



6

**FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS AND
GRANT OF EASEMENTS HARMAN MINOR IMPACT SUBDIVISION
AND HARMAN PARK SUBDIVISON**

This First Amendment to Declaration of Restrictions and Grant of Easements for Harman Minor Impact Subdivision and Harman Park Subdivision is made as of the 10th, day of DECEMBER, 2004, by Harman Artist, LLC, a Colorado Limited Liability Company ("Declarant").

The Declaration of Restrictions and Grant of Easements for Harman Minor Impact Subdivision recorded on January 30, 2003, at Reception Number 20300810, Office of the Archuleta County Clerk and Recorder and the Supplemental Declaration thereto recorded on Dec 21st, 2004, at Reception Number 20412244, in the Office of the Archuleta County Clerk and Recorder are referred to herein as the "Declaration."

1. Article I, Introduction, Section 1.1(h) is amended and, as amended, shall read as follows:

(h) "Lot Area." The total number of square feet of a Lot whether or not actually occupied or placed in service. Lot Area shall be measured from the exterior line of the Lot without deduction for easement areas, landscaped areas or areas used in common by more than one Owner or tenant. The Lot Area of each Lot in the project is as follows:

<u>Lot Number</u>	<u>Lot Area</u>	<u>Percent of Total</u>
1	1.34 acres	4.6%
2	0.47 acres	1.6%
D-1	2.43 acres	8.3%
D-2	0.55 acres	1.9%
D-3	0.53 acres	1.8%
D-4	0.58 acres	2.0%
D-5	0.61 acres	2.1%
D-6	0.41 acres	1.4%
D-7	0.42 acres	1.4%
D-8	0.49 acres	1.7%
E	7.23 acres	24.8%
F	5.00 acres	17.1%
G	3.86 acres	13.2%
H-1	0.63 acres	2.2%

High Country Title will pick up

[Handwritten signature]



H-2	0.71 acres	2.4%
H-3	0.67 acres	2.3%
H-4	0.63 acres	2.2%
H-5	0.81 acres	2.8%
H-6	0.62 acres	2.1%
H-7	0.56 acres	1.9%
H-8	0.66 acres	2.3%
Total	29.2 acres	100%

2. Article IV, Section 4.8, Maintenance Director, is hereby amended and, as amended, shall read as follows:

“4.8 The initial Maintenance Director shall be the Declarant. The Maintenance Director shall have the right, upon giving ninety (90) days’ prior written notice to the Owners of the Project, to resign as Maintenance Director, in which event the Owners shall appoint another person to be the Maintenance Director by majority vote of the Owners. The salary of the Maintenance Director shall be determined by majority vote of the Owners. The Maintenance Director may be terminated by majority vote of the Owners.”

3. The Declaration is hereby amended by adding a new Article VII, Open Space, which shall read as follows:

VII. Open Space

- 7.1. The term “open space” as used herein refers to Parcels 1 and 2 of the Harman Park Subdivision recorded DEC 21st, 2004, at Reception Number #20412244, Archuleta County Clerk and Recorder’s Office. The term includes all fixtures, private improvements and private sewer collection system in the right-of-ways and utility easements and also includes trails, subdivision signs, the round-about at the entrance to the subdivision and non-native plants.
- 7.2. The Declarant intends to make a gift of Parcels 1 and 2 to the Town of Pagosa Springs, but by agreement with the Town, except as otherwise provided herein, the maintenance and upkeep of Parcels 1 and 2 shall be the responsibility of the Lot Owners and Prime Lessees.
- 7.3. The Maintenance Director shall contract for and pay for all maintenance expenses and other expenses for the upkeep of

EFW n.s.

the open space. The Maintenance Director shall also contract for insurance, if necessary, on the open space. The Maintenance Director shall exercise his best efforts in good faith to insure that all contracts for open space maintenance or insurance shall be upon terms, in amounts and at rates that are reasonable and competitive for the Pagosa Springs, Colorado area.

- 7.4 Within sixty (60) days after the date any Owner purchases a lot or any Prime Lessee leases a lot, and thereafter by March 31st of each calendar year, the Maintenance Director shall endeavor to submit to each Owner or Prime Lessee of a lot a statement showing the total open space expenses for the previous calendar year and each lot's allocable share thereof and the annual budget for open space expenses (the "budget") for the then current calendar year and each lot's allocable share thereof. The Maintenance Director's failure to provide such reconciliation and budget by that date shall not excuse any Owner or Prime Lessee from its obligation to pay its share of open space expenses. Within thirty (30) days after receipt of the annual budget, each Owner or Prime Lessee shall pay its share of the open space expenses.
- 7.5 The Maintenance Director shall operate, maintain and repair the open space during each maintenance budget year in accordance with the budget submitted to the Lot Owners and shall not incur any expense not included in the budget, subject to Sections 7.6 and 7.7, without the written permission of owners owning a majority of the lot area of the subdivision. Notwithstanding the foregoing, the Maintenance Director shall be entitled to exceed the budget by not more than five percent (5%), in the aggregate, for all items without prior written approval from owners owning a majority of the lot area of the subdivision.
- 7.6 If the Maintenance Director is required to incur an extraordinary cost or expense during any maintenance budget year for the emergency repair or replacement of any portion of the open space which expense has not been set forth in a budget, each Owner shall pay to the Maintenance Director its share of such costs or expenses within thirty (30) days of receipt of the Maintenance Director's statement and reasonable backup documentation therefore. For purposes of

Handwritten signature
n.h.



this Section 7.6 an "emergency" necessitating repair or replacement shall be one which presents an imminent threat or danger of irreparable harm to person or property as to which a delay would cause further threat or damage or would further endanger person or property.

7.7 If the Maintenance Director reasonably deems it necessary to incur an extraordinary cost or expense for the repair or replacement of any portion of the open space which expense has not been set forth in any budget and which repair or replacement is not an emergency, the Maintenance Director shall request written approval of such expenditure from Owners and Prime Lessees as far in advance of such repair or replacement as is reasonably possible and such approval shall not be unreasonably withheld, conditioned or delayed. Written approval from Owners owning a majority of the lot area of the subdivision is sufficient.

7.8 The proportionate share of total open space expenses to be borne by each Owner for any maintenance year shall be that percentage set forth below:

<u>Lot Number</u>	<u>Areas (acres)</u>	<u>Percent of Total</u>
1	1.34 acres	4.6%
2	0.47 acres	1.6%
D-1	2.43 acres	8.3%
D-2	0.55 acres	1.9%
D-3	0.53 acres	1.8%
D-4	0.58 acres	2.0%
D-5	0.61 acres	2.1%
D-6	0.41 acres	1.4%
D-7	0.42 acres	1.4%
D-8	0.49 acres	1.7%
E	7.23 acres	24.8%
F	5.00 acres	17.1%
G	3.86 acres	13.2%
H-1	0.63 acres	2.2%
H-2	0.71 acres	2.4%
H-3	0.67 acres	2.3%
H-4	0.63 acres	2.2%
H-5	0.81 acres	2.8%
H-6	0.62 acres	2.1%

[Handwritten signature]

H-7	0.56 acres	1.9%
H-8	0.66 acres	2.3%
Total	29.21 acres	100%

- 7.9 In the event any Owner fails or refuses to pay when due its share of any bill for the open space maintenance and insurance expenses described above, which failure continues for a period of thirty (30) calendar days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the maintenance or insurance expenses of the defaulting Owner ("Curing Party") for reimbursement plus interest from and after the date said bill was due and payable to and including the date said bill is paid at a rate equal to the lesser of (i) the highest rate allowed by law, or (ii) eighteen percent (18%) per annum (the lesser rate being hereinafter referred to as the "Default Rate"). Furthermore, the Maintenance Director or Curing Party, as the case may be, shall have a lien on the lot of the defaulting Owner for the amount of said expenses plus accrued interest as set forth above; provided, however, that if in the sole determination of the Maintenance Director, there is a bona fide dispute as to the existence of such default or of the amount due, and if all undisputed amounts are paid, there shall be no right to place a lien on such Owners lot until such dispute is settled by final court decree or mutual agreement.
- 7.10 In the event the Maintenance Director is required to pursue legal action in order to collect any amounts due from any lot Owner or Prime Lessee for open space expenses, the Maintenance Director, provided he is the prevailing party in any such action or proceeding, shall be entitled to recover from the defaulting lot Owner or Prime Lessee in any such action or proceeding its reasonable costs and attorney fees as determined by the court in the same or a separate proceeding.
- 7.11 Notwithstanding anything in this Article VII to the contrary, in the event that Parcels 1 and 2 are not maintained to the satisfaction of the Town of Pagosa Springs, the Town may take appropriate action to provide the necessary maintenance and upkeep on said parcels and may bill the Maintenance

Director for all such costs of maintenance and upkeep. Such costs or expenses shall be treated as an extraordinary cost or expense under Section 7.6 hereof and shall be billed to and paid by the Owners and Prime Lessees as provided in that Section.

IN WITNESS WHEREOF the Declarant has executed this First Amendment to Declaration of Restrictions and Grant of Easements for Harman Minor Impact Subdivision and Harman Park Subdivision on the day and year first above written.

Harman Artist, LLC.
A Colorado Limited Liability Co.

By: [Signature]
Fred C. Harman, III, Manager

By: [Signature]
Norma Harman, Manager

ACKNOWLEDGMENT

STATE OF COLORADO }
 }ss.
COUNTY OF ARCHULETA }

This instrument was acknowledged before me this 10th day of December, 2004, by Fred C. Harman, III, as Manager of Harman Artist, LLC., and by Norma Harman, as Manager of Harman Artist, LLC., a Colorado Limited Liability Company.

Witness my official hand and seal.
My commission expires: 1-19-07

[Signature]
Notary Public

