amended from time to time.

**Section 3.** Each Member shall have one vote per Lot owned.

**Section 4.** When more than one Owner holds an interest in a Lot, the percentage voting right between such Owners shall be determined among those Owners themselves, but in no event shall fractions of a vote or more than one vote be cast with respect to any such Lot. In the event a real estate installment contract of purchase is executed upon any Lot, where the contract purchaser has the right of possession to the land and therefore equitable title thereto, the contract purchaser, and not the contract seller, shall be the Member holding the voting right, unless an agreement between the contract seller and contract purchaser provides to the contrary.

## ARTICLE III

### **ASSESSMENTS**

**Section 1.** All costs related to Maintenance and administration shall be equally apportioned among each Lot. The Board of Directors of the Association shall determine the Assessment for costs related to Maintenance and administration to be levied upon each Lot, subject to the bylaws of the Association, as may be amended from time to time.

**Section 2.** Assessments collected by the Association shall be used to provide for reasonable Maintenance, administrative costs, and attorney fees incurred in the collection of Assessments.

**Section 3.** If the Assessment levied herein is not paid in full within ninety (90) days of the date due, the unpaid portion of the Assessment shall become delinquent and shall bear interest from the date of delinquency at the annual rate of fifteen percent (15%) per annum. The Assessment as to each Lot shall include accrued interest, costs, and reasonable attorney's fees incurred for the collection thereof, shall be the obligation of the Owner of the Lot at the time the Assessment is levied, and shall constitute a lien against the Lot until paid in full.

**ARTICLE IV**  
**SUBORDINATION**

The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon any Lot.

**ARTICLE V**  
**CONDITION PRECEDENT  
TO EFFECTIVENESS OF AGREEMENT**

This Agreement shall become effective only upon execution and acknowledgment by (or subsequent ratification of) the owners of at least 25 of the 34 Lots described in Exhibit "B," and shall be effective only as to those properties whose owners have executed such acknowledgment or ratification.

**ARTICLE VI**  
**SUBSEQUENT RATIFICATION**

Any other owner of real property within the boundaries of the Sandia Canyon Subdivision as depicted on that survey plat entitled "Sandia Canyon" by James D. Crowl, NMPS #5213, Job No. S2134A, a reduced version of which is attached hereto as Exhibit "A," and which real property enjoys an appurtenant easement as to use of the Roads, may become a Member and bind itself and its Lot to the rights and obligations set forth herein by: (1) fully and accurately completing, executing, and acknowledging the Ratification form attached hereto as Exhibit "C"; (2) filing said ratification form in the Taos County records; and (3) providing a copy of the recorded ratification to the Association.

**ARTICLE VII**  
**PERPETUAL RECIPROCAL EASEMENTS**

Although it is the position of the Owners and the Association that easements for ingress, egress, and utilities exist which encompass the Roads and benefit the Lots, by executing or ratifying this Agreement, each Owner expressly grants a perpetual right of easement for ingress, egress, and utilities, that runs with the land, for the benefit of all Lots whose Owners have executed or subsequently ratified this Agreement over the portion of the Roads that are located on each such Owner's Lot, and such easements expressly include all rights and responsibilities

set forth in this Agreement.

**ARTICLE VIII**

**WAIVER**

The failure the Association to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of the Association's right to subsequently enforce and compel strict compliance with every provision herein.

[Individual Signature and Acknowledgment Pages to Follow]