

TABLE OF CONTENTS

| | Page |
|---|------|
| RECITALS AND DECLARATION | |
| I. DEFINITIONS | 2 |
| Section 1. Association | 2 |
| Section 2. Owner | 2 |
| Section 3. Properties | 2 |
| Section 4. Common Area | 2 |
| Section 5. Lot | 2 |
| Section 6. Declarant | 3 |
| II. PROPERTY RIGHTS | 3 |
| Section 1. Owner's Easements of Enjoyment | 3 |
| Section 2. Delegation of Use | 3 |
| Section 3. No Dedication | 4 |
| Section 4. Parking | 4 |
| Section 5. Aircraft Tie Down | 4 |
| III. MEMBERSHIP AND VOTING RIGHTS | 4 |
| IV. COVENANTS FOR MAINTENANCE ASSESSMENTS | 5 |
| Section 1. Creation of the Lien and Personal Obligations of Assessments | 5 |
| Section 2. Purpose of Assessments | 6 |
| Section 3. Maximum Annual Assessment | 6 |
| Section 4. Special Assessments for Capital Improvements | 6 |
| Section 5. Notice and Quorum for any Action Authorized Under Sections 3 & 4 | 7 |
| Section 6. Uniform Rate of Assessment | 7 |
| Section 7. Date of Commencement of Annual Assessments-Due Dates | 7 |
| Section 8. Effect of Nonpayment of Assessments-Remedies of the Association | 8 |
| Section 9. Subordination of the Lien to Mortgages | 8 |
| V. USE OF THE PROPERTIES | 8 |
| Section 1. Irrevocable Provisions Until 2050 | 8 |
| Section 2. Common Area | 9 |
| Section 3. Lots | 9 |
| Section 4. Animals | 11 |
| Section 5. Garbage and Refuse Disposal | 11 |
| Section 6. Building Type, Size and Location | 12 |
| Section 7. Architectural Control | 13 |
| Section 8. Easements | 14 |

| | | |
|-------------|--------------------------------------|----|
| Section 9. | Site Distance at Intersections | 15 |
| Section 10. | Access | 15 |
| Section 11. | Miscellaneous | 16 |
| Section 12. | Additional Powers of the Association | 16 |
| Section 13. | Discrimination | 18 |
| VI. | GENERAL PROVISIONS | 18 |
| Section 1. | Enforcement | 18 |
| Section 2. | Severability | 18 |
| Section 3. | Amendment | 19 |
| Section 4. | Annexation | 19 |
| Section 5. | Neighborhood Participation | 19 |
| Section 6. | Dirtbikes | 20 |
| Section 7. | Contiguous Property Owners | 20 |
| VII. | PARTY WALLS | 20 |
| VIII. | EXTERIOR MAINTENANCE | 22 |
| IX. | DAMAGE OR DESTRUCTION OF PROPERTY | 22 |

AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS and RESTRICTIONS OF CIELO DORADO ESTATES

This Amendment and Restatement of the Covenants, Conditions and Restriction of Cielo Dorado Estates was adopted by at least 75% of the lot owners of the subdivision as permitted by Article VI, Section 3 of these Covenants and as reflected in the attached signature pages. This document includes all prior Amendments.

THIS DECLARATION, made on the date hereinafter set forth by CIELO DORADO DEVELOPMENT, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in CIELO DORADO ESTATES, a subdivision in the County of Dona Ana, State of New Mexico, which is more particularly described as:

All of Tracts 46, 47A, 47B, 48, 49, 51B, 56 and a portion of Tracts 62, 63A, 64A of the United States Bureau of Reclamation in Section 33, Township 27 South, Range 3 East, N.M.P.M. and Section 4, Township 28 South, Range 3 East, N.M.P.M. in Dona Ana County, New Mexico, according to the map and plat thereof which will be recorded in the Plat Records of Dona Ana County, New Mexico.

The land which is being platted as CIELO DORADO ESTATES is described on Exhibit "A", which is attached hereto and made a part hereof for all purposes.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the

benefit of each owner thereof.

ARTICLE I. DEFINITIONS

Section 1. "Association" shall mean and refer to Cielo Dorado Homeowners Association, Inc., a New Mexico non-profit, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities of a fee simple title to any lot which is part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as many hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All of the real property shown on the aforesaid Plat of Cielo Dorado Estates, except that portion platted as residential lots, numbered 1 through 100.

No portion of the Common Area shall be used for a residence or dwelling. The Common Area shall be for the use and enjoyment of the members of the Association subject to the rules and regulations of the Association.

Section 5. "Lot" shall mean and refer to any plot of land upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Cielo Dorado Development, its successors and assigns, if such successors or assigns shall acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II. PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment

Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3rds) of each class of members has been recorded.

Section 2. Delegation of Use

Any Owner may delegate, in accordance with the By-Laws, his right to enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who

reside on the property. Such persons must physically reside in the dwelling located on the Lot owned by such Owner. The Association may provide for visitors or guest privileges with such restrictions and regulations as the Association shall determine. Use of runway and aviation facilities by non-owners, other than itinerant visitors, is prohibited. A non-owner is any person or persons who do not own a Lot in the subdivision, but who may be a partner or friend of an Owner who desires to use an aircraft that is based at the subdivision.

Section 3. No Dedication

The Common Area is not dedicated in any manner for use by the general public, but is limited and specifically restricted to the sole use and enjoyment of the Owners, and those to whom the use is properly delegated as herein provided.

Section 4. Parking

Each Owner shall maintain on his Lot at least two (2) parking spaces (other than garage and/or carport) for the use of the Owner and persons visiting the Owner. The Association shall have the right to make rules and regulations concerning speed limits, parking and use of the Common Area. For ease of vehicular movement, no parking will be allowed on designated streets.

Section 5. Aircraft Tie Down

Each Owner may be allowed to have one aircraft tied down anywhere upon his Lot. In addition, the Owner's guests will be allowed to park their aircraft on said Owner's Lot.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessments shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership

of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership.

Class A: Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due and remain a lien against the property.

Section 2. Purpose of Assessments

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment

Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Five Hundred Dollars (\$500.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3rds) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at any amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto,

provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4

Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at this subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment

Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments-Due Dates

The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate

signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments-Remedies of the Association

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Attorney's fees and court costs incurred in the collection of assessments shall be paid by the Owner.

Section 9. Subordination of the Lien to Mortgages

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot because of a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V. USE OF THE PROPERTIES

Section 1. Irrevocable Provisions Until 2050

Regarding use and enjoyment of the subject properties, the following provisions shall be irrevocable and not subject to change until the year 2050, except where amendment is allowed as provided below.

(a) Cielo Dorado Estates shall be used for single family residential purposes only. No portion of Lots or Common Areas shall be used for any trade, business, profession or occupation of any nature with the exception of a homeowner, approved by the Association, performing minor maintenance on aircraft based at the subdivision as a service for homeowners, and with the further exception of the operation of a fuel facility and water distribution system to be maintained by the Association. This provision shall apply to Common Areas as well as home sites. In addition, the airplane taxiways and runways shall be utilized for the exclusive benefit of owners and guests.

(b) The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed or contract of sale therefor, whether or not it shall be so expressed in such deed, is deemed to covenant to not subdivide Lots.

(c) Each Owner shall be allowed to have any type aircraft provided that such aircraft does not exceed 95 decibels or 12,500 pounds. The decibel level would be measured from a 1,000 foot fly-over at cruise power. These standard and measurement procedures are referenced in Federal Aviation Agency's Regulations Part 36 under Noise Limits.

Section 2. Common Area

The Common Area, including the Common Open Space, shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties.

Section 3. Lots

(a) No noxious, offensive, illegal or immoral activities shall be carried on upon any part of Cielo Dorado Estates (nor shall anything unreasonable be done which shall constitute a nuisance or annoyance to the neighborhood).

(b) Every owner shall keep and maintain his respective Lot(s) in a neat and clean

condition, free of weeds, litter, debris and other unsightly growth, all at Owner's cost and expense. If, in the sole discretion of the Association and/or Declarant, an Owner defaults in the performance of this stipulation and covenants, the same may be performed by the Association or Declarant, their successors or assigns, for account and at the expense of the Owner(s), and any and all expenses incurred by Association or Declarant in so doing shall be payable by Owner(s) to Association or Declarant, their successors and assigns, with interest at the rate of twelve percent (12%) per annum from the date when the same was so incurred or paid, within ten days (10) after written notice thereof, which such indebtedness shall be considered an assessment pursuant to Article IV above and said indebtedness, together with interest as provided in Article IV, Section 8, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such maintenance charge or assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the maintenance charge or assessment fell due and remain a lien against the property. Such lien provided for herein shall be inferior and subordinate to the lien of any first mortgage created subsequent to the Owner's payment in full of the purchase price for his respective lot.

(c) No trailer, tent, shack or structure of a temporary character shall be erected or used for any purpose whatsoever in Cielo Dorado Estates either on a temporary or permanent basis. Provided, however, recreational vehicles, such as trailers, motor homes, campers and boats may be stored (but not used for residential or storage purposes) on a Lot so long as the recreational vehicle is more than seventy (70) feet from the front Lot line and is not used for permanent dwellings. Provided, further, that each Owner may be allowed the use of temporary housing such

as trailer houses and mobile homes during construction of their permanent residence. Temporary housing must be approved by the Architectural Control Committee, such temporary use not to exceed one (1) year in any event.

(d) Ditches or pipes for irrigation and drainage where installed on easements shall be maintained in good repair and condition by the adjoining Owners at the established elevation and grade, such ditches are to be kept free of weeds and other obstructions at all times.

(e) No major vehicular, automotive or aircraft repair work shall be performed on said premises at any time except it be behind closed doors in garages or hangars. No junk vehicles or aircrafts will be stored on the property where it is visible to the neighborhood.

Section 4. Animals

Dogs, cats and other small household pets shall be permitted on the premises. Horses, cattle and sheep may be kept on the premises provided that they are not raised, bred or maintained for any commercial purposes, and furthermore, there shall be not more than three (3) of any such animals per acre of contiguous land under single ownership. Similarly, there shall not be any cattle or hog feed lots or any type of commercial operation with animals on said property.

Fencing for same to meet Rigid Code, as set forth by developer, to prevent runaway animals.

Section 5. Garbage and Refuse Disposal

(a) No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

(b) All septic tanks (which shall be aerobic or evapotranspiration or similar systems)

will be located on the rear of the Lot and shall be constructed and maintained so as not to constitute a health hazard and shall be in conformance with specifications and requirements of the State and County Health Department and Architectural Control Committee. All plumbing connections shall be installed and connected in a good and workmanlike manner. No outside privy of any type shall be placed upon any Lot except during the course of construction on the Lot - maximum limit is one year.

Section 6. Building Type, Size and Location

(a) No building shall be erected, altered, placed or permitted on any Lot other than one detached single family dwelling not to exceed two (2) stories in height, together with the private garage, airplane hangar and servants' quarters to service said single family residence. All garages, airplane hangars and servants' quarters shall be no more than two (2) stories in height and shall conform in exterior design to the single family dwelling.

(b) The ground floor area of the single family dwelling (exclusive of one story, open porches and garages or carports) shall not be less than 2500 square feet in floor area.

(c) No structure, house or building of any nature whatsoever shall be moved from another location to any residential Lot or plot unless constructed of new material, without the written consent of the Architectural Control Committee.

(d) No building shall be located on any Lot nearer than fifty (50) feet from the front Lot line nor nearer than fifty (50) feet from the rear Lot line. No building shall be located nearer than twenty (20) feet to an interior Lot or easement line, whichever is closest, except that a minimum twenty-five (25) feet side yard shall be required for a side yard abutting on a side street. As used herein, the term "building" shall include the single family residence, garage, carport, airplane

hangar, servants' quarters and all other structures except fences.

(e) The Architectural Control Committee shall have the power to allow variations from the restrictions set forth in Article V, Section 6 above, save and except minimum size or square footage requirements, so long as the variations do not, in the opinion of the Committee, affect the character of CIELO DORADO ESTATES.

Section 7. Architectural Control

(a) No building, fence, wall or other structure shall be commenced, erected or maintained in CIELO DORADO ESTATES, nor shall any exterior addition to, change or alteration thereof be made until the plans and specifications showing the nature, design, kind, shape, height, materials, color and location of the same have been submitted to and approved in writing by the Architectural Control Committee as to the quality of workmanship and materials, as to harmony of external design with existing structures, as to location with respect to topography and finish grade elevation, and as to compliance with these restrictions.

(b) Fences and walls shall be constructed only at locations approved by the Architectural Control Committee and then only as set forth in fencing restrictions as noted under Section 8, paragraph (b).

(c) All construction shall be done in strict accordance with the plans and specifications which have been approved by the Architectural Control Committee. Any changes (including changes in location of the improvement on the Lot), additions to or deletions from, plans and specifications which have been approved by the Architectural Control Committee shall be resubmitted for the approval of the Committee in the manner herein prescribed.

(d) The Architectural Control Committee is composed of three (3) or more

representatives appointed by the Board.

(e) The Committee's approval or disapproval as required in these covenants shall be in writing. In the event the Committee or its designated representative fails to approve or disapprove within sixty (60) days after plans and specifications have been submitted to it, the Committee's approval will not be required.

(f) The Association and the Architectural Control Committee shall have the power, but shall not be obligated to, enforce these restrictive covenants. No action shall be brought against the Association nor against the Architectural Control Committee as a result of any action or failure to take any action, on any of the matters required or authorized to either of them in these restrictive covenants.

(g) The powers herein granted to the Architectural Control Committee shall be exercised by the Committee as it shall, in its sole discretion think best. The granting by the Committee of any waiver or variance to any of the restrictions herein set out shall not constitute a waiver of the right of the Committee or any Owner to insist upon full and strict compliance with these restrictions in all other instances.

(h) Any structure must be completed in accordance with the plans and specifications approved by the Architectural Control Committee within one year of the date that construction actually begins.

Section 8. Easements

(a) Easements for the installation and maintenance of utilities, irrigation facilities and airplane taxiways are reserved over the Lots as shown on the aforesaid plat of CIELO DORADO ESTATES. No building shall be erected on any easement.

(b) There shall be no building, shrubs, fences or any other object permanently or temporarily located within thirty (30) feet of the centerline of any taxiway easement which exceeds three (3) feet in height, nor will any such object be placed within fifteen (15) feet of said taxiway centerline which exceed one (1) foot in height. Furthermore, there shall be no vehicular traffic other than airplanes on the designated taxiways.

(c) All Lots in the subdivision are subject to on-site ponding of storm waters. The typical street and Lot drainage cross-section, which must be strictly adhered to, is shown on the subdivision street and drainage plans on file in the County Road Superintendent's Office for Dona Ana County.

Section 9. Site Distance at Intersections

No hedge, shrub or planting which obstructs site lines at elevations between the ground and six (6) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property line and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same site line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley. No tree shall be permitted to remain within such distance of an intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such site line. In no instance shall a wall, fence or hedge be constructed, altered or maintained within the area of these site line limitations.

Section 10. Access

(a) Vehicular access to all Lots in CIELO DORADO ESTATES will be from designated

streets.

(b) Airplane access to all Lots in CIELO DORADO ESTATES will be from designated taxiways for those lots served by taxiways.

Section 11. Miscellaneous

(a) No sign of any kind shall be displayed to the public view on any Lot except one family identification sign of not more than an area of four (4) square feet, one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by the developers to advertise the property during the sales, such signs to be non-illuminating and not to exceed 144 square feet.

(b) The Declarant for each Lot owned within the Properties hereby covenants and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association fuel and water charges. This shall be a charge on the land and shall be a continuing lien held by the Association upon the property against which each assessment is made.

Section 12. Additional Powers of the Association

In addition to all other powers granted to the Association herein, or granted to the Association by the Charter or By-Laws of the Association, or the laws of the State of New Mexico, the Association, acting through its Board of Directors, shall have the right:

(a) To limit and regulate the size, type, subject matter, location and elimination of signs within the Properties, and to prohibit all or any type of subject matter or signs within the Properties.

(b) To provide guard service.

(c) To limit and control the access to the Properties, including the right to prohibit access at various hours, and to require identification permits for access to the Properties.

(d) To regulate the use of the Common Area, and the facilities erected thereon, to charge fees for the use of such facilities and to make regulations concerning the conduct of persons within the Properties.

(e) To prohibit or restrict political activities and political signs within the Properties.

(f) To limit the number of guests of Owners.

(g) To borrow money and execute mortgages as provided in the Articles of Incorporation of the Association or its Bylaws.

(h) To grant easements over the Common Area and to construct road, sidewalks, trails or other improvements over the Common Area.

(i) To exempt from the assessments herein described and the liens in connection therewith, any Lot owned by the Association and used for the benefit of the Association (other than as a rental unit).

(j) To make all other rules or regulations as the board of Directors shall deem necessary or desirable to maintain CIELO DORADO ESTATES as a first class residential area and to promote the recreation, health, safety and welfare of the residents of the Properties, and to provide for the protection of persons and property. However, in no event shall the Association undermine the substantive restrictions and covenants contained herein.

(k) To grant exceptions or variances to any of its rules and regulations or to any of the restrictions contained in this Article V.

(l) To operate a water distribution system for the benefit of the development. The

Association shall have the right to charge for the water delivered, the maintenance of the system, and any other fees necessary for the efficient delivery of potable water to each Lot for which an Owner requests it.

Section 13. Discrimination

Nothing herein shall allow the Association, or its Board of Directors, to discriminate in favor of or against any political party or any political candidate, nor to discriminate in favor of or against any person because of his or her sex, race, creed, color, national origin or religion.

ARTICLE VI. GENERAL PROVISIONS

Section 1. Enforcement

The Association, or 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 the Association or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prior actions of all Boards of Directors of the Association from 1980 to the present are ratified. Such ratification includes, but is not limited to:

- (1) Administration of the common areas;
- (2) Collection of regular assessments;
- (3) Collection of special assessments;
- (4) All expenditures made on behalf of the association;
- (5) Operation of the water distribution system;
- (6) All efforts to enforce the covenants;
- (7) All contracts entered into for the benefit of the Cielo Dorado Estates;
- (8) All liens filed against lots for assessments or other charges against the lots.

Section 2. Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall

in no way affect any other provision which shall remain in full force and effect.

Section 3. Amendment

The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date the original Declaration was recorded in 1980, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration, with the exception of Article V, Section 1, paragraphs (a), (b) and (c), which cannot be amended for thirty (30) years under the original Declaration, may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded in the public records of Dona Ana County, New Mexico.

Section 4. Annexation

Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3rds) of each class of members.

Section 5. Neighborhood Participation

The Association shall publish a regular newsletter which will be distributed to all members of the Homeowners Association and to all neighbors, within a three mile radius of the subdivision, who request to be included on the distribution list. Included in the newsletter shall be the name and telephone number of the officer of the Association who a neighbor may contact to file a complaint or comment. The Association shall treat a neighbor's complaint or problem with the same degree of importance as a complaint or problem presented to the Association by a member of the Association.

Section 6. Dirt Bikes

There shall be no riding of dirt bikes within the subdivision, other than to obtain ingress and egress to and from the subdivision.

Section 7. Contiguous Property Owners

It is understood and agreed that these covenants, conditions and restrictions may be enforced by contiguous property Owners, owning property within 500 feet of the properties defined herein, but only in the event that their respective properties and the use thereof are in full compliance with all provisions herein, and that the use of their property conforms to the same standard of quality of use of property as established herein. Contiguous property Owners shall likewise have access to developed roadways, save and except runways and taxiways.

ARTICLE VII. PARTY WALLS

The rights and duties of the Owners of any Lots within this project with respect to party walls shall be governed by the following:

(a) Each wall, including party walls, which is constructed as part of the original construction of any structure, any part of which is placed on the dividing line between separate lots, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these restrictive covenants, and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

(b) In the event any such party wall is damaged or destroyed through the act of one adjoining Owner, or any of his guest, tenants, licensees, agents or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of

the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without costs to the adjoining Owner.

(c) In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

(d) Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild his residence in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner.

(g) In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by each of the Owners

and the third by the two so chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five (5) days then by any Judge of the District Courts of Dona Ana County, New Mexico. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

(h) These covenants shall be binding upon the heirs, executors, administrators and assigns of any Owner, but no person shall be liable for any act or omission respecting any party wall except such as took place while as an Owner.

ARTICLE VIII. EXTERIOR MAINTENANCE

Each Owner shall be responsible for the upkeep and maintenance of all improvements upon each lot, as follows: paint, repair, replace and care for roofs, gutters, downspouts, doors, windows, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements and the watering of trees and grass.

ARTICLE IX. DAMAGE OR DESTRUCTION OF PROPERTY

In the event any common element is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby irrevocably authorize the Association to repair said damaged element and the Association shall so repair said damaged element in a good and workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association in the amount actually expended for such repairs.

In the event any home or other structure or improvement is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, Owner shall, within sixty (60) days from the date of the occurrence of the damage or destruction, enter into a binding bona fide contract for the repair and rebuilding of the exterior of said property and improvements and any damage to adjacent property or improvements in a good workmanlike manner in conformance with the original plans and specifications used in the construction of said improvements. In the event such Owner refuses or fails to so repair and rebuild any and all such damage to the exterior of a home and adjacent property within a reasonable time, not to exceed six (6) months from the date of the occurrence of the damage or destruction, the Association by and through its Board of Directors, is hereby irrevocably authorized by such Owner to repair and rebuild any such home and/or adjacent property or other improvements in a good workmanlike manner in conformance with the original plans and specifications of said home and/or improvements. The Owner shall then repay the Association in the amount actually expended for such repairs.

Each Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon said Owner's Lot and home and shall continue to be such lien until fully paid. Said lien shall be subordinate to any first mortgage or encumbrance on the subject property. Said charges shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The amount shall be a debt and shall be collectible and any lawful procedure allowed by the laws of the State of New Mexico.

Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association or its agent the right and power to bring all actions against such Owner for the

collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such Owner hereby expressly grants to the Association a power of sale in connection with said lien.

Nothing contained in this Article IX shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted.

In the event of a dispute between an Owner and the Board of Directors with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof, then upon written request of the Owner addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association or its Board of Directors. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by the Board of Directors, one chosen by the Owner and these two arbitrators shall then choose a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then by any Judge of the District Court of Dona Ana County, New Mexico. A determination by any two of the three arbitrators shall be binding upon the Owner and the Association who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after personal receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.