

**SHARED WELL & WATER SUPPLY AGREEMENT**  
**Deer Canyon Preserve**

This Shared Well Agreement/Water Supply Agreement ("Agreement" herein) is made and entered into this **7th** day of **July 2006**, by Verde Heritage Ranch LLC, a Delaware limited liability company and, the party or parties identified below as the owner or owners (referred to herein as "Owner") of the lots identified below (referred to herein as the "Homestead") in Deer Canyon Preserve located in Torrance County, New Mexico (referred to herein as "The Preserve"), with respect to the domestic water well servicing the Homesteads.

**RECITALS**

**WHEREAS**, Owner(s) have purchased Homesteads in The Preserve which are described as Lots **69,70,71,72,73,82,83&84**, Deer Canyon Preserve Phase II, Torrance County, New Mexico.

**WHEREAS**, in accordance with the Deer Canyon Preserve Disclosure Statement, its supplements or amendments, Verde Heritage Ranch LLC, at its expense, has drilled a water well for domestic supply purposes and has installed or agrees to install certain water pipelines on the Preserve.

**WHEREAS**, although Owner has the option of drilling and installing Owner's own well to service Owner's Homestead, Owner has determined that it would be more cost efficient and desirable to share water from the single well installed by Verde Heritage Ranch LLC with the owners of the other Homesteads in The Preserve (referred to herein collectively with the Owner as the "Participants" as defined in Section 2 below).

**THEREFORE**, in consideration of the promises, monetary payments, and covenants set forth below, the parties agree as follows:

**AGREEMENT**

**Section 1. Election to Participate in Shared Well.**

Owner hereby elects to participate in the shared well identified in the records of the New Mexico Office of the State Engineer or Deer Canyon Preserve well number **RG-86336** (the "Shared Well") on the terms and conditions set forth in this Agreement.

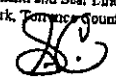
**Section 2. Administration.**

For the purposes of administering the provisions of this Agreement, including, but not limited to, the collection of fees, procurement of maintenance or repairs, or providing related services, an unincorporated association (referred to herein as the "Shared Well Association") is hereby established to carry-out said duties, the members of which shall be the Owner and any other owners of lots on the Preserve which have executed similar shared well/water supply agreements whereby they have elected to share the well identified in Section 1 and participate in this Shared Well Association (collectively referred to as the Participants). The Participants, in their sole discretion, may elect to prepare and file formal Articles of Association and comply with those provisions governing unincorporated associations found in 53-

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County Clerk, Torrance County, NM



10-1 MNSA 1978, et. seq. The Shared Well Association shall appoint an administrator (referred to as the "Administrator" herein), for the purposes of carrying-out the duties of the Shared Well Association or other duties imposed upon the Administrator by this Agreement. The Administrator may be the same administrator who is acting as an administrator under other shared well agreements within The Preserve. Each Homestead, regardless of the number of owners thereof, shall have one (1) vote for purposes of appointing an Administrator or conducting other business of the Association. A successor Administrator may be appointed by a written and acknowledged document signed by majority vote of the Participants. The Participants to this Agreement shall pay an Administrator's fee, to be paid out of the account maintained under this Agreement, the amount of which will be set from time to time by a majority vote of the participants, and shall reimburse Administrator's reasonable expenses incurred in carrying out the duties contemplated under this Agreement.

Section 3. Connection Fee/Inspection.

- A. Upon executing this document, Owner shall pay to the Shared Well Association a one - time connection fee in the amount of Fifty Dollars (\$50.00), and Prior to being connected to the Shared Well System (as defined in Section 6 below) Participants shall have their water system approved in advance of construction and upon completion by representatives of Verde Heritage Ranch LLC.
- B. The Administrator shall deposit all funds of the Shared Well Association on receipt to the Shared Well Association's credit in an interest bearing account at such banks or other depositories as shall from time to time be determined by the Participants (the "Maintenance Fee Account"). The Administrator shall have the power during his or her term for the benefit of the Shared Well Association to make such deposits and to endorse, assign and deliver for collection and deposit checks, drafts and other orders for the payment of money payable to the Shared Well Association or its order.

Section 4. Annual Maintenance Fee.

- A. In addition to the connection fee, Owner shall pay an annual maintenance fee of Five Hundred Dollars (\$500.00) to the Shared Well Association, for maintenance, repairs, refurbishment or replacement of the Shared Well system components. The initial annual maintenance fee payment is due upon execution of this Agreement and the reoccurring annual maintenance which fee shall be paid no later than January 15<sup>th</sup> of each year. If the annual maintenance fee is not paid by January 15<sup>th</sup> of each year, then the water supply to Participant may be terminated on January 31st of that same years as set out in Section 10.
- B. If the balance of the maintenance fee account (which shall include all connection fees paid and all maintenance fees paid, less expenditures) exceeds Five Thousand Dollars (\$5,000.00) at the end of a calendar year, then no maintenance fees shall be charged to existing users for the following calendar year.
- C. Notwithstanding anything to the contrary in the preceding subparagraph B, new users shall continue to be required to pay the connection fee and the first year annual maintenance fee, and undergo the inspections set out in Section 3 at the time that service is initiated.

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- D. If the cost of any maintenance repairs or refurbishment or replacement of the Shared Well System components or the Administrator's expenses exceeds the balance of any fees held in the Maintenance Fee Account, all Participants shall be assessed an equal amount proportionate to their vote set out in Section 2 necessary to cover any such costs. All such amounts paid under this Agreement and held in the maintenance fee account shall be utilized first to address repairs or replacement of the well before a claim may be made on the Individual Tract Owner's Well Trust for payment of those items authorized to be paid out of that Individual Tract Owner's Well Trust as recorded with the Offices of Torrance County, NM in book 296 at page 269-275.

Section 5. Cost of Power to Operate Shared Well.

Each Participant shall pay a proportionate share of the electrical or other fuel costs necessary to operate the Shared Well System. The costs of electricity or other fuel shall be billed to the Participants on a monthly basis in the same proportion that the respective user's water usage bears to the usage of other Participants. All Participants shall have the right to access all meters for purposes of inspection at all reasonable times. Regardless of the amount of water used by the Participants, each participant shall be liable for paying a proportionate share of the electrical stand by fee which shall be calculated as the stand by fee divided by the number of participants.

Section 6. Ownership of Shared Well System.

Verde Heritage Ranch LLC, for consideration paid, grants to the Participants as joint tenants the described improvements to real property in Torrance County, New Mexico: said Shared Well, the well pump, the master meter, the pipelines to the individual Homesteads and the other portions of the well system (the "Shared Well System") with warranty covenants.

Section 7. Reporting and Compliance to State of New Mexico.

Verde Heritage Ranch LLC shall install a master meter at the well which shall meter total water usage by all Participants. The Administrator shall report meter readings as may be required by the statutes, rules and regulations governing the New Mexico office of the State Engineer, or other agency having jurisdiction over such matters.

Section 8. Special Rights of Verde Heritage Ranch, LLC.

Verde Heritage Ranch, LLC, its assigns or successors in interest, in its role as creator and manager of The Preserve, shall retain voting rights with regard to all Homesteads served by the well identified in Section 1 which have either not yet been sold to individual purchasers, or have been sold to individual purchasers, but have been reacquired by Verde Heritage Ranch, LLC or its successors in interest. Verde Heritage Ranch, LLC or its successors in interest shall not, however, be required to pay any annual maintenance fees, or any other assessments provided for under this Agreement.

Section 9. Use of Water.

- A. The water provided under this Agreement shall be used solely for those purposes authorized under the Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County New Mexico (the "CC&R's" herein) in place and governing The Preserve from time to time.
- B. Generally, by way of explanation only, the CC&R's restrict the use of water to domestic purposes, and for livestock and landscaping purposes to the extent permitted in the CC&R's. No commercial use of the water or the Shared Well System is permitted by the Owner, nor is any use of the water off of the Owner's Homestead permitted.
- C. Annual consumption by an individual Homestead shall not exceed ninety-seven thousand seven hundred and forty-eight (97,748) gallons as metered, or an amount equal to the water rights granted by the New Mexico Office of the State Engineer divided by the number of Participants in the Shared Well Association or that amount of water that can be reasonably pumped from the well divided by the number of Participants in the Shared Well Association, whichever is less.

Section 10. Enforcement.

- A. Either the Administrator or any Participant may enforce the terms of this Agreement against any other Participant. Verde Heritage Ranch, LLC, or its successors in interest, may, but shall not be required to, enforce the terms of this Agreement in the event that the Administrator or any other Participants fail to take appropriate enforcement action. Primary enforcement responsibility shall, however, fall upon the appointed Administrator. In the event that any Participant fails to perform any of the obligations required to be performed by that Participant under this Agreement (the "Defaulting Participant"), such Defaulting Participant shall be in default of this Agreement. In such event the Administrator or the non-defaulting Participant or Participants, or Verde Heritage Ranch, LLC or its successors may take any one or more of the following actions:
  - 1. Temporarily terminate all access to and/or delivery of water from the Shared Well System to the Defaulting Participant's Homestead. The lines to the Defaulting Participant's property may be capped and Defaulting Participant shall have no right to use water from the Shared Well, unless and until such default is cured, at which time the provision of water to the Homestead shall be restored as soon as practical;
  - 2. Notwithstanding the provisions of Section 12(B), bring an action against the then owner and/or occupant of the Homestead for specific performance of this agreement and/or for any past due amounts owing;
  - 3. Record a lien on the Homestead to secure payment of any amount owed and to foreclose that lien in the same manner as mortgage foreclosures, but with a thirty-day right of redemption; and/or
  - 4. Take any action at law or equity which it may elect.
- B. Prior to taking any such steps, the Administrator, non-defaulting Participant or Participants, Verde Heritage Ranch, LLC or its successors, as the case may be, enforcing this Agreement (the "Enforcing Party") shall notify the Defaulting party in writing by hand delivery or by certified mail addressed postage prepaid to the

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address of the Homestead. It is not required that the Defaulting Participant receive the notice. If the default is not corrected by payment in full together with a demand fee of 25% of the amount owed but not less than One Hundred Fifty Dollars (\$150.00), the Defaulting party shall be deemed in default and the remedies provided in this agreement may be taken at the sole discretion of the Enforcing Party.

- C. In the event of any uncured default, the Enforcing party shall be entitled to payment by the Defaulting Party of all Enforcing party's costs, fees and expenses, including but not limited to reasonable attorney's fees incurred by the Enforcing Party, costs of preparing and recording a lien, costs of preparing for or filing a law suit, all arbitration fees and costs, witness and expert witness fees.

#### Section 11. Recording and Amendment.

This Agreement shall operate as a covenant running with and burdening the title to the property described above, and may be recorded by the Administrator, Owner, a Participant, or Verde Heritage Ranch, LLC in any public record for recording such covenants. In connection with this Agreement and the transactions contemplated hereby, each Participant shall execute and deliver such additional documents and instruments and perform such additional acts as may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions. The provisions of this Agreement may only be amended by a majority vote of Participants, with each Homestead having a single vote regardless of the number of owners.

#### Section 12. Miscellaneous.

- A. This Agreement shall be governed by the laws of the State of New Mexico.
- B. Specifically including those actions stated in Section 10, the Participants hereby agree that any disputes regarding the application, enforcement or interpretation of this Agreement, including but not limited to the enforceability of this arbitration provision, shall be determined exclusively through binding arbitration conducted by an arbitrator mutually agreed upon by the parties to the dispute, or in the event such agreement is not possible, appointed by the presiding judge of the Judicial District Court for the district in which The Preserve is located. Any order issued pursuant to the arbitration, and any lien filed and recorded as provided in this Agreement, may be enforced by judicial foreclosure, or any other applicable proceeding, against a Defaulting Participant.
- C. This Agreement shall be binding upon and benefit the heirs, representatives, successors in interest, and assigns of the parties hereto. Any person or entity who purchases or otherwise acquires a Homestead from a party to this Agreement and who desires to utilize the water provided for herein shall execute a written agreement agreeing to be bound by the covenants and terms of this Agreement. In the event that said successor actually utilizes water produced by a well covered by this Agreement, that successor, even without having executed a written document agreeing to be bound by the terms of this Agreement, shall nevertheless be deemed to have accepted and agreed to be bound by the covenants and terms of this Agreement by virtue of that successor's use of the water provided under this

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Agreement and shall from the date of the first such use be bound as a Participant to this Agreement.

- D. All prior agreements between the parties, excepting specifically the Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County New Mexico, concerning their relationship as Owner/Participants and The Preserve are incorporated in this agreement, which together with such CC&R's constitutes the entire agreement with respect to its subject matter. Its terms are intended by the parties as a final and complete expression of their agreements with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. This agreement may not be amended, modified, altered, or changed except by an agreement in writing executed by the Participants and The Preserve.
- E. For purposes of this Arrangement, any copy, facsimile, or other reliable reproduction of a writing, transmission or signature may be substituted or used in lieu of the original writing, transmission or signature for any and all purposes for which the original writing, transmission or signature could be used, provided that such copy, facsimile or other reproduction shall have been confirmed received by the sending Party.
- F. A Participant's waiver or consent, express or implied, to or of any breach or default by any party to this Agreement is not a consent or waiver to or of any other breach or default by that party of any other obligation under this Agreement. Failure on the part of a Participant to complain of any act of any person or to declare any person in default of this Agreement, irrespective of how long such failure continues, does not constitute a waiver by that Participant of any rights with respect to such default until the applicable statute of limitations period has run.
- G. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable in any respect under applicable law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.
- H. Indemnification. The Participants shall indemnify and hold harmless the Administrator and/or any Enforcing Party from and against any loss, expense, damage, or injury suffered or sustained by the Participants by reason of any acts, omissions, or alleged acts or omissions arising out of the Administrator's and/or Enforcing Party's activities on behalf of the Association and/or the Participants, or in furtherance of the interests of the Association and/or the Participants, including but not limited to any judgment, award, settlement, reasonable attorneys' fees, and other costs or expenses incurred in connection with the prosecution or defense of any actual or threatened action, proceeding, or claim, if the acts, omissions, or alleged acts or omissions upon which the actual or threatened action, proceeding, or claims are based were for a purpose reasonably believed to be in the best interests of the Association and/or the Participants, and which acts or omissions were not performed or omitted fraudulently or in bad faith or as a result of negligence by the Administrator and/or the Enforcing Party, and which acts or omissions were not in violation of the Administrator's and/or Enforcing Party's obligations to the Association and/or the Participants. Any such indemnification shall be first from the assets of the Association and then the proceeds of insurance acquired for purposes of providing indemnity, if any.

I. This instrument may be executed in multiple counterparts, each of which shall be considered an original.

**VERDE HERITAGE RANCH LLC,**  
a Delaware limited liability company

By: [Signature]  
JIM WINDER, Vice President



[Signature]  
Owner Signature

HENRY J. McINTYRE  
Owner Printed Name

[Signature]  
Owner Signature

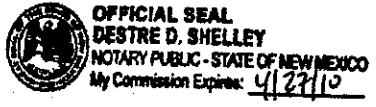
MARGARET H. McINTYRE  
Owner Printed Name

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**ACKNOWLEDGMENT**

THE STATE OF NEW MEXICO )  
:SS  
COUNTY OF DONA ANA)

This instrument was acknowledged before me this 7th day of July, 2006, by James R. Winder, Vice President of Verde Heritage Ranch LLC, a Delaware limited liability company, for and on behalf of said limited liability company.



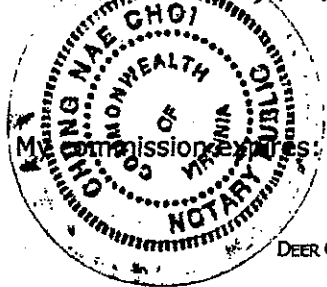
[Signature]  
Notary Public in and for the State of New Mexico

My commission expires: **April 27, 2010**

**ACKNOWLEDGMENT**

THE STATE OF Virginia )  
:SS  
COUNTY OF Fairfax )

The foregoing instrument was acknowledged before me this 4 day of August, 2006, by Chung Nae Chi.



October 31, 2009

[Signature]  
Notary Public in and for the State of Virginia