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1055084

Kathleen Neel - Summit County Recorder

**RESTRICTIVE COVENANT AND AGREEMENT
(Muggins Gulch Gate)**

This Restrictive Covenant and Agreement (Muggins Gulch Gate) (herein the "Covenant") is made this 9th day of May, 2014 by and between BLUE SKY RANCH, LLC, a Florida limited liability company (herein the "Owner") and the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (herein the "County"),

WHEREAS, Owner is the owner of all of the property (herein the "Property") described, delineated and depicted on the Plat of Muggins Gulch recorded on the 16th day of May, 2014 at Reception No. 1055079 in the office of the Summit County, Colorado Clerk and Recorder (herein the "Plat");

WHEREAS, by the filing of the Plat, Owner dedicated to the County the right of way identified on the Plat as Muggins Gulch Road;

WHEREAS, Owner requested approval of the Plat, and the County approved the Plat via Resolution 2009-09 recorded on the 16th day of May, 2014 at Reception No. 1055078 in the office of the Summit County, Colorado Clerk and Recorder (herein the "Resolution"), and subject to certain terms and conditions;

WHEREAS, Condition 5 of the Resolution addresses the Gate presently located at the beginning of Muggins Gulch Road in the area depicted in the Detail on Sheet 2 of the Plat (herein the "Gate"), and allows that such Gate could remain in place provided that arrangements were made and maintained for access to the property that were acceptable to the Summit County Engineer, Summit County Sheriff, Summit County Ambulance Service, and Red, White and Blue Fire Protection District (herein the "Emergency Service Providers"); and

WHEREAS, a Knox Box, which is a particular type of access arrangement utilized mainly by fire protection providers, has been placed at the Gate; and

WHEREAS, as reflected in Exhibit A, the Emergency Service Providers have agreed that the Knox Box provides them acceptable access as required by Condition 5 of the Resolution; and

WHEREAS, the County requested and Owner agreed to enter into this Covenant regarding maintenance of the access arrangement and cause it to be recorded such that it will be binding upon the Owner and all subsequent owners and successors in interest thereof.

NOW, THEREFORE, in consideration of the approval of the Plat, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Owner, the County and Owner agree as follows:

- A. Maintenance of Gate. The Gate and the gate opening mechanism that enables access by the Emergency Service Providers shall be maintained in good working order at all times.

B. Maintenance of Access Arrangements. The Knox Box that enables the Emergency Service Providers to open the Gate shall be maintained so that the Gate can be opened at all times. No other lock box, key pad, remote control, or access device shall be substituted for the Knox Box without an amendment to this Covenant, as provided for in paragraph K below.

C. Failure of Gate or Access Arrangements. The failure of the Gate opening mechanism or the access arrangements to function as needed for the Emergency Service Providers to open the gate when required shall constitute a default as provided for below and also shall constitute authorization for the Emergency Service Providers to break through or remove the Gate as necessary to access the Property in the event of an emergency without liability for damage to or repair of the Gate.

D. Records; Inspection; Monitoring.

1. The Owner's records with respect to the maintenance of and codes or remote controls for the Gate shall be subject to examination, inspection and copying by the County or its authorized agent upon reasonable advance notice. The County or its authorized agent shall also have the right to enter into the Property for the purpose of determining compliance with the provisions of this Covenant; provided, however, that the County or its agent shall first attempt to notify any affected owners or occupants of the Property prior to making entry.

2. The Owner shall submit any information, documents or certificates requested from time to time by the County with respect to the maintenance of and codes or remote controls for the Gate, which the County reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Covenant.

E. Default; Notice. In the event the County determines that Owner is in default hereunder, the County shall notify the Owner and any Mortgagee (as hereafter defined), of such default in writing. Within thirty (30) days following receipt of such notice the Owner shall correct such default, or in the event of a default not capable of being corrected within thirty (30) days, the Owner shall contact the County staff and shall develop a timetable agreeable to the staff to correct the default and thereafter correct the default with due diligence. A Mortgagee shall have the right (but shall not be required) to cure any default hereunder within the applicable cure period as provided above. If Owner fails or refuses to correct any default as provided above, and if the default is not cured by a Mortgagee within the applicable cure period, the County may terminate the condition permitting the Gate to remain in place and enforce this Covenant as hereafter provided. As used in this paragraph, the term "Mortgagee" shall mean the beneficiary of any recorded deed of trust encumbering any portion of the Property.

F. Equitable Relief. Owner agrees that in the event of Owner's default under or non-compliance with the terms of this Covenant, the County shall have the right of specific performance of this Covenant and the right to obtain from any court of competent jurisdiction a temporary restraining order, preliminary injunction and permanent injunction to obtain such performance or to cause the use of the Gate to be terminated. Any equitable relief provided for

in this paragraph may be sought singly or in combination with such legal remedies as the County may be entitled to, either pursuant to the provisions of this Covenant or under the laws of the State of Colorado.

G. County Authority to Enforce. The restrictions, covenants and limitations created herein are for the benefit of the County which is given the sole power to enforce this Covenant in the manner herein provided.

H. Enforcement in District Court. In addition to such other methods of enforcement as may be available to the County, in the event of Owner's default hereunder, which default is not cured as provided in the paragraphs above, the County may enforce this Covenant by bringing an appropriate action in the Summit County, Colorado District Court.

I. Code Enforcement Authority. The parties hereto expressly acknowledge that neither the execution of this Covenant, nor the exercise of any rights or enforcement authority provided for herein, shall in any manner abrogate from the right of the County to enforce any applicable provision of state or local law or regulation, including without limitation any Code enforcement action in accordance with C.R.S. Sections 30-28-124 & 30-28-124.5.

J. No Waiver/Latches. The failure of either party hereto to enforce a provision of this Covenant shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Covenant or any part hereof, or the right of such party thereafter to enforce each and every provision hereof. No such action or inaction shall serve as the basis for any claim of waiver or latches by either party.

K. Modification of Covenant. The restrictions, covenants and limitations created herein may be modified or amended with the written consent of both Owner and the County. No such modification or amendment shall be effective until the proper written instrument shall be executed by duly authorized representatives of the parties hereto and recorded in the office of the Clerk and Recorder of Summit County, Colorado.

L. Statute of Limitations. Owner hereby waives the benefit of, and agrees not to assert in any action brought by the County to enforce the terms of this Covenant, any applicable statute of limitation which might otherwise operate to bar the ability of the County to enforce this Covenant, including but not limited to, the provisions of Section 38-41-119, C.R.S. In the event that any statute of limitations may lawfully be asserted by the Owner in connection with an action brought by the County to enforce the terms of this Covenant, it is agreed between the Owner and the County that each and every day during which any violation of this Covenant occurs shall constitute a separate breach of this Covenant for the purposes of determining the commencement of the applicable statute of limitations period.

M. No Conflicting Agreement. Owner covenants, represents and warrants to the County that the execution and delivery of this Covenant to the County will not violate any agreement now existing with respect to the Gate. Owner shall not execute any other agreement with provisions conflicting with those contained in this Covenant which is paramount and controlling as to the rights, obligations and limitations herein set forth and shall supersede any other agreement with provisions in conflict herewith.

N. Entire Agreement. This Covenant constitutes the entire agreement and understanding between the parties relating to the subject matter of this Covenant, and supersedes any prior agreement or understanding relating thereto.

O. Severability. In case one or more of the provisions contained in this Covenant or any application hereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained in this Covenant and the application thereof shall not in any way be affected or impaired thereby.

P. Attorney's Fees. If any action is brought in a court of law by either party to this Covenant concerning the enforcement, interpretation or construction of this Covenant, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees and costs, including expert witness fees, incurred in the prosecution or defense of such action.

Q. Notices. Except as otherwise provided, all notices provided for or required under this Covenant shall be in writing, signed by the party giving the same, and shall be deemed properly given when actually received or two (2) days after mailed, postage prepaid, certified, return receipt requested, addressed to the parties hereto at their addresses appearing on the signature pages. Each party, by written notice to the other party, may specify any other address for the receipt of such instruments or communications.

R. Jurisdiction and Venue. The laws of the State of Colorado shall govern the interpretation and performance of this Agreement. Venue shall only be proper in Summit County, Colorado.

S. Recording and Filing; Covenant Running With The Land.

1. This Covenant shall be placed of record in the real property records of Summit County Colorado, and, except as otherwise provided herein, the benefits and burdens contained herein shall run with the land and shall bind and inure to, the Owner and its successors and assigns; as well as to the County, its successors and assigns.

2. The Owner hereby agrees that any and all requirements of the laws of the State of Colorado to be satisfied in order for the provisions of this Covenant to constitute a restrictive covenant running with the land shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that these restrictions run with the land. During the term of this Covenant, each and every contract, deed or other instrument hereafter executed conveying any of the Property shown on the Plat, or portion thereof, shall expressly provide that such conveyance is subject to this Covenant; provided, however, that this Covenant shall serve as record notice to all such subsequent owners under Colorado law, and the covenants contained herein shall survive and be effective as to successors and/or assigns of all or any portion of the open space, regardless of whether such contract, deed or other instrument hereafter executed conveying the open space, or portion thereof, provides that such conveyance is subject to this Covenant.

T. Owner's Covenant of Title and Authority. Owner covenants, represents and warrants to the County that Owner has good and marketable title to the open space, and full and complete legal authority to execute and deliver this Covenant to the County; subject only to taxes for 2014 and subsequent years.

U. Vesting and Term. Owner and the County agree that the County's rights and interests under this Covenant are vested immediately and that this Covenant and any amendments hereto, shall be binding and in full force and effect in perpetuity, unless terminated as herein provided.

V. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Covenant.

W. Terminology. Wherever applicable, the pronouns in this Covenant designating the masculine or neuter shall equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Covenant, the singular shall include the plural, and the plural shall include the singular.

X. No Benefit to Third Parties. This Covenant does not and shall not be deemed to confer upon or grant to any third party any rights to claim damages or to bring any lawsuit, action or other proceedings against any of the parties hereto because of any breach hereof, or because of any terms, covenants, agreements or conditions contained herein. Other than as specified herein, this Covenant is not intended to impose any legal or other responsibility on the Parties.

Y. Governmental Immunity. The County does not intend to waive, by any provision of this Covenant, the monetary limits or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended from time to time.

Z. Interpretation. Each party hereto acknowledges that it has reviewed this Covenant and participated in its preparation and understands the provisions of this Covenant. Accordingly, this Covenant and any ambiguous language contained herein shall not be construed against either party for having prepared it.

AA. Binding Effect. This Covenant shall be binding upon, and shall inure to the benefit of the parties, and their respective heirs, successors, assigns, legal representatives, and personal representatives, and all subsequent owners of any portion of the Property, or any interests therein, during the term of this Covenant as herein provided.

IN WITNESS WHEREOF, the parties have executed this Covenant as of the date first written above.

[SEPARATE SIGNATURE PAGES TO FOLLOW]

BLUE SKY RANCH, LLC
a Florida limited liability company

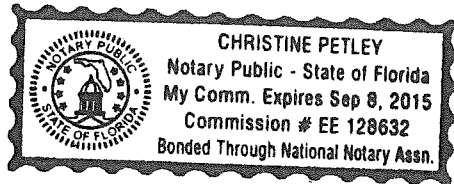
By: Rookis Development Company,
a Florida corporation, its Manager

By: TRZ
Richard J. Rookis, President

Address:
154 N. Ryan Street
Santa Rosa Beach, FL 32459

STATE OF FLORIDA)
)
COUNTY OF WALTON)

The foregoing was acknowledged before me this 09th day of MAY, 2014, by Richard J. Rookis as President of Rookis Development Company, a Florida corporation, Manager of Blue Sky Ranch, LLC, a Florida limited liability company, who personally appeared before me and is personally known to me or produced FIDC as identification.



(Seal)

Christine Petley
(Notary Public (sign above))
Print Name: CHRISTINE PETLEY
Notary Public, State of Florida
My Commission Expires: SEPT 08 2015

SUMMIT COUNTY, COLORADO

ATTEST:

Kathleen Neel
Kathleen Neel, Clerk and Recorder

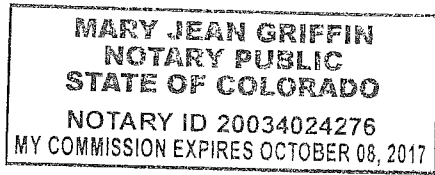
By: K. Stiegelmeier
Karn Stiegelmeier, Chairman
Board of County Commissioners

Address:
P.O. Box 68
Breckenridge, CO 80424

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing instrument was acknowledged before me this 13 day of May, 2014 by Karn Stiegelmeier, as Chairman of the Board of County Commissioners of Summit County, Colorado and Kathleen Neel as Clerk and Recorder of Summit County, Colorado.

WITNESS my hand and official seal.
My commission expires: 10-8-2017



Mary Jean Griffin
Notary Public

Approved as
to term
KAA
Logol



RED, WHITE & BLUE

FIRE PROTECTION DISTRICT
COURAGE, COMMITMENT, CARING

April 23, 2014

Robert Jacobs
Summit County Engineering Department
PO Box 5660
Frisco, CO 80443

RE: Muggins Gulch

Dear Mr. Jacobs:

The Red, White and Blue Fire Protection District's requirements for access are met with the Knox™ Box that has been installed for the gate. The 2012 International Fire Code, as amended, has specific requirements for gates as follow.

503.6 Security gates. The installation of security gates across a fire apparatus access road shall be approved by the fire chief. Where security gates are installed, they shall have an approved means of emergency operation. The security gates and the emergency operation shall be maintained operational at all times. Electric gate operators, where provided, shall be listed in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200.

The District allows for the use of a Knox™ Key Switch, Knox™ Padlock, Knox™ Box, or an Opticom device to satisfy the Code requirement.

Please let me know if you have any questions. I can be reached by email at jnelson@rwbfire.org or by phone at (970) 453-2474.

Sincerely,

RED, WHITE AND BLUE FIRE PROTECTION DISTRICT

Jay T. Nelson
Deputy Chief



OFFICE OF THE SUMMIT COUNTY SHERIFF

April 23, 2014

Robert Jacobs
Summit County Engineering Department
PO Box 5660
Frisco, CO 80443

RE: Muggins Gulch

Dear Mr. Jacobs:

The Summit County Sheriff's Office requirements have been met per the conversation between Undersheriff Derek Woodman and Mr. Richard Aget that occurred on April 17th, 2014. This conversation made it clear that we would need the gate code for access. It is my further understanding that the Red, White and Blue Fire Protection District's requirements for access are met with the Knox™ Box that has been installed for the gate. The 2012 International Fire Code, as amended, has specific requirements for gates which are as follows:

503.6 Security gates. *The installation of security gates across a fire apparatus access road shall be approved by the fire chief. Where security gates are installed, they shall have an approved means of emergency operation. The security gates and the emergency operation shall be maintained operational at all times. Electric gate operators, where provided, shall be listed in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed and installed to comply with the requirements of ASTM F 2200. The District allows for the use of a Knox™ Key Switch, Knox™ Padlock, Knox™ Box, or an Opticom device to satisfy the Code requirement.*

The only further requirement we will need is an assurance that any changes made to the gate code will be conveyed to us promptly.

Respectfully,

John G. Minor
Summit County Sheriff

SHERIFF
John G. Minor

UNDERSHERIFF
Derek Woodman

DIVISION COMMANDERS
Captain Jaime FitzSimons – Patrol /
Investigations
Captain Erik Bourgerie –
Detentions/Civil
Joel Cochran – Emergency Manager
Lesley Hall – Director, Animal
Control & Shelter

ADMINISTRATION
Tracy LeClair
Adrienne Stuckey
Teri Furl

RECORDS / CIVIL
Cecilia De Los Santos
Erin Opsahl

PATROL SUPERVISORS
Sr. Sgt. Dave Martinez
Sr. Sgt. Rachel Dunaway
Sgt. Scott Wagner
Sgt. Jason Little

JAIL SUPERVISORS
Sr. Sgt. Cheryl Giordano
Sr. Sgt. Cynthia Gilbert
Sgt. Ron Hochmuth
Sgt. Jonathan Diurba

INVESTIGATIONS
Sgt. Wes Mumford

SPECIAL OPERATIONS
Sr. Sgt. Cale Osborn

**ANIMAL CONTROL and
SHELTER**
Ian Andrews
Meg Leroux

“Serving Our
Community”