

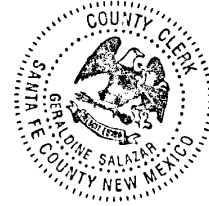
COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

AMENDED AND RESTATED
PAGES: 57

I Hereby Certify That This Instrument Was Filed for
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Witness My Hand And Seal Of Office
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Deputy Wendee Dugan County Clerk, Santa Fe, NM



AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR THE CIELO LUMBRE SUBDIVISION



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CIELO LUMBRE AMENDED AND RESTATED DECLARATION OF COVENANTS

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR THE CIELO LUMBRE SUBDIVISION ("Declaration") is recorded this 15th day of October, 2019, following approval by Owners of Lots holding at least eighty percent (80%) of the votes in the Cielo Lumbre Homeowners' Association, a New Mexico nonprofit corporation formed to manage, maintain and insure the Easement and common area improvements, including the road easements, access and utility easements, drainage easements, community water system easements, and public pedestrian easements shown on the Subdivision Plat, along with any Lot owned by the Association; to enforce the Subdivision covenants; and to contract for services for the benefit of Lot Owners.

RECITALS

- A. Cielo Lumbre Subdivision ("Subdivision") was created by the "Plat of Cielo Lumbre Subdivision", recorded in Book 204, page 012, on November 15, 1989, in the files of the County Clerk of Santa Fe, New Mexico ("Original Plat"); as amended by the plat titled "Cielo Lumbre Subdivision Unit II", recorded in Book 231, page 013, on January 3, 1992, in the files of the County Clerk of Santa Fe, New Mexico ("Unit II Plat"); and the "Plat of Cielo Lumbre Subdivision", recorded in Book 299, page 030, on May 30, 1995, in the records of the County Clerk of Santa Fe, New Mexico ("Amended Plat") (collectively: the "Subdivision Plats").
- B. The original "Declaration of Protective Covenants for the Cielo Lumbre Subdivision" was recorded on November 15, 1989, in Book 664, pages 822-874, in the files of the County Clerk of Santa Fe, New Mexico ("Original Declaration"); and amended by the "First Amendment to Declaration of Protective Covenants for the Cielo Lumbre Subdivision", recorded on January 7, 1992, in Book 781, pages 205-209, in the files of the County Clerk of Santa Fe, New Mexico ("First Amendment to Original Declaration").
- C. Pursuant to Article VI, Section 5 of the Original Declaration, the Owners of Lots within the Subdivision desire to amend the provisions of the Original Declaration and First Amendment to Original Declaration through the adoption of this Amended & Restated Declaration of Protective Covenants for Cielo Lumbre Subdivision ("Declaration"), for the purpose of protecting the value and standards of the property within the Subdivision. The terms of this Declaration shall completely replace, supplant and supersede any and all prior or contemporaneous declarations, bylaws, amendments, agreements or understandings, whether recorded or unrecorded—written or oral—with respect to the subject matter herein, and shall run with the land and be binding upon and inure to the benefit of all parties having any right, title or interest in or to the real estate described herein, or any part thereof, and their successors and assigns.

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NOW, THEREFORE, the Owners hereby declare that the Subdivision shall be subject to the following covenants, conditions and restrictions:

ARTICLE 1
Definitions

1.1 ACC.

"ACC" shall mean and refer to the Architectural Control Committee created by Article 2, Section 9 of this Declaration.

1.2 Association.

"Association" shall mean and refer to the Cielo Lumbre Homeowners' Association, a New Mexico nonprofit corporation formed to manage, maintain and insure the Easements and common area improvements, including the road easements, access and utility easements, drainage easements, community water system easements, and public pedestrian easements shown on the Subdivision Plat, along with any Lot owned by the Association; to enforce the Subdivision covenants; and to contract for services for the benefit of Lot Owners, including septic tank inspections and pumping.

1.3 Bylaws.

The Bylaws of Cielo Lumbre Homeowners' Association. In the event of a conflict between the provisions of the Declaration and the Bylaws or any Subdivision Rules adopted by the Association, the Declaration shall prevail except to the extent the Declaration is inconsistent with the HOA Act.

1.4 Disclosure Certificate.

The certificate to be prepared by the Association within ten (10) business days, at the written request of a seller or seller's agent, as required by Sections 47-16-11 and 47-16-12 of the HOA Act, containing the following disclosures: (i) the existence and terms of any right of first refusal or other restraint on the free alienability of the lot; (ii) the amount of the monthly common expense assessment and any unpaid Common Expense or Special Expense Assessment currently due and payable from the selling Lot Owner; (iii) any other fees payable by Lot Owners; (iv) any capital expenditures anticipated by the Association and approved by the Board of Directors for the current fiscal year and the two next succeeding fiscal years; (v) the amount of any Reserves for capital expenditures and of any portions of those Reserves designated by the Association for any approved projects; (vi) the most recent regularly prepared balance sheet and income and expense statement, if any, of the Association; (vii) the current operating Budget of the Association; (viii) any unsatisfied judgments or pending suits against the Association and the status of any pending suits material to the Association of which the Association has actual knowledge; (ix) any insurance coverage provided for the benefit of Lot Owners and the Board of Directors of the Association; (x) the remaining term of any leasehold estate affecting the Association and the provisions governing any extension or renewal thereof; and (xi) the contact person and contact information for the Association.

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1.5 Easements.

"Easements" shall mean and refer to all real property designated as such on the Amended Plat and the Unit II Plat, including roadways and streets comprising Via Brisa, Brisa Circle, Via Magdalene, Via Janna, and any medians thereon.

1.6 Estoppel Certificate.

A recordable statement setting forth the amount of unpaid assessments against a Lot Owner's Lot, to be furnished upon written request by a Lot Owner within ten (10) business days. Pursuant to Section 47-16-6(D) of the HOA Act, the statement shall be binding on the Association and the Board of Directors.

1.7 Homeowner Association Act or HOA Act.

The statute governing homeowner associations in New Mexico [Chapter 47, Article 16 NMSA 1978]. In the event of conflict between the provisions of this Declaration or the HOA Act, the terms of the HOA Act shall prevail.

1.8 Lot.

"Lot" shall mean and refer to each of the thirty-six (36) Lots numbered 1 through 6, inclusively, and 8 through 37, inclusively, as shown on the Amended Plat and the Unit II Plat. For purposes of this definition as used herein, Lot 7 is specifically excluded.

1.9 Member.

"Member" shall mean any Owner of a Lot within the Subdivision.

1.10 Mortgagee.

The institutional holder of a first Security Interest in a Lot.

1.11 Nonprofit Corporation Act.

The statute governing nonprofit associations in New Mexico [Chapter 53, Article 8 NMSA 1978].

1.12 Owner.

"Owner" shall mean and refer to any contract purchaser or record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, but excluding those having such interest merely as security for the performance of an obligation.

1.13 Park.

"Park" shall mean and refer to the park common area comprising all of Lot 7 as shown on the Amended Plat.

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1.14 Percentage Interest.

"Percentage Interest" shall be the number one (1) divided by the total number of Lots in the Subdivision ("Percentage Interest").

1.15 Plat.

Plat shall refer to one or more of the following:

"Original Plat of Cielo Lumbre Subdivision Prepared for the Hurlocker Corp. within Section 28, T17N, R9E NMPM Santa Fe County New Mexico" filed with Santa Fe County on November 15, 1989 in Book 204, page 012, and amended by the plat entitled "Cielo Lumbre Subdivision Unit II prepared for the Hurlocker Corp. and Sidney Singer, Replat of Tract T-1, Lot 1 & Lot 2, and Tract T-2 Lot 1 of a portion of the Edwin J Smith Tract within Section 28, T17N, R9E NMPM Santa Fe County, New Mexico" filed with Santa Fe County 3rd day of January 1992," recorded in Book 231, page 013-and most recently amended by the "Plat of Cielo Lumbre Subdivision", recorded in Book 299, page 030, on May 30, 1995, in the records of the County Clerk of Santa Fe, New Mexico ("Amended Plat"). In addition "Amendment to Cielo Lumbre Homeowners Association Declaration of Protective Covenants regarding variance of setback requirements for Lots 29 and 30". See Exhibit A.

1.16 Property.

The real estate shown on the Plat and described on **Exhibit A**.

1.17 Structure.

"Structure" shall mean any residence, dwelling, garage, out-building or wall.

1.18 Subdivision.

"Subdivision" shall mean and refer to the real estate commonly known as the Cielo Lumbre Subdivision, as shown on the Original Plat, Unit II Plat and Amended Plat and as described on **Exhibit A**.

1.19 Subdivision Rules.

"Subdivision Rules" shall mean and refer to the rules established from time to time by the Board of Directors of the Association for the purpose of enforcing the covenants and governing the operation, use, maintenance, management, and control of the Easements, common areas, and any facilities or services made available to the Owners.

ARTICLE 2

Structures

2.1 Single-Family Dwelling.

No structure shall be erected, altered, placed or permitted to remain on any Lot or building site subject to this Declaration other than one detached single-family dwelling for private use, a private attached garage, recreational facilities, solar heating devices, evaporative

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cooler or coolers, and improvements incidental to residential use of the Lot. Notwithstanding any other provision contained herein, all Structures, exclusive of walls thirty (30) inches or less in height, constructed on Lot 22 must be built within the "building envelopes" designated as "Area A" or as "Area B" as shown on the Plat.

2.2 No Subdivision.

No subdivision of any Lot shall be permitted.

2.3 Prohibited Structures.

No modular homes, prefabricated structures or mobile homes may be placed on or kept at any building site. No temporary house, dwelling, garage, outbuilding, trailer or other structure shall be placed or erected upon the Subdivision except as permitted by this Declaration.

2.4 Height Limitations.

No structure shall exceed fourteen (14) feet in height. For the purpose of this section, height shall be measured from the highest natural, undisturbed ground level of the main residential building measured at the stem wall perimeter to the top of the parapets or main house structure, exclusive of chimneys and permitted television antennae. Notwithstanding any provision contained herein to the contrary, the Architectural Control Committee may, in its sole discretion, approve a waiver of said maximum height restriction where the ACC determines that other Lots will not be adversely affected. Notwithstanding any other provision contained herein, no variance of height restrictions shall be permitted within the Abuilding envelope@ designated as AArea B@ within Lot 22 as shown on the Plat, nor shall any variance of the height restrictions be permitted for Lots 33, 34 and 35.

2.5 Renewable Energy.

2.5.1 Subject to restrictions contained herein, structures powered by passive and active solar energy systems are encouraged within the Subdivision.

Design, approval and installation shall be in accordance with the New Mexico "Solar Rights Act" (47-3-1 to 47-3-5 NMSA 1978), the "Solar Rights Act" (Sections 47-3-1 to 47-3-5 NMSA 1978) and the "Solar Recordation Act" (Section 47-3-6 to 47-3-12 NMSA 1978) as amended. It is preferable that roof mounted and ground mounted solar-panel installations be as unobtrusive as possible. Homeowner intending to install a solar collector system shall submit a roof or ground plan of the installation and a signed and notarized "Solar Right Declaration" to the CLHA Architectural Committee for review and approval.

2.5.2 Wind Energy: Small wind energy systems may be approved by the ACC upon submission of the proposed location and design of the system. Noise generated by the wind energy system shall not be a nuisance to surrounding neighbors. Homeowner requesting installation of a wind energy system shall provide the ACC with manufacturer's noise generation data for the system to be installed.

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2.6 Construction and Design of Structures.

Any and all dwellings, attached garages or walls (hereinafter collectively called AStructures@) shall be constructed on the Subdivision in accordance with the following criteria:

- 2.6.1 All structures shall be pueblo, territorial, Northern New Mexico "Ranch" style, or "new" Santa Fe in style and stuccoed in earth-tone colors, as approved by the ACC based on the most current El Rey® stucco color chart or as otherwise allowed by the ACC, so as to be in harmony with the general surroundings. All exterior paint colors must also be approved by the ACC. No wooden exteriors of structures other than trim or decking shall be permitted without the prior written consent of the ACC.
- 2.6.2 Roofing materials, air conditioning units, evaporative coolers and associated ductwork visible from any Lot or Easement within the Subdivision shall be non-reflective and of a color and material approved in advance by the ACC. No asphalt shingle or exterior wooden roofs shall be permitted.
- 2.6.3 The location or arrangement of any sewage disposal system shall not endanger any person's health or safety or any public utility or any Lot Owner's facilities or improvements. Any septic system must maintain compliance with all current federal, state and local laws and regulations.
- 2.6.4 Exterior residential improvements, including the final stucco color coat, paint, trim and landscaping shall be fully completed within one (1) year after the commencement of construction.
- 2.6.5 All masonry block structures (including walls) and frame structures shall be covered with waterproofing paper prior to lathing and plastering so as to conceal moisture Ableed-through@ of masonry joint lines and sheathing joints.

2.7 Reflective Materials.

No reflective material visible from any other Lot or Easement within the Subdivision shall be used. If such visible reflection does occur, the reflective material shall be painted a subdued color or otherwise screened from view, as approved in writing by the ACC.

2.8 Exterior Design Details.

In order to avoid angles that break from the vertical and thus show a delineated shadow line where the parapet meets the roof line on exterior wall elevations, all exterior walls that slope inwards above the roof line shall do so gently without obvious lines. Windows (except "bay" windows) shall be recessed into the wall from the exterior face except where Territorial detailing is involved. Notwithstanding the foregoing, the final determination of acceptable design details shall rest solely with the ACC.

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2.9 Architectural Control Committee.

An "Architectural Control Committee" (hereinafter sometimes referred to as the "ACC") for the Subdivision is hereby established and shall consist of three (3) persons appointed by the Association's Board of Directors.

- 2.9.1 Upon the expiration of the term of any ACC member, the Board of Directors of the Association shall appoint a successor to such position who shall serve for a period of three (3) years, such that the terms of the ACC members are staggered. An ACC member shall serve until his or her term expires and a successor is duly appointed and qualified, the member resigns, or is unable to serve, or the member is removed in the manner provided for the removal of directors in Section 4.07 of the Bylaws for the Association. Any vacancy in the ACC occurring before the end of a term shall be filled by a person appointed by the majority vote of the Board of Directors of the Association.
- 2.9.2 The affirmative vote of a majority of the members of the ACC shall be required for approval for any matter; provided, however, that a majority of the members of the ACC may designate one member to act on behalf of the ACC.
- 2.9.3 The Cielo Lumbre Subdivision is adjacent to the Coyote Ridge Subdivision (f/k/a College Park Subdivision). A member of the Coyote Ridge Association, Inc. may be invited by the Cielo Lumbre Homeowners' Association ACC to attend its design review meetings. Notwithstanding the foregoing, the rights and privileges of the Owners hereunder shall not extend to any owner of property within the Coyote Ridge Subdivision nor shall the Coyote Ridge Association, Inc. member attending the Cielo Lumbre Homeowners' Association ACC meetings have any voting rights therein.

2.10 Design Approval.

Prior to the commencement of construction of any Structure, including additions or renovations, or any construction activity, road building, excavation, site preparation, tree cutting, etc., on any Lot, the Owner thereof (the "Owner-Applicant") must obtain approval by the affirmative vote of the Architectural Control Committee for a portion of the construction plans as follows:

- 2.10.1 The Owner-Applicant shall hand deliver the following information to the Association's Board of Directors which, following the Board's review, shall forward the same information to the ACC for its review:
 - (a) three (3) sets of complete plans, to scale, for any wall, road, or exterior of such Structure, including the exterior detail;
 - (b) exterior elevation drawings for all sides of the Structure or wall;
 - (c) the number of interior square feet;
 - (d) the location of such Structure, including walls, upon the Lot;

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- (e) the exterior color scheme and description of materials to be used, including roof treatment, if applicable;
- (f) location of and plans for the driveway, if applicable;
- (g) the location of the septic system, if applicable; and
- (h) the street and mailing address for such Owner.

2.10.2 The Owner-Applicant, prior to submitting the items required by subparagraph 2.10.1 of this Section, shall stake the locations of all Structures, including walls, the driveway and septic system, if applicable.

2.10.3 No change in approved plans for elevations of Structures, location of Structures, including walls, driveways, septic systems, or exterior color scheme and roof treatment, shall be permitted unless such change has been approved pursuant to the terms of this Section.

2.11 Annexation.

In 2019, the Subdivision may be annexed to the City of Santa Fe as part of its Phase 3 annexation. If annexation occurs, the Subdivision will become subject to City of Santa Fe zoning and land use requirements, in addition to the covenants and restrictions within this Declaration.

ARTICLE 3

Common Scheme Restrictions and Requirements

3.1 Trees and Landscaping.

The native growth within the Subdivision (including but not limited to cacti, piñon, and juniper trees) shall not be destroyed or removed without the prior written approval of the Architectural Control Committee. Each Owner shall be responsible for keeping his or her native trees in a healthy condition, and shall take reasonable measures to ensure the health of such trees does not become threatened by disease or infestation. The Association, upon receiving evidence of a Lot Owner's native trees being diseased or infested, may give notice to such Owner to treat or remove the diseased or infested trees. In the event the Owner has not effectively treated or removed his or her diseased or infested trees within twenty (20) calendar days after the date of such written notice, the Board may order the treatment of the diseased or infested trees, with the cost thereof being assessed to such Owner as a Special Expense. The Board may also give notice of the diseased or infested trees to neighboring Lot Owners and encourage inspection and preemptive treatment on the part of those neighboring Lot Owners.

3.2 Driveways.

3.2.1 No private driveways shall be constructed in excess of twelve (12) feet in width.

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- 3.2.2 All driveways shall be surfaced by lot owners with gravel, asphalt, brick, earth-tone colored concrete or compacted base coarse to prevent dust, and maintained so as to reduce erosion and eliminate unsightly conditions.
- 3.2.3 All driveways shall be graded and sloped for proper drainage.
- 3.2.4 All driveways shall have culverts large enough for proper drainage. A minimum 18" diameter culvert shall be installed where the driveway crosses the roadside ditch adjacent to the private access road for the Subdivision.

3.3 Utilities.

- 3.3.1 All electrical service, gas lines, water lines, cable television, telephone lines or other utilities shall be placed underground and installed in or adjacent to the driveway.
- 3.3.2 Additional utility Easements as shown and stated on the Plat of the properties are imposed on the Lots.

3.4 Set-backs.

Any single family dwelling erected upon any Lot and every part thereof, shall be located not closer to any property line of the Lot than twenty-five (25) feet; provided, however, that some Lots shall have set-backs other than 25 feet as shown on the Plat.

- 3.4.1 Lot 29 shall have a variance to the setback requirement as set forth herein such that the completed single family dwelling shall not encroach more than eleven (11) feet from its common boundary with Lot 30.
- 3.4.2 Notwithstanding the foregoing, no Structure (except walls thirty (30) inches or less in height) shall be constructed on Lots 6, 8, 9, 10 and 11 within thirty (30) feet of the upper edge of the escarpment existing on said Lots. No wall thirty (30) inches or less in height shall be constructed on Lots 6, 8, 9, 10 and 11 within ten (10) feet of the upper edge of said escarpment. Any question of where the edge of the escarpment is situated shall be determined solely by the Architectural Control Committee.

3.5 Fences and Walls.

- 3.5.1 No free standing fences or walls may be more than thirty (30) inches high or closer than fifteen (15) feet to any Lot line abutting an Easement or to the boundary of any Easement. Fences and walls in excess of thirty (30) inches in height must be attached to a residence and cannot enclose more than a total of six thousand (6,000) square feet. No wire or metal mesh fencing is allowed except for garden fences eighteen (18) inches in height. Fences or walls for "screening" purposes may exceed thirty (30) inches in height and need not be attached to a residence, if approved by the Architectural Control Committee. No perimeter Lot fencing shall be permitted.

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- 3.5.2 Fencing material may be coyote style constructed of aspen, fir or cedar posts. Walls may be either (i) adobe (plastered or unplastered) or (ii) plastered masonry walls. Board, slat or bark-faced fences are strictly prohibited.
- 3.5.3 Land not immediately surrounding Structures and garden areas shall be left open and unfenced.

3.6 Trash and Noise.

- 3.6.1 No Lot shall be used for the storage or dumping of rubbish or debris of any kind, or for the storage of any personal property or thing that will cause such Lot to appear in an unclean or untidy condition, or that will be visually offensive or obnoxious, toxic, dangerous, or unhealthy.
- 3.6.2 No substance, thing or material may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any occupants or Owners of Lots in the Subdivision.
- 3.6.3 Before and after construction, the storage of construction material, supplies and equipment shall be prohibited unless placed out of sight from other Lots and the Easements within the Subdivision.
- 3.6.4 All clothes lines, clothes drying facilities, mechanical and other equipment, wood piles, except fire logs less than one (1) cord in size, storage piles, campers and horse trailers, on any Lot shall be walled in and/or screened at all times, with the written approval of the ACC, so that they may not be seen from any other Lot or the Easements.
- 3.6.5 No devices emitting unreasonable noise levels shall be permitted within the Subdivision.
- 3.6.6 During or after construction of improvements to any Lot, no concrete slurry shall be left on any Lot or within the Easements.
- 3.6.7 Garbage and recycling receptacles should be removed from the street within a day of pick-up or as soon as possible.

3.7 Garages.

- 3.7.1 A garage of sufficient size to accommodate at least two automobiles shall be constructed with each residence.
- 3.7.2 The garage shall primarily be used for vehicles and not storage. Storage in garages may not take precedence over the garage's primary function: to house automobiles.
- 3.7.3 Trailers, boats and similar mobile structures and vehicles shall be completely screened from view of other Lots and the Easements by means of a coyote fence, wall, or similar treatment approved by the ACC.

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- 3.7.4 No sheds shall be permitted without prior written approval of the Architectural Control Committee. Any such storage shed erected on a Lot shall be screened from view from other Lots and the Easements in a manner approved in writing by the ACC before the shed is constructed.
- 3.7.5 No vehicles of any type shall be permanently or semi-permanently parked in any portion of the Subdivision visible from other Lots or the Easements for purpose of repairs, reconstruction or storage.

3.8 Storage Tanks.

No elevated tanks of any kind shall be erected, placed or permitted within a Lot. Any tanks for use in connection with any residence, including all tanks for the storage of liquefied petroleum gas and fuel oil, gasoline or oil, and water greater than 55 gallons must be buried or concealed by walls or fences approved by the ACC so as to shield them from view from other Lots and the Easements. Rain barrels less than 55 gallons are not required to be buried or screened, but it is preferred that such barrels be architecturally pleasing.

3.9 Towers.

- 3.9.1 Provisions of this Section shall remain enforceable even if enforcement action is not commenced within the time limitations otherwise provided by the Declaration.
- 3.9.2 No derrick or other structure designed for use in boring for oil or natural gas, and no radio or television transmission towers shall be erected, placed or permitted on any Lot or the Easements. The production or extraction of oil, natural gas, petroleum, asphalt or hydrocarbon products or substances shall not be permitted on any Lot or the Easements.
- 3.9.3 Pursuant to the provisions of the Federal Communications Commission's Over-the-Air Reception Devices Rules (47 C.F.R. Section 1.4000), as amended, an over-the-air reception device less than one (1) meter in diameter may be installed provided that the device is no larger than absolutely necessary for reception of an acceptable quality signal and is located such that the device is least visible to the other Lots within the Subdivision or from the Easements.
- 3.9.4 Direct Broadcast Satellite, Mobile Data Service and Fixed Wireless Service devices that are larger than one (1) meter in diameter are prohibited. A mast, cabling, supports, guide wires, conduits, wiring, fasteners, or other accessories necessary for the proper installation, maintenance, and use of a device shall be considered part of the device.

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3.10 Animals.

Except as expressly provided herein, no animals of any kind, including livestock, may be kept on any Lot, whether for personal or commercial purposes. Each lot may have a maximum of three (3) dogs or four (4) cats, or some combination thereof totaling four (4) animals for non-commercial purposes only ("Pets").

- 3.10.1 Pets shall be registered, licensed, and inoculated as required by law.
- 3.10.2 All Pets must be confined on the Owner's Lot in accordance with the Santa Fe County Animal Control Ordinance.
- 3.10.3 No animals may be kept or maintained on any Lot in any manner or number which constitutes a nuisance, in the Board's sole discretion, or is offensive to the residents of neighboring Lots, whether by reason of noise, habits, odors, being permitted to roam free, or otherwise. The Board of Directors of the Association shall have the right to order the removal of any animal which is kept in violation of this Declaration.
- 3.10.4 Enclosures for animals shall be constructed in accordance with this Declaration.
- 3.10.5 Small household pets which remain inside the residence on a Lot, such as caged birds, aquarium fish or guinea pigs, shall be allowed at the Lot owner's discretion so long as the "nuisance" portions of this provision are not violated.
- 3.10.6 Service animals other than dogs will be considered by the Board of Directors on a case by case basis, pursuant to the Association's Reasonable Accommodation and Reasonable Modification Request Policy and Procedures.

3.11 Home Occupations.

No business or commercial activity of any nature shall be conducted upon or from any Lot, except that Home Occupations, as defined in the Santa Fe County Code, shall be permitted if such activity, in the sole discretion of the Board of Directors, does not unreasonably disturb Owners of other Lots or increase traffic upon the Easements to undesirable levels.

3.12 Billboards and Signs.

No billboards or advertising signs will be permitted on any Lot or on any building except for the name plate of the occupant of any residence upon which his or her professional title may also be added, but no sign or name plate shall exceed one (1) square foot in size. All signs must be of a uniform shape, as designated by the ACC; provided, however, one sign shall be allowed for the sale of any house, except as may be provided in the Subdivision Rules.

3.13 Exterior Lights.

All exterior lights shall be shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted, and must be located so as not to be directed toward surrounding Lots or Easements. Bright, glaring lights

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on roof tops and patio walls or elsewhere are strictly prohibited. Exterior lights must also conform to applicable state law, county code, and municipal ordinance requirements.

3.14 Flags.

Pursuant to Section 47-16-16 of the HOA Act, the Association shall not adopt or enforce a restriction related to the flying or displaying of flags that is more restrictive than the applicable federal or state law or Santa Fe county or municipal ordinance.

3.15 Water Conservation.

Lot Owners are urged to practice indoor and outdoor water conservation measures and restrictions of Santa Fe County and the City of Santa Fe. All construction must comply with the published water conservation restrictions of Santa Fe County and the City of Santa Fe, to the extent applicable.

3.16 Drainage.

Surface drainage courses within Lots are to remain in their natural state, except for diversion approved in writing by the Architectural Control Committee.

3.17 Hunting and Firearms.

No hunting or discharge of firearms is permitted within the Subdivision.

3.18 Mailboxes and Street Address Signs.

On the Amended Plat, an Easement is shown on Lot 1 for the location of NBU mailboxes to be used by all Owners, address sign boards and newspaper delivery receptacles. Owners shall not construct other mailboxes within the Subdivision, with the exception of newspaper delivery receptacles approved, in writing, by the Architectural Control Committee.

3.19 House Size.

No principal residence, exclusive of the required attached garage, shall be less than seventeen hundred (1,700) square feet of interior heated space. No construction of any other buildings or Structures shall commence until the exterior of the principal residence is substantially completed.

3.20 Private Easements.

No mini-bikes, motorcycles, off-road vehicles or any unlicensed vehicles of any kind shall be driven or permitted on the Easements except for ingress and egress to an Owner=s residence. No motor-driven vehicle shall be driven or permitted in the Subdivision except on the Easements or the driveways within the Subdivision.

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3.21 Impoundment of Water.

Stormwater, surface drainage, or any other water shall not be impounded by any Owner or occupant in any way which might adversely affect other Owners or occupants of the Subdivision.

3.22 Discharge of Explosives.

No explosive material may be discharged on any lot, except for bona fide construction purposes, and then only after: (i) advance written approval by the ACC; and (ii) all inhabitants of the Subdivision have been duly notified in advance of the proposed discharge of an explosive material. Explosive material may only be used in a manner that shall reduce to a minimum the noise, vibration and other impact of the proposed discharge.

3.23 Mechanical Devices.

No mechanical or other device, including solar panels, shall be installed or maintained on the roof or exterior surface of any structure within the Subdivision if such device is visible from the ground level of any other Lot or the Easements, unless the device is screened, enclosed or otherwise approved in writing by the Architectural Control Committee.

3.24 Domestic Water Supply Wells.

Except for three (3) domestic water wells within the Subdivision which were drilled by the original Declarant, no water wells whatsoever may be drilled within the Subdivision. Every Purchaser of a Lot within the Subdivision specifically waives his or her right to drill a domestic water well. No water rights may be transferred to permit diversion of water onto the Subdivision. (NOTE: Lot #1 has an existing grandfathered water well)

3.25 Community Water System.

Three (3) water wells for the Subdivision service the following Lots:

Well A: Lots 1, 2, 3, 4, 5, 6, 8, 9, 10, 12, 13 and 14

Well B: Lots 11, 15, 16, 17, 18, 19, 20, 27, 28, 29, 30, 31, and the Park

Well C: Lots 21, 22, 23, 24, 25, 26, 32, 33, 34, 35, 36 and 37

Well "A" is located on Lot 2, Well "B" is located in the Park (Lot 7), and Well "C" is located on Lot 25.

3.26 Well and Water Line Easements.

3.26.1 An easement over, under and across Lot 2 for maintenance, construction and repair of Well "A" is hereby granted for the benefit of the Association and Lots, 1, 3, 4, 5, 6, 8, 9, 10, 12, 13 and 14. Such easement shall be ten (10) feet in width and shall run five (5) feet on each side of the well and the water line running from Well "A" to Via Magdalene.

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- 3.26.2 An easement over, under and across Lot 7 (the Park) for maintenance, construction and repair of Well "B" is hereby granted for the benefit of Lots 11, 15, 16, 17, 18, 19, 20, 27, 28, 29, 30 and 31. Such easement shall be ten (10) feet in width and shall run five (5) feet on each side of the well and the water line running from Well "B" to Via Brisa.
- 3.26.3 An easement over, under and across Lot 25 for maintenance, construction and repair of Well "C" is hereby granted for the benefit of Lots 21, 22, 23, 24, 26, 32, 33, 34, 35, 36, and 37. Such easement shall be ten (10) feet in width and shall run five (5) feet on each side of the well and the water line running from the well to Via Brisa.
- 3.26.4 Each of the foregoing easements shall be perpetual, shall run with the land, and shall survive the revocation and termination of this Declaration unless this Section 3.26 is expressly revoked and terminated.

3.27 Appropriation of Water.

As long as all of the Lots are served by the three wells described in Section 3.25, no Lot Owner shall appropriate more than 0.25 (¼) acre feet of water per annum from the well designated for use by said Lot. Each Lot Owner shall separately meter his or her water usage at his or her sole expense, and the Association or its representative shall have the right to enter upon any Lot at reasonable times to read said meter.

3.28 Wastewater Discharge.

Pursuant to the terms of the Amended Plat, dwellings on Lots 2, 6, 8, 12, 20, 21, 22, 23, 25 and 26 are limited to a maximum of three (3) bedrooms or wastewater discharge of 375 gallons per day.

3.29 Easements: Uses and Restrictions.

The Easements are established upon various Lots within the Subdivision for the benefit of the Owners pursuant to this Declaration and include road easements, access and utility easements, drainage easements, community water system easements, and public pedestrian easements ("Easements"). Use of the Easements may be subject to Subdivision Rules established from time to time by the Board of Directors.

- 3.29.1 No Owner shall improve, landscape, repair or decorate any portion of the Easements except where the driveway to Structures on such Owner's Lot abuts the Easements unless approved in writing by the Board of Directors. This subsection includes but is not limited to the installation of traffic calming devices.
- 3.29.2 The Association shall have the right to control access to the Easements but shall not impair any Owner's right of access to his or her Lot.
- 3.29.3 All or a portion of the Easements may be dedicated to the City of Santa Fe, County of Santa Fe, or other governmental body if approved by Owners

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holding sixty-six percent (66%) or more votes in the Association and evidenced by a written consent to dedication execution and acknowledged by the Board of the Association and delivered to the governmental body.

3.30 Decorative Easement.

The Association shall have an easement within the building setback lines on the corner of each Lot which is located at an intersection of road Easements within the Subdivision to install decorative entrance treatments and street signs.

3.31 Other Easements.

Coyote Ridge Association, Inc. shall have a non-exclusive easement for the construction, repair and maintenance of an underground natural gas lines within the seven-point-five (7.5) foot underground utility easement located on both Lot 23 and Lot 24, along their common boundary. Such easement shall be perpetual, shall run with the land and survive the termination and or revocation of this Declaration, unless expressly terminated in writing or abandoned by said grantee.

ARTICLE 4
The Association

4.1 The Association.

The Cielo Lumbre Homeowners' Association has been duly incorporated and organized pursuant to New Mexico law, pursuant to the Articles of Incorporation and Bylaws of the Association. The membership of the Association, powers and duties of members, and powers and duties of the Association are specified in the Articles and Bylaws, and are supplemented herein. The Association has the duty, among others: to manage, maintain and insure the Easements, the Park (Lot 7), the community water systems, and drainage easements; to pay for electricity supplied to these common areas; and to contract for septic tank inspections and pumping.

4.1.1 In the event that the Association, as a corporate entity, loses its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice, be formed and shall succeed to all rights and obligations of the Association hereunder until a qualified nonprofit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not inconsistent therewith, by the Declaration, the Articles of Incorporation and the Bylaws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.

4.1.2 The affairs of the Association shall be managed by the Board of Directors, which shall exercise all of the rights and powers and perform all of the duties and responsibilities set forth in the Declaration and the Articles and Bylaws for the Association.

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4.1.3 The Association shall, from time to time, make, establish, promulgate, amend, and/or repeal the Subdivision Rules. The Board of Directors shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and distribute such statement to each member and each Mortgagee upon request. The Association shall take such action, whether or not expressly authorized by the Subdivision restrictions, as may reasonably be necessary to enforce or carry out the purposes of this Declaration and the Subdivision Rules.

4.2 One Class of Membership.

All Members of the Association shall be entitled to one (1) vote for each Lot owned.

4.3 Voting Rights.

Each Member in good standing, pursuant to the terms of the Bylaws, shall be entitled to vote on all matters properly submitted for vote to the membership of the Association. The right to vote may not be severed or separated from any Lot, and any sale, transfer or conveyance of the beneficial interest of the fee of any Lot to a new Owner shall operate to transfer the appurtenant voting rights without the requirement of any express reference thereto.

ARTICLE 5
Assessments

5.1 Mutual Covenants to Pay Assessments.

Each Owner, by acceptance of a deed to a Lot, covenants and agrees with each other Owner and with the Association, to pay all Assessments levied by the Board, as required in this Declaration, whether or not such covenant is contained in such deed.

5.2 Creation of Operating Fund and Reserve Fund.

The Board of Directors shall establish an "Operating Fund" and "Reserve Fund" to enable the Association and the Board to exercise the powers and perform the rights, obligations and duties stated herein. Such funds shall be funded by Assessments as hereinafter provided, to be paid by all Owners. Such fund shall be administered on a fiscal year basis. The first Assessment shall be determined by the Board in accordance with this Declaration and the Bylaws of the Association and shall be prorated over the Association's fiscal year commencing with the date set by the Board for the first Assessment.

5.3 Annual Budget.

Pursuant to the procedures outlined in the Bylaws, each year the Board of Directors shall prepare and adopt a proposed estimate of the total amount it deems necessary for the Association's next fiscal year (hereinafter referred to as "Annual Budget"). Within thirty (30) calendar days after adoption of any proposed budget for the association, the Board shall provide a summary of the Budget to all the Lot Owners.

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5.4 Assessments.

Effective the first day of each fiscal year, each Owner shall be assessed a sum equal to the number one (1) divided by the total Subdivision Lots ("Percentage Interest") multiplied by the total Annual Budget, which sum shall be paid by the Owner in quarterly installments on the first day of each of the quarters of each fiscal year, continuing until a new Assessment is made by the Board.

- 5.4.1 Contributions for quarterly Assessments shall be prorated if the ownership of a Lot commences on a day other than the first day of a quarter. The omission or failure of the managing agent or the Board to fix the Assessment for any quarter shall not be deemed a waiver, modification or a release of the Owners from their obligations to pay the Assessment for that period.
- 5.4.2 If the amount of the Annual Budget proves inadequate for any reason including, without limitation, non-payment of any Owner's Assessment, the Board may at any time levy a further Assessment by increasing the Annual Budget and each Owner shall be assessed a sum equal to his or her Percentage Interest multiplied by such increase; provided, however, extraordinary expenses omitted from the Annual Budget, which may become due during the fiscal year, shall first be paid from the replacement and contingency Reserve Fund; and provided further, if inadequate funds exist during a fiscal year, the Association may borrow sufficient funds. The Board shall give written notice of any such increase, and the reasons therefor, to each Owner, and shall state the date and terms of payment of such increase.
- 5.4.3 All such Assessments collected shall be paid and expended for the purposes authorized herein, and (except for such special Assessments as may be levied against less than all of the Owners and for such adjustments as may be required to reflect delinquent or unpaid Assessments) shall be deemed to be held for the benefit, use and account of all Owners in the same percentages as their percentage ownership of the total Subdivision Lots.
- 5.4.4 Notwithstanding any other provision contained herein, no Owner shall have the right to demand that more than his or her *pro rata* share of the Assessments collected be used to benefit his or her Lot.

5.5 Special Expenses.

Any Common Expense for services provided by the Association to an individual Lot at the request of an Owner shall be assessed against the Lot which benefits from such service.

- 5.5.1 In the event any improvement or landscape feature for which the Association is responsible for monitoring, maintaining, repairing or

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replacing (including, but not limited to: the Easements, decorative easements, water system, septic system, landscaping and signage) is damaged in any way through the intentional or negligent act or omission of any Owner or his or her agents, employees, or invitees, the expense incurred by the Association for the repair of such damage shall be deemed a Special Expense. Such Special Expenses shall be levied by the Board and assessed only to the Owner whose act or omission resulted in the aforementioned damage, and shall be paid by the Owner together with his or her next quarterly Assessment due the Association.

5.6 Lien for Non-Payment of Common and/or Special Expenses.

All sums assessed and fines imposed by the Association, but unpaid, for the share of Common Expenses, including, without limitation, any Assessments and violations of this Declaration, the Bylaws or Regulations of the Association or Subdivision, chargeable to any Lot or its Owner shall constitute a lien on such Lot from the time the Assessment or fine becomes due. If an Assessment is payable in installments, the full amount of the Assessment shall be a lien from the time the first installment becomes due. The Association's lien may be foreclosed in like manner as a mortgage on real estate. Recording the Declaration of the office of the County Clerk of Santa Fe County, New Mexico constitutes notice and perfection of the Association's lien.

- 5.6.1 If any Assessment shall remain unpaid for thirty (30) calendar days after the due date thereof, the Board or managing agent shall assess interest thereon at a rate equal to eighteen percent (18%) per annum, commencing on the date such Assessment was due, together with reasonable costs and any attorney's fees incurred in connection with the collection thereof.
- 5.6.2 In any foreclosure of such lien the Owner shall be required to pay the costs and expenses of such proceeding, all reasonable costs of collection and all reasonable attorney's fees. The Owner shall also be required to pay to the Association any Assessment due for the Lot during the period of foreclosure. The managing agent or Board shall have the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the same.
- 5.6.3 Any encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any unpaid Common and/or Special Expenses due with respect to such Lot, and upon such payment such encumbrancer shall have a lien on such Lot of the same rank as the lien of his encumbrance for the amounts paid.
- 5.6.4 The Association may give notice to the Lot Owner and the Mortgagee(s) of a Lot of any unpaid Assessments remaining unpaid for longer than thirty (30) calendar days after the same are due.

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5.7 Personal Debt of Owner.

The Amount of the Common and/or Special Expenses assessed against each Lot shall be the personal and individual debt of the Owner thereof at the time the Assessment is made. A suit to recover a money judgment for unpaid Common and/or Special Expenses shall be maintainable without foreclosing or waiving the lien securing same. Notwithstanding anything to the contrary contained herein, the Association shall seek any sums due for unpaid Common and/or Special Expenses from a Person in possession of a Lot pursuant to real estate installment sale contract for a period of forty-five (45) calendar days following notice to such Person of unpaid Common and/or Special Expenses before seeking such sums from the legal Owner of such Lot.

5.8 No Waiver of Common and/or Special Expenses.

No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Easements or his Lot, by abandonment of his or her Lot or by any other means whatsoever.

ARTICLE 6
General Provisions

6.1 Enforcement.

The Board and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by a party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

6.2 Variances.

Any provision contained in Sections 2.4, 2.6.1, 2.6.4, 2.6.5, 2.9 and 2.10 of Article 2, Section 2.1 of Article 2 with respect to detached garages only, or Article 3 hereof may be waived for a particular Lot upon the prior written approval of the Architectural Control Committee.

6.3 Notices.

Any notices required or permitted to be delivered hereunder shall be deemed to be delivered when personally delivered to the respective addressee or upon deposit of the same in the United States mails, postage prepaid, certified or registered mail, return receipt requested, and addressed to the Owners at the respective addresses as shown in records maintained by the Association. Any Owner may change his or her address for notice by giving written notice thereof to the Association.

6.4 Severability.

Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

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6.5 Amendment.

The covenants and restrictions of this Declaration shall run with and bind the land; provided, however, that Owners holding at least of eighty percent (80%) of the voting power of the Association, by executing and acknowledging an appropriate instrument, may release the land subject hereto from all of the restrictive covenants contained in this Declaration, or may, with the consent of Owners holding at least two-thirds (2/3^{rds}) of the voting power of the Association, change, amend, modify or revise any of said restrictive covenants, except as prohibited herein. Every amendment must be executed by the President and Secretary of the Association, and recorded in the real estate records of Santa Fe County, New Mexico.

6.6 Binding Effect.

This Declaration shall be binding upon and shall inure to the benefit of the Owners, and their respective heirs, successors and assigns and shall run with the land.

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The following described real estate being the Cielo Lumbre Subdivision within Section 28, T.17 N., R.9E., N.M.P.M. in Santa Fe County, New Mexico.

Commencing at the easternmost corner of said Subdivision at the corner of Coyote Ridge Road and West Alameda Street from whence a Brass Cap marking the $\frac{1}{4}$ corner of Sections 28 and 33, T.17 N., R.9E., N.M.P.M. bears S. $27^{\circ}30'01''$ E. a distance of 1783.95 feet; thence from said point and place of beginning S. $68^{\circ}25'46''$ W. a distance of 128.64 feet; thence along a curve to the left with a chord bearing S. $63^{\circ}37'05''$ W. 106.16 feet, a radius of 717.26 feet, and a delta of $8^{\circ}29'16''$;

thence S. $59^{\circ}56'08''$ W. a distance of 139.29 feet;
thence S. $59^{\circ}00'02''$ W. a distance of 265.51 feet;
thence S. $52^{\circ}30'03''$ W. a distance of 142.87 feet;
thence N. $17^{\circ}10'44''$ W. a distance of 676.43 feet;
thence S. $72^{\circ}48'26''$ W. a distance of 559.45 feet;
thence N. $17^{\circ}10'53''$ W. a distance of 1319.38 feet;
thence N. $72^{\circ}49'08''$ E. a distance of 660.37 feet;
thence S. $17^{\circ}10'06''$ E. a distance of 989.44 feet;
thence N. $72^{\circ}50'03''$ E. a distance of 660.22 feet;
thence S. $17^{\circ}06'09''$ E. a distance of 329.84 feet;
thence S. $17^{\circ}12'02''$ E. a distance of 505.33 feet to the point and place of beginning.

Containing 34.986 acres, more or less.

All as shown on that certain "Plat of Cielo Lumbre Subdivision prepared on January 23, 1989 by Gary E. Dawson, N.M.P.L.S. No. 7014.

Exhibit A

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