



6/21/05 Sent
original to
Fred Harman (6)

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

This Second Amendment to Declaration of Restrictions and Grant of Easements for Harman Minor Impact Subdivision and Harman Park Subdivision is made as of the 8th day of JUNE, 2005, 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, in the Office of the Archuleta County Clerk and Recorder, the Supplemental Declaration thereto recorded on December 21, 2004, at Reception Number 20412250, the Corrected Supplemental Declaration of Restrictions and Grant of Easements for the Harman Minor Impact Subdivision and the Harman Park Subdivision recorded on April 14, 2005, at Reception Number 20503373, and the First Amendment to the Declaration of Restrictions and Grant of Easements Harman Minor Impact Subdivision and Harman Park Subdivision recorded on December 21, 2004, at Reception Number 20412249, all in the Office of the Archuleta County Clerk and Recorder are referred to herein collectively as the "Declaration."

This Second Amendment is made in accordance with Article V, Section 5.3, heading "Further Restrictions," of the Declaration, the purpose of which is to add further use restrictions and to provide a mechanism for adding or removing then existing use restrictions on the use and occupancy of those Lots in the Project owned by Declarant as of the date of this Second Amendment, to wit: Lots D-1 through D-8, Lot E, Lot F, Lot G, and Lots H-1 through H8. Consistent with Article V, Section 5.3, it is not the intent of this Second Amendment to defeat or materially impair any exclusive use previously granted to an Owner or Prime Lessee. The only Owners or Prime Lessees other than Declarant as of the date of this amendment are Wells Fargo Bank, Owner of Lot 1, Harman Minor Impact Subdivision and Coyote Growth Management, LLC, Owner of Lot 2, Harman Minor Impact Subdivision.

1. The Declaration is hereby amended by adding a new Article VIII, Architectural Review Committee, which shall read as follows:

VIII. ARCHITECTURAL REVIEW COMMITTEE

8.1. Committee and Guidelines: There is hereby established an

JERRY VENN
POB 246
PAGOSA SPRINGS, CO.
8147



Architectural Review Committee (hereinafter "ARC"), which shall be responsible for the establishment and administration of design guidelines and construction criteria and guidelines to facilitate the purposes and intent of this Declaration. All such guidelines shall be deemed additional use restrictions on the use and occupancy of Lots D-1 through D-8, Lot E, Lot F, Lot G, and Lots H-1 through H-8 of the Project. The Committee may amend, vary, repeal, and augment the design and construction guidelines from time to time, in the Committee's sole discretion based on concerns for good planning and design, the aesthetic, architectural and environmental harmony of the Project or other factors as necessary or desirable to fulfill the intent of the design and construction guidelines. However, no such amendment, variance, repeal or augmentations of the Design and Construction Criteria and Guidelines shall defeat or materially impair any exclusive use previously granted to the Owners of Lots 1 and 2, Harman Minor Impact Subdivision. The Design and Construction Criteria and Guidelines shall be binding on all Owners and Prime Lessees who hereafter acquire or lease any of the Lots listed above.

The Design and Construction Criteria and Guidelines may include, among other things, those restrictions and limitations set forth below:

- 8.1.1. Requirements pertaining to building set backs or building envelopes, building orientation, height, exterior building materials, and mechanical equipment.
- 8.1.2. Requirements for site considerations, including traffic circulation, parking and loading areas, landscaping, storage, signs, lighting, utility connections, fencing/screening, drainage, refuse and trash receptacles and disposal, and vehicle storage.
- 8.1.3. Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under the Design Guidelines.
- 8.1.4. Procedures for making application to the Architectural Review Committee for review and approval of any structure or improvement to be erected on a Lot, including the documents, plans and reports to be submitted and the time limits in which the Committee must act to approve or disapprove any submission.
- 8.1.5. Guidelines regulating construction activities, including without limitation the following: Owner and Contractor responsibilities,



on any Lot shall be subject to and shall require ACC approval in writing before any such work is commenced.

8.5. Nonliability: Neither the ACC nor any architect or agent thereof including the Maintenance Director or the Declarant shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. Approval by the ARC shall not be deemed to constitute compliance with the requirements of the rules, regulations and building codes of the Town of Pagosa Springs or Archuleta County and any other applicable state or federal agencies and it shall be the responsibility of the Owner or any representative submitting plans to the ARC to comply therewith. The Owner must obtain all approvals, licenses and permits prior to the commencement of construction.

8.6. Enforcement: All ARC design guidelines, construction criteria and guidelines, rules and regulations shall be enforced as provided in Article IV, Section 4.9 of this Declaration.

8.7. Expenses: Except as provided in this section below, all expenses of the ARC shall be paid by the Owners and shall constitute an open space expense to be included in the annual budget referred to in the Declaration, Article VII, Section 7.4. The ARC shall have the right to charge a fee for each application submitted to it for review in an amount which may be established by the ARC from time to time and such fees shall be collected by the ARC or its agent (Maintenance Director) to help defray the expenses of the committee's operation.

8.8. Delegation of Functions: The Architectural Review Committee shall have the right, but never the obligation to delegate one or more of its functions to the Maintenance Director. The delegation of such functions and the limitations thereon may be made by the Architectural Review Committee from time to time in its discretion. Such delegated functions may include, but are not limited to the following: The receipt and review of applications for building permits which may include review of site plans, drainage reports, architectural plans and specifications, landscaping, lighting, and signage, review of variance requests, monitoring compliance with the construction criteria and guidelines for Harman Park Subdivision, attendance at pre-construction conferences, approval of contractor sanitary facilities, approval and designation of parking for construction crews, construction vehicles and machinery, approval of construction signage, monitoring of any blasting activities on site, and policing designated



working hours. Although the Maintenance Director may make recommendations as to approval or disapproval of the application package including plans and specifications, the final decision approving or disapproving the plans shall be made by the ARC.

8.9. Disapproval: The ARC shall have the right to disapprove any proposed improvements, plans, specifications or details submitted to it in the event the same are not in accordance with all the provisions of the Declaration, if the siting, design and appearance of the proposed improvement or other structure is not in harmony with the general surroundings or with adjacent improvements or structures, if the plans and specifications submitted are incomplete, or in the event the ARC deems the plans, specifications or details, or any part thereof to be incompatible with the Design Guidelines or contrary to the interest, welfare or rights of all or any part of the Project or the Owners thereof. The Committee shall not arbitrarily or unreasonably withhold approval of plans and specifications, and if plans are disapproved, disapproval shall be accompanied by suggested changes, which if adopted, would result in approval. The ARC shall establish a reasonable time limit policy for such action.

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

- (m) "Project". The Project is located on the Southside of Highway 160 in the Town of Pagosa Springs, County of Archuleta, State of Colorado. It is described in Exhibit A to the Declaration of Restrictions and Grant of Easements for Harman Minor Impact Subdivision, and is generally depicted on Exhibit C of that Declaration and was recorded on January 30, 2003, at Reception Number 20300810, Clerk and Recorder's Office, Archuleta County, Colorado. The Project was expanded to include the real property referred to in the Supplemental Declaration to Declaration of Restrictions and Grant of Easements of the Harman Minor Impact Subdivision and for the Harman Park Subdivision recorded on December 21, 2004, at Reception Number 20412250, as corrected by Corrected Supplemental Declaration recorded April 14, 2005, at Reception Number 20503373, Clerk and Recorder's Office, Archuleta County, Colorado.

IN WITNESS WHEREOF the Declarant has executed this Second 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.

