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12/10/2009 03:16 PM JOYCE M RENO  
R\$21.00 D \$0.00 Chaffee County Clerk

## ROADWAY MAINTENANCE COVENANT

This Covenant ("Covenant") is executed on this 10<sup>th</sup> day of December, 2009 by Wood Development Company, LLC.

**WHEREAS**, Wood Development Company, LLC is the current owner of the property described on the plat of Hillside Minor Subdivision in the City of Salida, Chaffee County, Colorado, the legal description of which is attached hereto as **Exhibit A** (the "Hillside Property").

**WHEREAS**, Wood Development Company, LLC intends to sell and convey various Lots (as defined below) within the Hillside Property for residential purposes.

**WHEREAS**, Wood Development Company, LLC desires to create certain Covenants with respect to maintenance of the Road (as defined below) that will benefit the current and future owners of the Lots (as defined below) located within the Hillside Property, and impose certain rights, responsibilities and obligations with respect thereto.

**NOW, THEREFORE**, for valuable consideration given and received, the receipt and sufficiency of which are hereby acknowledged, Wood Development Company, LLC hereby imposes the following covenants upon the Lots located within the Hillside Property:

### ARTICLE I

#### Definitions

1.1 "Lot" or "Lots" shall mean any numbered Lot shown on the plat of Hillside Minor Subdivision in the City of Salida, Chaffee County, Colorado.

1.2 "Owner" shall mean all parties to this Covenant and the record owner, whether one or more persons or entities, of any Lot, but excluding those having an interest merely as security for the performance of an obligation.

1.3 "Road" shall mean that certain five hundred (600) foot section of Chaffee County Road 177 identified on the plat of Hillside Minor Subdivision which adjoins the Lots described thereon.

### ARTICLE II

#### Maintenance and Repair of Road

2.1 Each Owner, by execution of this Covenant or by acceptance of a deed or land contract therefore, whether or not it shall be so expressed in such deed or land contract, is deemed to covenant and agree to pay its pro rata share of all monetary amounts necessary to maintain the Road in a good, safe and driveable condition, as determined herein.

2.2 Unless future development of the Hillside Property necessitates the improvement of the Road as required by the Subdivision Improvements Agreement for the Property recorded as Reception No. 385173 in the Office of the Chaffee County Clerk and Recorder, the Road shall be constructed and maintained only as a gravel roadway sufficient for vehicular traffic, with maintenance to include, without limitation, grading, scraping, ditching, snow

removal, and spreading of new gravel, as necessary, in the sole discretion of the Owners of the Lots served by said Road.

2.3 Each Owner shall have the right to approach the other Owners regarding a desire or need for maintenance or repair of the Road and an estimate of the cost associated with such maintenance or repair. The agreement by a simple majority of the Owners to perform such maintenance or repair shall entitle the Owner who first approached the other Owners, or another Owner if agreed upon by the others, to contract for the maintenance or repair to be done.

2.4 The pro rata share of each owner for such maintenance or repair shall not exceed Two Hundred Fifty Dollars (\$250) in any calendar year. If the cost of any maintenance or repair to the Road is expected, based on estimates from qualified contractors, to exceed the \$250 limitation, then unanimous Covenant by all Owners as to its necessity is required.

2.5 The Owner who contracts for the maintenance or repair to be done shall be responsible for collecting payment. That Owner will provide written notice to the others of each Owners pro rata share of the cost of the maintenance or repair and when payment is due. Unless waived by the Owner responsible for collecting payment, any payment not made within twenty (20) days after the due date shall be increased by a late fee equal to ten percent (10%) of the initial amount due. Interest on any unpaid amount shall bear interest from the due date at the rate of fifteen percent (15%) per annum.

2.6 In the event that maintenance or repair is contracted for and performed in accordance with this Covenant, each Owner's pro rata share shall be the personal obligation of the Owner who owned each Lot at the time the work was contracted. An Owner or Owners who contribute the share of an Owner who fails to pay may put a lien on the Lot of the non-paying Owner.

2.7 An Owner or Owners who contribute the share of an Owner who fails to pay may bring an action at law against a defaulting Owner personally obligated to pay, or may foreclose the lien against the Lot by judicial foreclosure. The non-paying Owner of the Lot shall be liable for and the lien shall be deemed to secure payment of all costs of collection and bringing of an action at law and/or to foreclose the lien, including but not limited to actual attorney fees and costs. 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, but not the personal obligation for payment, which became due prior to such sale or transfer.

2.8 No Owner may waive or otherwise escape liability for the costs of maintenance or repair provided for herein by non-use of the Road or abandonment of his/her/its Lot.

### **ARTICLE III**

#### **Miscellaneous.**

3.1 The provisions of this Covenant shall run with the Lots and shall inure to the benefit of and be binding upon the owners, tenants, lessees thereof and their successors in



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interest and assigns, including their grantees, sublessees and assigns and all persons or entities claiming through them.

3.2 If future further development on or in the vicinity of the Hillside Property occurs and Chaffee County Road 177 is improved to City of Salida standards and the City of Salida accepts maintenance or repair responsibility for the Road, the Owners shall no longer be responsible for shared maintenance of the Road and this Roadway Maintenance Covenant shall be null and void.

3.3 The failure of any party to this Covenant to comply with its responsibilities or obligations herein shall entitle the non-defaulting party to pursue any and all appropriate legal recourse, including the rights of injunction, damages, specific performance or any or all of the above. Should any party institute legal action or proceeding for the enforcement of the any responsibilities or obligations herein, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in the preparation and prosecution of such action or proceeding.

3.4 The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Covenant. Venue shall be in Chaffee County, Colorado.

IN WITNESS WHEREOF, the parties have executed this Roadway Maintenance Covenant the day and year first written above.

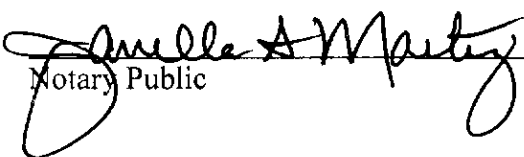
  
Sign

P.T. Wood  
Print

STATE OF COLORADO )  
 ) ss.  
COUNTY OF CHAFFEE )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of December, 2009 by Janelle S. Martinez - P.T. Wood Director  
Wood Development CO, LLC  
Witness my hand and official seal.

My Commission Expires: 10-01-2011

  
Notary Public

