

**STATE OF NEW MEXICO  
COUNTY OF LINCOLN  
TWELFTH JUDICIAL DISTRICT COURT**

**JAMES A. MILLER and  
SARAH L. and JOSHUA C. BOTKIN,**

**Plaintiffs,**

v.

**Cause No.** D-1226-CV-2021-00261

**ROPER INVESTMENTS, LLC and  
ROPER CONSTRUCTION, INC.,**

**Defendants.**

**COMPLAINT FOR DECLARATORY JUDGMENT  
AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF  
ENFORCING DEED RESTRICTIONS AND  
FOR COMPENSATORY AND PUNITIVE DAMAGES**

For their Complaint against Defendants Roper Construction, Inc. and Roper Investments, LLC (collectively “Roper”), Plaintiffs James A. Miller and Sarah L. and Joshua C. Botkin (“Plaintiffs”) state:

**NATURE OF CASE**

1. Plaintiffs bring this action for Declaratory Judgment and Injunctive Relief based on Defendant Roper’s continued violations of deed restrictions burdening Roper’s real property and benefiting Plaintiffs’ adjoining real property. Pursuant to a uniform deed restriction shared commonly by plaintiffs and Roper, any use on lots owned by Plaintiffs and Roper is expressly prohibited “which by its nature (whether noise, odor, hours of operation, etc.) would be a nuisance to adjoining owners.” Despite this prohibition, which runs with and burdens the lots of Roper and Plaintiffs, Roper has filed an application with the New Mexico Environment Department (the “NMED”) seeking to obtain an air quality permit authorizing the construction of a concrete batch

plant on a lot owned by Roper and burdened by the restriction. The proposed plant, by virtue of its deleterious attributes, including noise, air emissions, increased traffic, and proposed hours of operation, constitutes a nuisance, both objectively and as perceived by Plaintiffs, who are entitled to enforce the restriction. Plaintiffs therefore seek a declaratory judgment that the applicable deed restriction prohibits Roper from constructing and/or operating a concrete batch plant on lots burdened by the restriction. Plaintiffs also seek Injunctive Relief ordering Roper to cease and desist with further attempts to obtain permits and authorizations for the construction of the concrete batch plant, contrary to the deed restriction, including an air quality construction permit from the NMED. Finally, Plaintiffs seek an award of compensatory and punitive damages for Roper's intentional and reckless disregard of the deed restriction and the property rights enjoyed by Plaintiffs.

#### **PARTIES, JURISDICTION AND VENUE**

2. All matters material to this action have occurred in Lincoln County, New Mexico.
3. All parties to the case are residents of Lincoln County, New Mexico.
4. Plaintiff James A. Miller is the owner of a tract which is burdened and benefited by the deed restriction prohibiting any use which would be a nuisance to adjoining land owners.
5. Plaintiffs Sarah L. and Joshua C. Botkin are the owners of a tract which is burdened and benefited by the deed restriction prohibiting any use which by its nature would be a nuisance to adjoining land owners.
6. Defendant Roper is the owner of two tracts which are burdened and benefited by the deed restriction prohibiting any use which by its nature would be a nuisance to adjoining land owners.

7. This Court has jurisdiction to determine “any question of construction or validity arising under the instrument,” including a deed which imposes restrictions of use on Defendant Roper and Plaintiffs, and to declare the “rights, status and other legal relations” of the parties pursuant to the Declaratory Judgment Act, NMSA 1978, § 44-6-4. This Court also has jurisdiction pursuant to Article 6, Section 13 of the New Mexico Constitution.

8. Venue is proper in Lincoln County pursuant to NMSA 1978, § 38-3-1(A).

### **FACTUAL ALLEGATIONS**

9. By deed dated May 23, 2014, Frank Reed, a single man, and Ellen Bramblett, a single woman, executed a deed (the “Reed and Bramblett Master Deed”) imposing certain use restrictions on the following described real estate located in Lincoln County, New Mexico:

Tract 4, the tract of land between NW/4 NE/4, lying north of NM220, Section 27, Township 10 South, Range 13 East, NMPM, Lincoln County, New Mexico, as shown by the boundary survey Replat Family Claim of Exemption filed for record in the Office of the County Clerk of Lincoln County, New Mexico, May 23, 2012, in Cabinet J. Slide No. 739.

The Reed and Bramblett Master Deed is attached as Exhibit A.

10. The Reed and Bramblett Master Deed expressly provided limitations and restrictions on use of the property as follows:

Uses: The property may be used for any Legal Purpose, save and except the following, which shall not be allowed

- A. Salvage, scrap metal, or “junk” operations of any kind.
- B. Swine, poultry, or other livestock operations which deal in the commercial feeding, raising or slaughter of animals.
- C. Sexually oriented businesses.
- D. Any use which its nature (whether, noise, odor, hours of operation, etc.) would be a nuisance to adjoining owners.

11. Subsequent to the conveyance creating the use restrictions, the property subject to the Reed and Bramblett Master Deed was divided into five (5) separate tracts described on Exhibit B; the current owners of four (4) of those tracts are Plaintiffs and Defendant Roper. Plaintiff James A. Miller acquired Tract 1, Plaintiffs Sarah L. and Joshua C. Botkin acquired Tract 3A, and Defendant Roper acquired Tracts 4A-1 and 4B. The Reed and Bramblett Master Deed contains no mechanism for any subsequent lot owner to unilaterally create variances from or to remove the restrictions, and the restrictions therefore benefit and burden each lot in perpetuity. Consequently, each divided tract remains subject to the restrictions set forth in the Reed and Bramblett Master Deed, which, as a matter of law, run with the land.

12. Defendant Roper was aware of the use restriction imposed by the Reed and Bramblett Master Deed at the time Roper purchased Tracts 4A-1 and 4B and, upon information and belief, knew that the Reed and Bramblett Master Deed prohibited any use which would be considered a nuisance to adjoining owners, including Roper's proposed concrete batch plant. Despite this knowledge, Roper requested Alliance Abstract Title LLC ("Alliance"), the closing agent for Roper's purchase of Tracts 4A-1 and B, to unilaterally remove the deed restriction because Roper knew or should have known that the restriction, if enforced by adjoining lot owners, would prevent such a proposed use.

13. In its initial response to Roper's request to unilaterally remove the restriction, Alliance's representative stated that, "Also, I needed to talk with you about what you had said about 'changing some of the restrictions.'" By subsequent e-mail, Alliance advised Roper that the restrictions set forth in the Reed and Bramblett Deed would limit the use of the property and that Roper could only obtain the removal of the restriction by contacting the other three lot owners and

seeking their consent to remove the restriction. Defendant Roper declined the invitation and told Alliance “[l]et’s just go ahead and close.”

14. Despite the existence of the deed restriction and Roper’s knowledge of it, Roper has embarked on a scheme designed to abrogate the restriction by constructing a concrete batch plant on Tracts 4A-1 and 4B. The concrete batch plant will cause deleterious effects on the quality of life of the Plaintiffs, as adjoining lot owners subject to the protection of the restriction, and the cement batch plant will directly decrease their property values as a result of those adverse effects. Moreover, the noise generated from the proposed plant will severely damage and impair the quality of life currently enjoyed by Plaintiffs, and the hours of operation proposed by Roper (which extend until 3:00 a.m. during many months of the year), will cause additional adverse consequences and render Plaintiffs’ property unsuitable for enjoyable habitation. Consequently, construction and operation of the proposed concrete batch plant will violate the deed restriction because its very nature will be a nuisance to Plaintiffs, as adjacent landowners.

15. Notwithstanding the limitations on uses imposed by the deed restriction, Roper continues to pursue an air quality construction permit with the NMED, which has scheduled a hearing on Roper’s application beginning February 9, 2022.

**COUNT I**  
**DECLARATORY JUDGMENT**

For Count I of their Complaint against Roper, Plaintiffs state:

16. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 15 the same as if fully set forth.

17. An actual controversy exists concerning Roper’s violations of the deed restriction by seeking regulatory authority to obtain an air quality permit to authorize the construction of the concrete batch plant. Consequently, this Court has jurisdiction under NMSA 1978, § 44-6-2 to

declare that Roper's continued attempts to obtain an air quality construction permit and to build and operate the concrete batch plant constitute a violation of the deed restriction.

18. As noted above, the Reed and Bramblett Master Deed, together with its restrictions, run with the land and confer upon all individual subsequent grantees, including Plaintiffs, the right to enforce the restrictive covenant. Plaintiffs have provided Defendant Roper, through his counsel, with notice that Roper's continued attempts to secure an air quality construction permit to construct the concrete batch plant constitute a violation of the deed restriction. Despite this demand, Roper has refused and continues to refuse to comply with the deed restriction.

WHEREFORE, Plaintiffs request judgment against Roper on Count I as follows:

A. Declaring that the deed restriction set forth in the Reed and Bramblett Master Deed, which prohibits "any other use which, by its nature (whether noise, odor, hours of operation, etc.) would be a nuisance to adjoining owners," is a covenant that runs with the land and binds all successive grantees of the lots subject to the restriction, including Defendant Roper;

B. Declaring that the construction and operation of the concrete batch plant violates the deed restriction; and

C. Declaring that, as a result of the deed restriction, Roper has no legal basis to continue to seek an air quality permit authorizing the construction of the concrete batch plant on Tracts 4A-1 and 4B; and

D. For such other and further relief as the Court deems proper.

**COUNT II**  
**PRELIMINARY AND PERMANENT INJUNCTION PROHIBITING**  
**ROPER FROM CONSTRUCTING THE CONCRETE BATCH PLANT**

For Count II of their Complaint against Roper, Plaintiffs state:

19. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 18 the same as if fully set forth.

20. As a result of Roper's continued attempts to unlawfully violate the deed restriction, Plaintiffs will suffer irreparable harm if such interference is not enjoined, both preliminarily and permanently.

21. A balancing of the interests of Plaintiffs and Roper demonstrates that Roper has no legitimate interest in abrogating the deed restriction, which is a covenant running with the land, while Plaintiffs have a substantial interest in ensuring compliance with the deed restriction

22. Issuance of an injunction is not adverse to the public interest; on the contrary, the injunction protects the public interest by ensuring that deed restrictions running with the land are enforced, and that members of the public, including Plaintiffs, may rely on the enforceability of such restrictions when purchasing real property.

23. Plaintiffs have a substantial likelihood of success on the merits because the law is unambiguous that the deed restriction is enforceable by Plaintiffs and, further, that the construction of a concrete batch plant is the type of deleterious activity which, by its nature, including noise, hours of operation, air emissions, and impairment of the Plaintiffs' quality of life, satisfies the plain meaning of nuisance within the deed restriction.

24. Roper's continued attempts to improperly circumvent the deed restriction and engage in a use which is expressly prohibited by the restriction constitutes real and irreparable injury to Plaintiffs, such that Plaintiffs have no adequate remedy at law. Further, Plaintiffs have a unique interest in preserving and enforcing their real property rights, thereby strongly militating in favor of equitable relief.

WHEREFORE, Plaintiffs request judgment against Roper on Count II as follows:

A. Preliminarily enjoining Roper from constructing or operating, or taking any future action to obtain regulatory authority to construct and operate, a concrete batch plant on Tracts 4A-1 and 4B, in violation of the deed restriction;

B. Entering a permanent injunction containing the same terms and conditions as the preliminary injunction; and

C. Awarding to Plaintiffs their costs and such further relief as the court deems proper.

**COUNT III**  
**COMPENSATORY AND PUNITIVE DAMAGES FOR**  
**INTENTIONAL VIOLATION OF DEED RESTRICTION**

For Count III of their Complaint against Roper, Plaintiffs state:

25. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 18 the same as if fully set forth.

26. At all material times, Roper had knowledge of the existence of the deed restrictions, and unsuccessfully attempted to cause the title company to unilaterally remove them. Instead of observing the title company's admonition that the restrictions could not be removed absent the agreement of all landowners subject to the restrictions, Roper elected to engage in an illegal scheme to intentionally violate the deed restrictions by seeking an Air Quality Permit to construct a concrete batch plant prohibited by the plain language of the restrictions.

27. Roper's knowledge and conduct evince an intentional or reckless disregard for the protections of the deed restrictions and for the rights of adjoining property owners, as a result of which an award of exemplary damages is necessary and appropriate to punish Roper and deter Roper from engaging in such reckless and intentional conduct in the future.

28. Plaintiffs have sustained damages, either nominal or actual, as a result of Roper's deliberate violation of the deed restriction.



WHEREFORE, Plaintiffs request judgment against Roper on Count III as follows:

A. Compensatory damages in an amount to be proven at trial; and

B. Exemplary damages in an amount sufficient to punish Roper for his reckless and intentional violation of the deed restriction and to deter Roper from engaging in such conduct in the future.

Respectfully submitted,

HINKLE SHANOR LLP

*/s/ Thomas M. Hnasko* \_\_\_\_\_

Thomas M. Hnasko

Julie A. Sakura

Dioscoro Blanco

Post Office Box 2068

Santa Fe, NM 87504

(505) 982-4554

[thnasko@hinklelawfirm.com](mailto:thnasko@hinklelawfirm.com)

[jsakura@hinklelawfirm.com](mailto:jsakura@hinklelawfirm.com)

[dblanco@hinklelawfirm.com](mailto:dblanco@hinklelawfirm.com)

*Attorneys for Plaintiffs*

### QUITCLAIM DEED

Frank Reed, a single man and Ellen Bramblett, a single woman, for consideration paid, quitclaims to Frank Reed, a single man and Ellen Bramblett, a single woman, as joint tenants, whose address is: 136 Corrida De Rio, Alto, New Mexico 88312, the following described real estate in Lincoln County, New Mexico:

Tract 4, being a tract of land within the NW/4NE/4, lying North of NM 220, Section 27, Township 10 South, Range 13 East, N M P M, Lincoln County, New Mexico, as shown by the Boundary Survey Keplat Family Claim of Exemption filed for record in the Office of the County Clerk of Lincoln County, New Mexico, May 23, 2012, in Cabinet J, Slide No. 739,

TOGETHER WITH all improvements,

SUBJECT TO easements reservations and restrictions of record;

AND FURTHER SUBJECT TO the following LIMITATIONS AND RESTRICTIONS

- 1 GENERAL RESTRICTIONS All of the property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Declaration and following limitations and restrictions.
- 2 USES The Property may be used for any Legal Purpose, save and except the following, which shall not be allowed.
  - A Salvage, scrap metal, or "junk" operations of any kind,
  - B Swine, poultry, or other livestock operations which deal in the commercial feeding, raising or slaughter of animals,
  - C Sexually oriented businesses,
  - D Any other use which, by it's nature (whether noise, odor, hours of operation, etc.) would be a nuisance to adjoining owners
- 3 Improvements All improvements to the property shall be done in a professional and workmanlike manner and any residence on the property shall be constructed on site from the ground up,

Witness our hand(s) and seals(s) this 23<sup>RD</sup> day of May, 2014.

  
\_\_\_\_\_  
Frank Reed

  
\_\_\_\_\_  
Ellen Bramblett

STATE OF NEW MEXICO                    )  
  ss  
COUNTY OF LINCOLN                    )

This instrument was acknowledged before me this 23<sup>RD</sup> day of May, 2014, by Frank Reed and Ellen Bramblett

My Commission Expires  
6/12/15

  
\_\_\_\_\_  
Notary Public

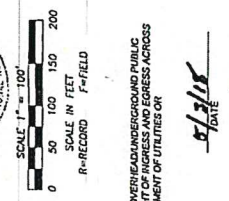
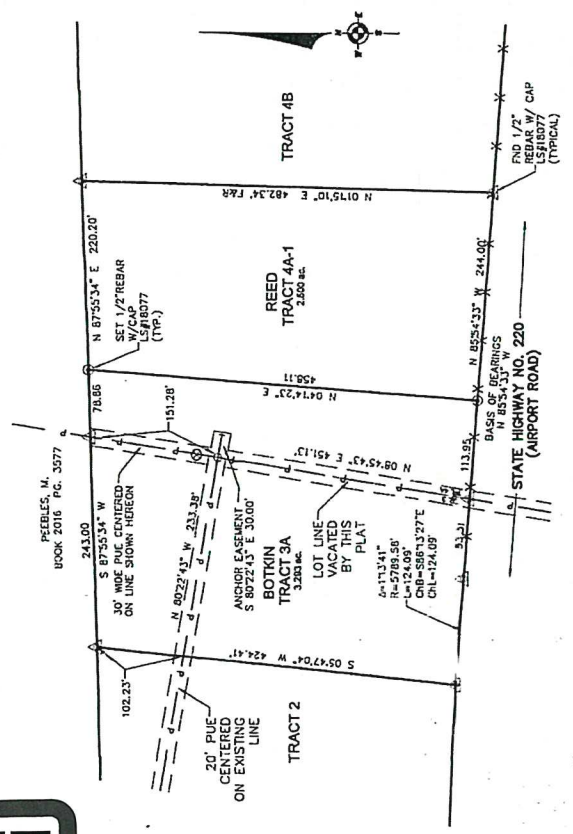


LINCOLN COUNTY - NM  
RHONDA B BURROHS, CLERK  
201402915  
Book 2014 Page 2915  
1 of 1  
05/27/2014 02:02:20 PM



**EXHIBIT  
B**

**BOUNDARY SURVEY REPLAT**  
TRACT 3 AND TRACT 4A,  
WITHIN THE NW/4 NE/4 OF SECTION 27,  
TOWNSHIP 10 SOUTH, RANGE 13 EAST, N.M.P.M.,  
LINCOLN COUNTY, NEW MEXICO



**FLOOD CERTIFICATE:**  
THESE TRACTS ARE LOCATED OUT OF A SPECIAL FLOOD HAZARD ZONE AS SHOWN ON THE LINCOLN COUNTY FEMA FLOOD HAZARD MAP DATED NOVEMBER 16, 2011.

**APPROVAL BY UTILITY COMPANIES:** NOTE: AN EASEMENT IS RESERVED FOR ALL OVERHEAD UNDERGROUND PUBLIC UTILITIES CROSSING THE PROPERTY AND FOR ANY CROSSINGS ACROSS APPURTENANCES, THERE TO.  
 TITLE: \_\_\_\_\_ DATE: 4/13/18  
 TITLE: \_\_\_\_\_ DATE: 4/13/18  
 TITLE: \_\_\_\_\_ DATE: 4/13/18  
 TITLE: \_\_\_\_\_ DATE: 4/13/18



**APPROVAL BY LIEN HOLDER OF TRACT 3**  
 LIEN HOLDER: María Romo  
 NAME AND TITLE: MARLA ROMERO, A/P  
 DATE: 5-17-2018

**AFFIDAVIT**  
STATE OF NEW MEXICO ) SS  
COUNTY OF LINCOLN ) SS

I, FRANK REED, DO HEREBY CERTIFY THAT FRANK REED, A SINGLE MAN AND ELLEN BRAMBLETT, A SINGLE WOMAN, AS JOINT TENANTS ARE THE RECORD OWNERS AND PROPRIETORS OF TRACT 4A WITHIN THE NW/4 NE/4 OF SECTION 27, TOWNSHIP 10 SOUTH, RANGE 13 EAST, LINCOLN COUNTY, NEW MEXICO, AS SHOWN BY THE BOUNDARY SURVEY REPLAT FILED IN THE OFFICE OF THE COUNTY CLERK AND EXCERPTED RECORDER OF LINCOLN COUNTY, NEW MEXICO ON FEBRUARY 21, 2018, IN BOOK C-1, PAGE 1022.

**ACKNOWLEDGMENT**  
STATE OF NEW MEXICO ) SS  
COUNTY OF LINCOLN ) SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 19th DAY OF April, 2018 BY FRANK REED, A SINGLE MAN.  
 MY COMMISSION EXPIRES: 4/30/20

*Frank Reed*  
FRANK REED

*Ellen Bramblett*  
ELLEN BRAMBLETT

**OFFICIAL SEAL**  
ERIC E. COLLINS  
NOTARY PUBLIC  
STATE OF NEW MEXICO  
My Commission Expires: 4/30/20

**ACKNOWLEDGMENT**  
STATE OF NEW MEXICO ) SS  
COUNTY OF LINCOLN ) SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 17th DAY OF April, 2018 BY ELLEN BRAMBLETT, A SINGLE WOMAN.  
 MY COMMISSION EXPIRES: 4/30/20

*Eric E. Collins*  
ERIC E. COLLINS  
NOTARY PUBLIC

**OFFICIAL SEAL**  
ERIC E. COLLINS  
NOTARY PUBLIC  
STATE OF NEW MEXICO  
My Commission Expires: 4/30/20

**ACKNOWLEDGMENT**  
STATE OF NEW MEXICO ) SS  
COUNTY OF LINCOLN ) SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 25th DAY OF April, 2018 BY SARAH C. BOTWIN AND SARAH L. BOTWIN, HUSBAND AND WIFE AS JOINT TENANTS.  
 MY COMMISSION EXPIRES: 4/30/20

*Sarah L. Botwin*  
SARAH L. BOTWIN

*Sarah C. Botwin*  
SARAH C. BOTWIN

**OFFICIAL SEAL**  
ERIC E. COLLINS  
NOTARY PUBLIC  
STATE OF NEW MEXICO  
My Commission Expires: 4/30/20

**APPROVAL BY LINCOLN COUNTY**  
APPROVED BY SUMMARY PROCEDURE BY LINCOLN COUNTY THIS 19th DAY OF JUNE, 2018.

*Eric E. Collins*  
ERIC E. COLLINS  
NOTARY PUBLIC  
STATE OF NEW MEXICO  
My Commission Expires: 4/30/20

**TAX CERTIFICATE**  
RITA TAYLOR, COUNTY MANAGER  
SUSANNAH BROSZ, PLANNING DIRECTOR

THE LINCOLN COUNTY ASSESSOR'S OFFICE CERTIFIES THAT TAXES ARE PAID THROUGH THE CURRENT TAXABLE YEAR FOR PARCELS SHOWN ON THIS PLAT.

COUNTY ASSESSOR

DATE: 6/19/18

**INDEXING INFORMATION FOR COUNTY CLERK**

BOOK: 20180216  
PAGE: 266

RECORD: N/A - SEE PLAT

OWNER OF PROPERTY: REED/BOTWIN

SECTION: 27

TOWNSHIP: T 10 S

RANGE: R 13 E

N.M.P.M.:

COUNTY CLERK FILING INFO

**BOOK NUMBERS:**  
TRACT 4A: 4-072-059-307-420

**BOUNDARY SURVEY REPLAT:**  
TRACT 3 - BOTWIN; BOOK 2014, PAGE 2015

**TRACT 4A - REED/BOTWIN;** BOOK 2014, PAGE 2015