

**AMENDED AND RESTATED  
RANCHO CABALLO  
WELL SHARING AGREEMENT**



WHEREAS, RLF RANCHO CABALLO, LLC, a Colorado Limited Partnership registered to do business in New Mexico, (hereinafter "RLF") is the owner of the following described real property located in the County of Torrance, State of New Mexico, to-wit:

All of §18 in T1N, R8E; All of §§ 1, 2, 11, 12, 13, 14, 15, 22 in T1N, R7E; SE1/4 OF §9, T1N, R7E; S1/2 OF §10, T1N, R7E; S1/2 and NE1/4 OF §16, T1N, R7E; E1/2 of SE1/4 of §17, T1N, R7E, NW ¼ of §23 T1N, R7E; and E1/2 of §35, T2N, R7E.

(said property referred to collectively as "RANCHO CABALLO" or the "Development");  
and

WHEREAS, RLF proposes to drill wells (the "Wells") on the Development, and to construct and install pumps, well houses, storage tanks, well equipment, meters, irrigation faucets, waterlines and related improvements (together with the Well, the "Water Supply Improvements") on certain lots of the Development (the "Lots");

WHEREAS, RLF desires to create an easement for the Water Supply Improvements which is described on the Development, referenced above;

WHEREAS, RLF has the authority to drill wells throughout the Development, limited to two (2) wells on any single lot;

WHEREAS, RLF desires to provide for the sharing of the water from the Wells and the joint use of the Water Supply Improvements by some of the Lots; and

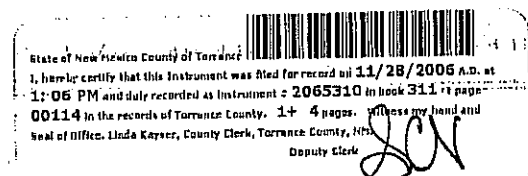
WHEREAS, Rancho Caballo Homeowners Association, Inc. (the "Association"), a non-profit corporation comprised of the owners of the Lots, has been created;

WHEREAS, RLF desires to provide for the Association to operate, maintain, repair and replace the Water Supply Improvements;

WHEREAS, RLF filed an initial Declaration for Well Sharing and Water Supply Improvements on September 21, 2006 with the Clerk of Torrance County, New Mexico; and

WHEREAS, RLF finds it necessary to file this Amended and Restated Well Sharing Agreement to clarify certain rights and responsibilities of RLF and the Association.

NOW, THEREFORE RLF makes this Declaration for Well Sharing and Water Supply Improvements Easement (hereinafter "this Declaration"):



1. a. RLF hereby declares that the Lots shall hereafter be subject to and burdened by the Water Supply Improvements Easement, which shall be used for the Water Supply Improvements and the operation, maintenance, replacement and repair thereof, and access to and from the Water Supply Improvements.
- b. RLF may, but shall have no obligation to, (1) add at any time or from time to time additional lands ("Additional Lands") to the scheme of this Declaration, to be treated as Lots for purposes of this Declaration, and (2) create at any time or from time to time additional easements for the Water Supply Improvements on any Lot it owns at the time of the creation ("Additional Easements"). RLF reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or of any owner and/or mortgagee of any Lot.
- c. RLF has the right, but not the obligation, to drill up to two (2) wells on any lot or common area in the Development.
2. Each Lot, the owners thereof, and the Association and its agents shall have a non-exclusive right to use the Water Supply Improvements Easement and the Water Supply Improvements.
3. The Water Supply Improvements shall be used exclusively for livestock, irrigation, domestic and household water needs of the residents of the Lots and for maintaining the landscaping located on the Lots.
4. RLF may install individual water meters on each Lot, as well as a master meter at any and all Well sites.
5. a. Each Lot shall be entitled to not more than .55 acre feet per year. RLF and the Association shall each have the right, but neither shall have the obligation, to purchase additional water rights to increase the maximum amount of water which may be taken from the Well. Entitlement to such additional water shall be allocated to one or more Lots (including any Additional Lands) as the purchaser may, in its discretion, determine.
- b. Each owner of a Lot (the "Indemnitor") agrees to indemnify and hold harmless the owner of each other Lot (the "Indemnitee") from any loss, damage, or claim arising from the Indemnitor's use of water in excess of the entitlement for the Indemnitor's Lot. The Indemnitor also agrees that the Indemnitee shall be entitled (1) to obtain injunctive relief preventing such excess use and (2) to recover from Indemnitor all costs of enforcing this Subsection 5.b, including reasonable attorneys' fees.
6. a. The Association shall operate, maintain, repair and (as it reasonably deems necessary or appropriate) replace the Water Supply Improvements, whether constructed or installed by the Association or RLF. RLF or the Association shall

have the right to enter onto any Lot within the Development to maintain or repair the Water Supply Improvements.

- b. The cost and expense of operation, maintenance, repair, and capital replacement for the Water Supply Improvements shall be paid through assessments as determined to be necessary by the Association, provided however, in the event any damage or destruction to any Water Supply Improvement is done through the negligence of, or intentional harm by, one of the Lot owners or his or her family or their invitees, then the costs of such repairs or replacement shall be borne by that Lot owner.
- c. If the Well is unable to produce sufficient water to meet the needs of the Lots, without deepening the Well or making substantial modifications, the owners of each Lot shall use the water available, in proportion to their respective entitlements under Section 5. If a water shortage may be reasonably alleviated by deepening the Well or doing other modifications, the deepening or modifications shall be undertaken by the Association and the cost and expense therefor shall be assessed to the Lot owners as determined by the Association.
- d. The Association has the authority to demand payment of all assessments for the Water Supply Improvements, including any assessments for repairs or replacement of Improvements caused by individual Lot owners. Assessments are required to be paid in full within sixty (60) days of the date the assessment is mailed. The Association shall also be entitled to recover from such owner its costs of collection of the unpaid assessment, including reasonable attorneys' fees and costs. Upon the failure of any property owner to pay an assessment when due, the Association may obtain and enforce a lien against the Property of such owner for the unpaid assessment, including fees and costs, by recording the notice of assessment with the Clerk and Recorder of Torrance County, New Mexico.

7. Section 6 of this Declaration notwithstanding, in the event the Association is not formed or ceases to exist, then each Lot owner shall be equally responsible for operation, maintenance, repair and capital replacement of the Water Supply Improvements and shall bear the costs and expenses thereof equally, provided however that (a) if the Lot owners fail to implement other arrangements to fulfill such responsibility, the owner of the lots on which wells are constructed shall act as managers of the Water Supply Improvements, shall oversee metering water use and shall otherwise have authority to take necessary steps to operate, maintain, repair and replace the Water Supply Improvements and (b) if water use is then being metered, then the cost and expense of operation and maintenance shall be borne based upon proportional usage of water.

8. Each Lot owner shall be required to bear any and all expenses related to extending a waterline from the stubout and water meter on each Lot to the dwelling or other structures or improvements constructed on the Lot.

9. No Lot owner shall, by first commencing to use the Well, obtain a priority over any other Lot owner, but shall have rights to the water produced from the Well, as provided for herein.

10. The term of this Declaration shall begin on the date it is filed with the County Clerk of Torrance County, State of New Mexico, and shall continue thereafter so long as any Well is able whether in its present condition or following repair, deepening and/or modification as herein provided, to produce a volume of water adequate to serve the reasonable domestic needs of each Lot served thereby.

11. Notwithstanding the terms of this Declaration, to the extent any provisions hereof conflict with or are in violation of any laws, regulations and/or directives of the State Engineer of New Mexico or other appropriate regulatory authorities, the specific provisions hereof which are in conflict or violation shall be deemed null and void, but the remaining provisions hereof, shall remain in full force and effect.

12. Any Lot owner may terminate use of water from the Well and use of the Water Supply Improvements by abandoning them in an acknowledged, written statement delivered to the Association (or, if Section 7 applies because the Association is not formed or ceases to exist, then to the owners of all other Lots) in recordable form. Upon such abandonment, the abandoning owner of a Lot (a) shall have no further right to receive water from the Well or to use the Water Supply Improvements and (b) shall be relieved of the obligation to bear costs or expenses therefor incurred after the date of delivery of such statement, provided however, that this sentence shall not relieve the abandoning owner of any Utility Assessment properly assessed by the Association prior to the date of delivery of such statement and provided further that no such abandonment shall extinguish any portion of the Water Supply Improvements Easement.

13. No Lot owner, excluding RLF, may drill their own well without the express affirmative consent of RLF or the Homeowners' Association, which decision shall be made at a meeting called and convened in accordance with the bylaws thereof. The consent of RLF or the Homeowners' Association shall not relieve said owner of the obligation to have all appropriate permits and licenses from all relevant governmental agencies, including, without limitation, the State Engineer.

14. Subject to Subsection 1.b, this Declaration may only be amended by a written document executed and acknowledged by not less than seventy-five percent (75%) of the Lot owners benefited hereby.

15. RLF hereby agrees, and each owner of a lot by the acceptance of a deed or contract of sale therefor, whether or not so expressly provided in any such deed or contract or other conveyance, is deemed to agree, to the entitlements and obligations under this Declaration.

16. This Declaration shall be deemed to run with the land and shall be binding upon and shall inure to the benefit of RLF, its successors and assigns, including, without limitation, the Homeowner's Association, in all respects.

[Signature on following page]

