

## **Los Caminitos Subdivision**

### **Amended and Restated Restrictive Covenants**

**Effective January 1, 2020, As Amended March 14, 2020**

These Amended and Restated Restrictive Covenants for Los Caminitos Subdivision are made effective as of January 1, 2020, and are further amended as of March 14, 2020.

WHEREAS, it must be assumed that all owners of property within Los Caminitos Subdivision, by virtue of their purchase of such property, are motivated by the character of the natural environment in which their property is located, and accept, for and among themselves, the principle that the development and use of Los Caminitos Subdivision must preserve that character for its present and future enjoyment by other owners; and

WHEREAS, a Declaration of Restrictive Covenants for Los Caminitos Subdivision (“**Original Covenants**”) was recorded in the Office of the County Clerk of Santa Fe County, New Mexico, on December 18, 1979, as Instrument No. 451,045 in Book 392, Pages 047 through 057, which governs all of the lands lying, situated and being in the County of Santa Fe, State of New Mexico within Los Caminitos Subdivision shown on the plat which was filed in the Office of the County Clerk of Santa Fe County, New Mexico, on December 12, 1979, as Instrument No. 450,741 in Book 74, Pages 14-16; and

WHEREAS, the Original Covenants may be amended in accordance with their terms and have been amended from time to time, most recently by the Amended and Restated Restrictive Covenants recorded in the Office of the County Clerk of Santa Fe County, New Mexico, on June 6, 2011, as Instrument No. 1636662 (“**Existing Covenants**”), which replaced in their entirety the Original Covenants; and

WHEREAS, these Amended and Restated Restrictive Covenants were duly approved by the Members at the Annual Meeting of Members held on August 17, 2019 in order to amend and restate the Existing Covenants effective as of January 1, 2020; and

WHEREAS, these Amended and Restated Restrictive Covenants were duly amended by the Members at the Special Meeting of Members held on March 14, 2020 in order to amend Sections 2B, 7F, 7H and 14B;

NOW, THEREFORE, the Existing Covenants are hereby amended and restated in their entirety, as set forth herein, and further amended in respect of Sections 2B, 7F, 7H and 14B, as set forth herein.

#### **1. Definitions**

In addition to the defined terms found in Section 47-16-2 of the New Mexico Homeowner Association Act (NMSA 1978, §§ 47-16-1 to -16), which are incorporated herein by *March 2020*

this reference as though fully set forth herein, the following terms are defined for all purposes of these Restrictive Covenants:

- A. “**Act**” means the New Mexico Homeowner Association Act (NMSA 1978, §§ 47-16-1 to -16).
- B. “**Annual Assessments**” means assessments levied in accordance with Section 8C.
- C. “**Architectural Approval**” means approval of plans and specifications, and such other matters as provided for herein, by the Architectural Control Committee in accordance with Section 6.
- D. “**Architectural Control Committee**” means the committee of the Association created and authorized by Section 7G.
- E. “**Architectural Control Rules**” means the rules adopted by the Board pursuant to Section 7H.
- F. “**Articles**” means the Articles of Incorporation of the Association, as amended from time to time.
- G. “**Assessments**” means, individually and collectively, the Assessments as contemplated in Section 8, including Annual Assessments, Supplemental Assessments and Special Assessments.
- H. “**Association**” means Los Caminitos Homeowners Association, a New Mexico nonprofit corporation, and its successors and assigns.
- I. “**Board**” means the Board of Directors of the Association.
- J. “**Board Rules**” means the rules and regulations adopted by the Board pursuant to Section 7E.
- K. “**Bylaws**” means the Bylaws of the Association, as amended from time to time.
- L. “**Common Area**” means all real property, and the Structures thereon, owned by the Association for the common use and enjoyment of all Owners, including all real property within Los Caminitos Subdivision that is not part of the Lots owned by Owners (but shall not include any Lots acquired by the Association in foreclosure upon an Association Lien, unless, and only if, the Association is permitted by applicable Law to designate, and expressly so designates, any such Lot acquired by the Association as additional Common Area).
- M. “**Disclosure Certificate Charge**” means the fee that can be charged by the Association pursuant to Section 8I.

- N. “**Governing Documents**” means, individually and collectively, the Articles, Bylaws, Restrictive Covenants, Board Rules and Architectural Control Rules.
- O. “**Governmental Authority**” means any national, state, county, local or tribal government, or any subdivision, agency, branch, bureau, board, commission, legislature, court, tribunal, arbitrator, official or other instrumentality or authority thereof.
- P. “**Law**” means any statute, law (including common law), rule, ordinance, regulation, ruling, requirement, writ, injunction, decree, order or other official act of or by any Governmental Authority to which a person or property is subject, whether such Laws are now existing or come into effect in the future.
- Q. “**Lease**” means a lease, sublease, rental, time-sharing, home-sharing or home-swapping, room rental or other agreement or arrangement of similar effect concerning a Lot, any Structure located thereon or any room or portion thereof.
- R. “**Lessee**” means a lessee, tenant or occupant.
- S. “**Los Caminitos Subdivision**” means all lands lying, situated and being within the subdivision shown on the Master Plan of said subdivision and on the plats of all phases thereof filed in the office of the County Clerk of Santa Fe County, New Mexico, at Los Caminitos Phase I, Plat Book 74, Pages 14-16, as Instrument No. 450,741; Los Caminitos Phase II, Plat Book 101, Pages 23A, 23B and 23C, as Instrument No. 479,480; Los Caminitos Phase III, Plat Book 122, Pages 20, 20A and 20B, as Instrument No. 505,742; Subdivision of Lot 74, Plat Book 239, Page 043, as Instrument No. 786,180; and subsequent filings; and such term shall be interchangeable with the term “development” or “project” as defined by the Act.
- T. “**Lot**” means each and every numbered lot in Los Caminitos Subdivision, including lots in Phase III which are permitted to be subdivided and may be designated by number and letter.
- U. “**Lot Transfer Fee**” means the charges levied in accordance with Section 8H.
- V. “**Member**” means a member of the Association.
- W. “**Minor Structure**” means, at any time after completion of construction of the principal residence on a Lot in accordance with these Restrictive Covenants, including Architectural Approval, a Structure of the following types that is proposed to constructed, installed, modified or removed within the applicable set-back lines as provided in Section 4C and generally is consistent with the character of the community of Los Caminitos Subdivision: (i) walkway, which may include subdued lighting less than two (2) feet tall; (ii) pole less than six (6) feet tall and not reflective; (iii) sign to show address less than six (6) square feet, which may include subdued lighting; (iv) small pond, fountain or other water feature, which may include subdued lighting; (v) outdoor sculpture or other

installed art work that is not Visible; (vi) satellite dishes, antennae, other devices for television, internet or radio signals and similar equipment that are not Visible; and (vii) any other Structure that is minor, unobtrusive or not Visible.

X. “**Owner**” means the holder of record fee title to a Lot. Owner shall not include persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee of a Lot. If the Lot is owned by a revocable trust, the settlor shall be deemed to be the Owner. If the Lot is owned by an irrevocable trust, the trustee shall be deemed to be the Owner.

Y. “**Restrictive Covenants**” means these Amended and Restated Restrictive Covenants, as amended from time to time.

Z. “**Special Assessments**” means assessments levied in accordance with Section 8G.

AA. “**Structure**” means any house, guest house, garage, studio, workshop, barn, stable, building or other structure or improvement of any type or kind and any other thing constructed, installed or placed on a Lot, the use of which requires location on the ground or attachment to something having location on the ground, including any walkway; driveway or road; parking area; gate, wall, barrier, corral or fence; electric, wind, solar or other utility installation, water, wastewater, sewage or drainage facility; swimming pool, hot tub, pond, fountain or other water feature; outdoor fireplace or kiva; stair; patio or courtyard; pole; sign; outdoor sculpture or other installed art work; satellite dishes, antennae, other devices for television, internet or radio signals and similar equipment; and any and all components of any of the foregoing; and the site or location thereof; and any excavation, drainage, grading or fill work on or of any such Lot.

BB. “**Supplemental Assessments**” means assessments levied in accordance with Section 8E.

CC. “**Visible**” or “**Visibility**” means, with respect to any given object, that such object can be seen by an individual who is standing at ground level within fifty (50) feet of the principal residence on any Lot or standing on any Common Area, or is visually intrusive to any other Owner to an unreasonable extent.

## **2. Duration**

A. Duration; Covenants Running with the Land. All Lots shall be held, sold, occupied, improved, and conveyed subject to the covenants, limitations and restrictions contained herein, which are for the purpose of enhancing and protecting the value, attractiveness and desirability of Los Caminitos Subdivision and the Lots as a private, prestigious, single-family residential subdivision. These Restrictive Covenants shall run with the land and shall be binding on and inure to the benefit of and be enforceable by the

Association and each Owner, and their respective legal representatives, heirs, successors and assigns.

B. Amendment. These Restrictive Covenants may be amended from time to time upon adoption of a resolution of the Members of the Association approved by Members who are the Owners of at least two-thirds (2/3) of the Lots with respect to which the Owners are eligible to vote at the meeting of Members called for such purpose. Members shall be given notice not less than ten (10) days nor more than fifty (50) days in advance of a meeting of Members called to consider the approval of the amendment. Amendments duly approved by the Members shall not be effective until recorded with Santa Fe County.

C. Termination. These Restrictive Covenants may be terminated as a whole upon adoption of both (i) a resolution of the Board approved by majority vote and (ii) a resolution of the Members of the Association approved by Members who are the Owners of at least seventy-five percent (75%) of the Lots with respect to which the Owners are eligible to vote at the meeting of Members called for such purpose. Members shall be given notice not less than 10 days nor more than 50 days in advance of a meeting of Members called to consider the approval of the termination proposal. Termination duly approved by the Board and the Members shall not be effective until recorded with Santa Fe County.

### **3. Permitted Uses**

A. Single Family, Private Residences. Upon each Lot there may be erected a principal residence consisting of one detached single-family dwelling together with such Structures as are commonly and customarily appurtenant thereto including detached solar collectors; such dwelling may be used only for private residential purposes (except for activities permitted by Sections 4E and 10) and shall be designed and built for use by and used by a single family. All plans for every Structure to be built shall be approved as herein provided before construction shall begin. In Phases I and II only, the construction of private swimming pools or hot tubs (except with Architectural Approval), barns, stables or corrals is prohibited. Private swimming pools or hot tubs, barns, stables and corrals are allowed in Phase III, subject to compliance with these Restrictive Covenants.

Additionally, upon each Lot there shall be permitted the following:

- i. one principal garage
- ii. one studio
- iii. one workshop
- iv. one guest house and garage

B. Maintenance of Lots. Each Lot and the Structures located thereon shall be maintained by the Owner thereof in good condition and repair, and in such a manner as not to create a fire hazard to such Lot or Los Caminitos Subdivision. In the event of damage or other destruction affecting a Lot or any Structure thereon, whether due to fire, mudslide, earthquake or other natural cause, the Owner shall repair, reconstruct or remove the affected Structure within a reasonable period of time not to exceed 18 months.

C. Leases. Certain Leases are permitted in accordance with Section 10. All other Leases are prohibited.

#### **4. Prohibitions**

A. Division of Lots. In Phases I and II, no Lot shall be divided, subdivided or partitioned nor in any manner shall the ownership of any portion thereof be severed from the ownership of any other portion thereof unless the resultant Lots thus divided will be no less than ten (10) acres in size. In Phase III, each of the original Lots 74 and 75 may be subdivided into not more than four (4) Lots or a total potential of eight (8) Lots for Phase III, of which no Lot shall be less than ten (10) acres; and thereafter, no Phase III Lot shall be further divided, subdivided or partitioned nor in any manner shall the ownership of any portion thereof be severed from the ownership of any other portion thereof. The limitations of this provision shall not apply to transfers of an undivided ownership interest in the whole of any Lot or to transfers of a portion of a Lot to a governmental authority made under condemnation or threat of condemnation.

B. Height. No Structure placed on any Lot shall have a height in excess of fifteen feet (15') above the average natural ground level at the construction site. Accordingly, no item shall be placed or installed upon, or added or affixed to, any Structure such that it would exceed the aforesaid fifteen foot (15') height limitation. The foregoing shall not apply to normal vent pipes or to security cameras, small antennae, satellite dishes or other unobtrusive electronic equipment previously approved by the Architectural Control Committee for that Structure.

C. Set-Back Lines. Unless a variance is allowed by the Architectural Control Committee, no Structure shall be erected nor shall any disturbance of natural ground cover and vegetation be permitted within fifty feet (50') of any Lot line except for a driveway with or without a gate which shall not be more than twenty five feet (25') in width at any place within fifty feet (50') of any Lot line; no Structure shall be erected on or within thirty seven and one-half feet (37.5') of the centerline of any trail easement as shown on the plats of Los Caminitos Subdivision filed and recorded as aforesaid. However, with a waiver by the Board, the Owners of two or more abutting Lots may agree in writing to cluster the principal residences on such Lots in such manner that there is less than the otherwise appropriate setback from one Lot line of each such Lot, and provided that in no case shall there be any diminution of the setback from any Lot line

abutting a Lot in the subdivision, the Owner of which does not agree in writing to participate in such clustering.

D. Fences. Except as provided for Phase III below, no fences or barriers of any nature except enclosures for pets or private gardens shall be erected or maintained, provided that privacy barriers may be erected and maintained within thirty-five feet (35') of any residence or guest house, provided such barriers be shown on the original plans for such Structure or plans which are approved in the same manner as is herein provided for the approval of the original plans for construction. In Phase III, Lots may have fences constructed appropriate to the corralling of horses, subject to compliance with these Restrictive Covenants.

E. Commercial Activities. No commercial activities shall be conducted; provided that nothing herein shall be construed to prohibit the use of space within a residence or guest house or studio for a professional or other office or for a work space for art, jewelry or handicrafts (i) in which there is employed not more than one employee or other person who does not reside on such Lot, (ii) which does not substantially increase the flow of traffic to such Lot to a level greater than that normally generated by such a residence and (iii) which does not otherwise violate these Restrictive Covenants.

F. Agriculture. No commercial farming, ranching or other agricultural activity or livestock or other animal boarding, kenneling, breeding or raising activity shall be permitted.

G. Animals. No cows or goats and no animals creating excessive noise, odor or other nuisances shall be kept on the premises. Owners shall use reasonable efforts to remove their animal's excrement from roads, hiking trails and other Common Area. Carnivorous animals such as dogs and cats shall be trained or restrained from interfering with or killing wildlife native to or found in Los Caminitos Subdivision and no grazing shall be permitted in any unfenced area within Los Caminitos Subdivision. In Phase III a total of four (4) horses will be allowed on each of Lots 74A, 74B, 74C, 74D and 75 for an aggregate total of 20 horses (and if Lot 75 is divided into additional Lots as permitted in Section 4A, each such additional Lot shall be limited to one horse, thereby not affecting the aggregate total of 20 horses allowed in Phase III). Owners of Lots in Phase III on which any horse is maintained shall maintain the Lot and the barns, stables, corrals and other related Structures in reasonably clean and odor-free condition, including removal of manure at least weekly. Horses shall be kept in barns, stables and corrals and not permitted to stray off the Lot or into any unfenced portion of the open space on the Lot.

H. Mobile or Manufactured Structures. No mobile home or "doublewide" home shall be permitted for any purpose. No prefabricated, modular or other type of manufactured Structure shall be permitted unless (i) its exterior appearance is in all respects consistent with these Restrictive Covenants and then applicable Architectural Control Rules for primary residences and ancillary Structures, including color, materials,

size and overall design, (ii) the Structure is sited on a permanent foundation and permanently affixed thereto and (iii) the Structure is otherwise acceptable to the Architectural Control Committee, such approval to be evidenced as set forth in Section 5D hereof.

I. Temporary Structures. No Structure of a temporary character, whether tent, tepee, yurt, shed or other building, shall be permitted for any purpose; provided that children's tents and party tents of limited size and Visibility may be temporarily utilized for their intended purposes and customary duration; and further provided that temporary buildings shall be permitted for uses incidental to construction on the Lot but may not be used as temporary residences and must be removed from the Lot upon completion of the construction.

J. Storage. No storage of building materials not contained in a garage or enclosed storage, other than during construction, shall be permitted. No storage yard for any materials other than those commonly and regularly in residential use or for purposes of construction of the infrastructure of Los Caminitos Subdivision shall be permitted. When not in use, all garden equipment, tools and machinery, bicycles and toys shall be kept in enclosed storage or maintained in areas not Visible.

K. Hunting. No hunting shall be permitted.

L. Signs. No signs except signs indicating the name and address of the residents of any Lot shall be maintained or installed. No more than one (1) "For Sale" sign of customary size shall be displayed upon any Lot.

M. Inconsistent Uses. No uses inconsistent with the residential character of Los Caminitos Subdivision shall be made.

N. Driveways and Gates. Each Lot shall be limited to a single driveway which has a single interconnection with the roadways in Los Caminitos Subdivision; provided that this limitation shall not apply to invalidate a Lot's existing second non-construction driveway that interconnects with the roadways as of May 1, 2019. Driveways shall lead to the principal residence and, with Architectural Approval, may split off to a guest house or other approved Structure, including parking areas and turn-arounds. All gates on driveways shall be set back from roadways at least twenty feet (20').

O. Vehicles. No unlicensed vehicle or trailer shall be parked, stored or otherwise allowed to remain on any Lot unless contained in a garage or enclosed storage. No graders, backhoes, front loaders or other type of mobile construction equipment shall be parked, stored or otherwise allowed to remain on any Lot except during the construction or repair of Structures previously approved by the Architectural Control Committee. In addition, no recreational vehicle, boat, camper or motor home, or travel or utility trailer greater than six feet long or four feet high, or any other type of vehicle greater than

twenty feet long or seven feet high or other similar equipment or vehicle which is Visible, shall be parked, stored or otherwise allowed to remain on any Lot without being contained in a garage or enclosed storage for more than seven consecutive days or for more than fifteen days in any calendar year. None of the aforesaid vehicles, boats, campers, trailers or equipment or other similar equipment or vehicles shall ever be parked, stored or otherwise allow to remain on any Common Area; provided, however, that the foregoing shall not apply to (i) vehicles, trailers or other equipment belonging to any contractor which performs work for the Association or (ii) horse trailers and related equipment placed on Lots in Phase III by the Owner who maintains horses on such Lot. Motor vehicles, motorcycles, all-terrain and other off-road vehicles and unlicensed motor vehicles of any kind shall be used only on Association roads and the Owner's driveway, all "off-road" use being prohibited; provided that, in Phase III, an Owner may engage in "off-road" use for purposes of accessing the Owner's Lot and for equine-related activities on such Lot, all in a manner consistent with the character of the community of Los Caminitos Subdivision and otherwise in compliance with these Restrictive Covenants.

P. Firearms. No firing of firearms or other weapons shall be permitted.

Q. Parking on Roads. No automobile, recreational vehicle, boat, motor home or trailer may be parked on any road maintained by the Association except (i) when necessitated during construction and approved by the Architectural Control Committee, (ii) by an Owner or guest when snow, other inclement weather or an emergency impedes or prevents access to such Owner's driveway or (iii) by an Owner or guest during social functions or Association functions.

R. Items on Rooftops. No apparatus, appurtenance or personal property shall be temporarily or permanently placed upon the roof of any residence or other Structure, except (i) HVAC and similar mechanical systems and satellite dishes, antennae or other devices for the transmission or reception of television, internet or radio signals and associated equipment to the extent in compliance with these Restrictive Covenants and (ii) items temporarily placed upon the roof which may be required in connection with construction, repairs or maintenance.

S. Blocking Access to Lots. Encroaching, altering or blocking access in any way to Los Caminitos Subdivision or to any Lot without express written approval from the Association is forbidden.

T. No Rezoning or Change of Use. No application for rezoning of any area in Los Caminitos Subdivision, and no applications for variances or use permits, shall be filed with any Governmental Authority unless the proposed rezoning, variance or use permit has been approved by the Architectural Control Committee, and unless the proposed use otherwise complies with these Restrictive Covenants.

U. Trash and Unsightly Conditions. No Lot shall be used or maintained as a dumping ground for rubbish or trash, and no garbage or other waste shall be kept except in sanitary containers. No machinery parts or household appliances or any unsightly items inconsistent with the character of the community of Los Caminitos Subdivision may be kept on any Lot so as to be Visible.

V. Liquid-Waste Disposal. Owners shall use conventional, on-site water or waste water systems with tanks and leach fields. The Owner is responsible for these systems.

W. Offensive Behavior. No noxious, offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which is inconsistent with the character of the community of Los Caminitos Subdivision or may be or become a nuisance or cause unreasonable noise, embarrassment, disturbance, annoyance or danger to Los Caminitos Subdivision or other Owners.

X. Open Fires. No open fires, campfires or fireworks shall be permitted on any Lot nor shall any similar activity or condition be permitted which would tend to increase fire hazard in general or insurance rates for Los Caminitos Subdivision or another Owner. No fireplace, kiva, ground level fire pit or standing fire pit (except barbeque grill) shall be permitted on any Lot without Architectural Approval, but in all cases the use thereof shall be subject to compliance with these Restrictive Covenants and applicable Law including any temporary or permanent rules, regulations or orders of local fire officials or other Governmental Authorities.

Y. Propane Tanks. Owners shall undertake reasonable measures to camouflage, disguise or hide propane tanks that are Visible. Reasonable measures include, among others, use of coyote fencing, embankments, vegetation, suitable painting and burial. In the case of tanks in place as of August 2019 that are Visible, Owners shall undertake such measures on or before December 31, 2020.

## **5. Construction**

A. Timing. Construction shall begin within one year (365 days) after Architectural Approval. In the event construction is not timely begun, plans and specifications shall be resubmitted to the Architectural Control Committee for approval before construction is begun. Once begun, exterior construction of any Structure or revegetation or landscaping of any excavated area shall be completed within four hundred eighty (480) weather working days; provided that nothing herein contained shall prohibit staged construction; in any staged construction of a principal residence, once begun, construction of any stage of construction shall be completed within four hundred eighty (480) weather working days; provided further that the initial stage shall not be of less than 2100 square feet, and provided further that upon completion of any stage, the Structure which is so built shall have the exterior appearance of finished construction. Construction activities shall be permitted from 7 a.m. (exterior noise not to begin prior to 8 a.m.) to 6 p.m. (exterior noise

not to continue past 5 p.m.) on Monday through Saturday (except that work that is entirely indoor may occur on Sunday) and shall not occur on the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

B. Vegetation. During construction, contractual requirements shall be made of the builder requiring him or her to refrain from damaging or removing trees and other vegetation, except as may be reasonably necessary and unavoidable for clearance of a building site and construction of driveways, parking areas and turnarounds. Although each Lot is limited to a single driveway, a secondary construction driveway may be utilized during construction if approved by the Architectural Control Committee. After construction, secondary construction driveways shall be removed and remediated, including with appropriate revegetation.

C. Deposit. It is essential that each Owner engaged in construction assure that no construction litter be thrown or deposited, or otherwise allowed to remain, on any community road or other Common Area or another Lot. To secure the Owner's responsibility in this regard, prior to the commencement of construction, the Owner shall deposit with the Association the sum of \$3,000, such amount being subject to modification as applicable to any particular calendar year by resolution adopted by the Board. If, during the course of or on completion of construction, any litter from such construction remains on any community road or other Common Area, or on another Lot for seven (7) days after notice thereof is given to the constructing Owner, the Board may use the deposit to defray the cost of removing same. If, upon the completion of construction, all such litter has been removed either by the Association or the Owner, the balance of the deposit will be returned to the Owner. The deposit called for hereunder shall be placed in the Association's general account. The Association shall have no obligation to invest or pay any interest on the deposit.

D. Approval. No initial activities on any site (other than surveying) or initial construction of any Structure, and no alteration, rebuilding or reconstruction of the exterior of any existing Structure, shall be commenced until definitive plans therefor, as called for herein and in the Architectural Control Rules, have been approved by the Architectural Control Committee and the security deposit called for in Section 5C hereof has been posted with the Association. Architectural Approval shall be evidenced only by letter from the Architectural Control Committee to the submitting Owner identifying with reasonable specificity the plans being approved. All construction shall be performed in substantial accordance with the approved plans therefor. Any construction not in substantial accordance with the approved plans shall be removed and replaced with complying construction.

## **6. Architectural Approval**

A. Required Approval. All Structures shall comply with the requirements of these Restrictive Covenants. The location, design, materials, exterior colors and finishes,

construction, installation, exterior modification of or addition to any Structure shall require Architectural Approval and compliance with these Restrictive Covenants. Except where the context otherwise requires, the term “construction” as used in these Restrictive Covenants or the Architectural Control Rules shall include demolition of Structures. Architectural Approval shall be determined by the Architectural Control Committee following submission of plans and specifications. The Architectural Control Committee retains the services of a professional architect to assist it, at the expense of the Owner. A copy of Owner submissions and the Architectural Approval shall be maintained in the records of the Architectural Control Committee. Notwithstanding anything to the contrary in these Restrictive Covenants, at any time after completion of construction of the principal residence on a Lot in accordance with these Restrictive Covenants including Architectural Approval, an Owner may submit to the chairman of the Architectural Control Committee a written request (including reasonable detail concerning location, design and other specifics) to treat a Structure that is proposed to be constructed, installed, modified, added to or removed as a Minor Structure. Following consultation with at least one other member of such committee, the chairman of the Architectural Control Committee shall have the discretionary right, but shall not be obligated, to determine that treatment of the proposed Structure as a Minor Structure not requiring formal Architectural Approval is appropriate. If so, the chairman shall notify the requesting Owner in writing that the Structure that is proposed to be constructed, installed, modified, added to or removed (only to the extent described in the Owner’s written request) shall be treated as a Minor Structure not requiring formal Architectural Approval so long as the location, design, materials, exterior colors and finishes, construction, installation, exterior modification, addition or removal of such Minor Structure is consistent with the description contained in the Owner’s written request. The chairman shall so advise the Architectural Control Committee at its next meeting and a copy of the Owner’s request and chairman’s notice shall be filed in the records of the Architectural Control Committee. In the absence of such a determination by the chairman of the Architectural Control Committee, the proposed Minor Structure shall require formal Architectural Approval.

B. Standards. The standards for Architectural Approval are:

i. No principal residence shall be less than 2100 square feet interior heated space; no guest house shall be of less than 500 square feet, nor more than 2000 square feet interior heated space.

ii. No construction of any guest house or other Structure shall commence until substantial exterior completion of the principal residence, provided that the Architectural Control Committee may waive the provisions of this requirement upon a showing of good faith simultaneous or contemporaneous construction of a principal residence and such guest house or other Structure.

iii. The type of construction and architecture shall be in keeping with the character of the community. Santa Fe style architecture, territorial style architecture, traditional pueblo style architecture and western ranch architecture is encouraged and favored, as is the use of construction materials having the appearance of local, indigenous and traditional building materials. Energy and water conservation devices, such as solar collectors, cisterns, etc. are also encouraged. The determination of whether the architectural style is satisfactory shall be in the sole discretion of the Architectural Control Committee. The only requirement for the Architectural Control Committee shall be that it act in good faith for the benefit of all the Owners of the Lots in Los Caminitos Subdivision; notwithstanding, an Owner may appeal to the Board for approval.

iv. All extensions of utilities shall be underground to all Structures at all locations. No electrical or telephone lines shall be maintained above ground except during construction. If the original Phase III Lots 74 and 75 are subdivided in accordance with these Restrictive Covenants, all roadways shall be first approved by the Architectural Control Committee as to location and standards of construction.

v. No exterior floodlights or street lamps shall be installed, operated or maintained on any Lot in such manner that light therefrom shall directly illuminate lands other than those of the Owner thereof.

vi. Such other standards, requirements or limitations as may be expressly contained in these Restrictive Covenants.

C. Committee. The Architectural Control Committee shall consist of at least three persons, at least two of whom shall be Owners. No member of the Committee shall sit in consideration of plans dealing with a Lot owned by such Committee member or a Lot abutting a Lot owned by such Committee member. When a member of the Committee is not qualified to sit for such reason and the remaining number of members who are qualified to sit is less than three, the Board shall designate additional members *pro tem* for the purpose of dealing with such matter so that the total number of members of the Committee (including any such *pro tem* members) is at least equal to three.

D. Site. The selection of all construction sites on any Lot shall be subject to Architectural Approval. Approval may be withheld if, among other reasons, the site selected will unreasonably interfere with drainage patterns or archaeological sites, will violate setback requirements, will result in excessive cutting and filling, would be inappropriate for location of on-site sewage disposal systems or will require excessive removal of native vegetation. Selection and approval of the construction site should take into consideration Visibility and the sight lines from neighboring properties.

E. Buyer Plans. The Owner of a Lot for sale may submit a potential buyer's plans to the Architectural Control Committee for input or Architectural Approval. Such Architectural Approval would survive the change of ownership.

F. Access. Members of the Board and the Architectural Control Committee, acting in their representative capacities, shall have the right, exercisable from time to time but only during the construction, reconstruction or alteration of Structures on any Lot, or in the course of performing its duties under these Restrictive Covenants, and enforcement thereof, to enter upon the Lot, together with such professional advisors as they may deem advisable, to determine if the provisions of these Restrictive Covenants and the Architectural Control Rules are being adhered to. Directors and members of the Architectural Control Committee shall use reasonable efforts to notify the Owner at least 24 hours in advance of its intent to enter upon the property for such purposes and, in instances where the Owner is residing on the subject Lot, shall use reasonable efforts to schedule a mutually convenient time for doing so. After each inspection, the Owner shall be notified that an inspection has been performed and of any deficiencies or violations noted.

G. Rules Violations. Any breach or violation of the Architectural Control Rules, as from time to time in effect, shall constitute a breach or violation of these Restrictive Covenants, affording the Association all rights and remedies afforded under applicable Law or in the Governing Documents, including Articles VI and VIII of the Bylaws, same being incorporated by this reference herein for all purposes.

H. Waiver and Appeal. Notwithstanding anything to the contrary contained in or inferable from these Restrictive Covenants or the Architectural Control Rules, the Architectural Control Committee shall have the sole, exclusive right, power, authority and discretion to grant, at any time or times, and with or without conditions, such variances to the design and construction requirements, standards and guidelines as contained herein and therein as the Architectural Control Committee may deem appropriate and consistent with the character of the community of Los Caminitos Subdivision provided that the appearance and size of the resulting Structure will be generally consistent with the Structures currently existing in the community. Variances may be granted prospectively or retroactively but shall be legally effective only if evidenced in writing, executed by a member of the Architectural Control Committee authorized to do so. Accordingly, no variance shall be deemed granted by virtue of any prior action or forbearance of the Architectural Control Committee. A variance granted in one instance shall be applicable only to that instance and shall not form a precedent for the granting of any subsequent variance. Any Owner aggrieved by the failure of the Architectural Control Committee to issue an acceptable variance may appeal to the Board to do so, in which event the Board shall have the same right, power, authority and discretion to grant a written waiver as provided herein for the Architectural Control Committee.

## **7. Subdivision Governance Framework**

A. Formation of Association. The Association is a New Mexico nonprofit corporation charged with the duties and vested with the powers prescribed by applicable

Law and set forth in the Governing Documents, together with such rights and powers under the Act and other applicable Law as may be reasonably necessary to effectuate all the objectives and purposes of the Association.

B. Membership. Each Owner shall be a Member of the Association and there shall be one (1) vote for each Lot owned by such Owner. When more than one person holds an ownership interest in any Lot, all such persons shall be Members, but the vote for such Lot shall be allocated and exercised as they determine in writing among themselves (with notice to the Board), and in no event shall more than one (1) vote be cast with respect to such Lot. All co-owners of a Lot shall be jointly and severally obligated to perform the responsibilities of Owners with respect to such Lot. As of August 2019, the Association has 78 total Lots and an aggregate of 78 total votes. When any Lot is divided or subdivided, in whole or in part, in accordance with these Restrictive Covenants, such original Lot, as so modified, shall retain its one (1) full vote and each additional Lot created from any such division or subdivision of such original Lot shall have its own additional one (1) vote. When any Lot is combined with another Lot, in whole or in part, in accordance with these Restrictive Covenants, the one (1) vote attributable to each of the formerly uncombined Lots that is involved in the combination shall be allocated among the affected Owners of the resulting combined Lots as such Owners determine in writing among themselves (with notice to the Board), and if the affected Owners do not agree, then such votes shall be allocated proportionately among the affected Owners according to the number of Lots so combined (and their respective ownership percentages in such Lots), but in no event shall more than one (1) vote be cast after such combination with respect to each of what were formerly the uncombined Lots that were involved in the combination.

C. Board of Directors. The Board shall be comprised of Members elected to serve as directors in accordance with the Articles, the Bylaws and the Act. Any Owner interested in potentially becoming a director may submit a letter of interest to the President of the Association on or before the July 1 prior to the next annual meeting of Members of the Association, which will be posted on the Association's website and included with the notice of meeting and proxy mailed to all Members. Owners submitting timely letters of interest and any incumbent directors who advise the President of the Association of their willingness to continue to serve as directors shall be nominees and on the ballot at the annual Members meeting. Each nominee shall have the opportunity to address the Members at the meeting for two minutes, followed by voting in accordance with the Bylaws. If there are more nominees than open director seats, the nominees with the most votes in excess of the vote required by the Bylaws shall be elected to the open director seats. If there remains an open director seat for which no nominee receives the requisite number of votes, another vote will be taken until nominees receiving the requisite votes have been elected to fill all open director seats. Nominees for director shall disclose to the Association in writing prior to the applicable election, and directors shall disclose to the Board in writing from time to time as and when relevant, any conflict of interest, as

such term is defined by the Act. Directors shall deliver such certifications as may be required of directors by the Act, and the lack of timely delivery shall result in suspension from the Board until such certification is provided.

D. General Powers of Association. The Association shall have and may exercise any and all rights, powers and privileges which a corporation organized under New Mexico Laws regarding nonprofit corporations now or hereafter has and now or hereafter may exercise, subject only to such limitations, if any, as are expressly set forth in the Articles. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under the Governing Documents, the Act and other applicable Law, and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Association and the Owners, including the following:

- i. levy Assessments and other charges and pursue the collection of unpaid Assessments and other charges, as provided in the Governing Documents;
- ii. pay taxes, assessments and other liabilities which are or would become a lien on the Common Area;
- iii. hold fee title in and to the Common Area and to any Lots acquired, in accordance with the Governing Documents and applicable Law, through the foreclosure process for nonpayment of Assessments;
- iv. maintain and improve the Common Area, including construction, reconstruction and maintenance of roads, landscaping, clubhouse and other facilities;
- v. plant and replace trees or other vegetation and ground cover in the Common Area;
- vi. take measures which may be necessary to prevent or retard the shifting or erosion of any dirt, dunes or embankments located in the Common Area;
- vii. purchase such liability, casualty, errors and omissions and other types of insurance as the Board deems necessary or appropriate;
- viii. enter into contracts;
- ix. adopt, amend, repeal and enforce Board Rules and Architectural Control Rules;
- x. enter into the Lots, without liability to any Owner, to enforce the terms and provisions of the Governing Documents; and

xi. seek recompense for, and commence and maintain actions to enforce, seek damages and cost reimbursement or restrain and enjoin, any actual or threatened noncompliance with the Governing Documents by an Owner or an Owner's Lessees, their agents, contractors, employees, licensees, animals, invitees or guests.

E. Implied Rights; Board Authority. The Association may exercise any other right or privilege given to it expressly by the Governing Documents or under applicable Law or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise expressly provided in the Governing Documents or by applicable Law, all rights and powers of the Association may be exercised by the Board without a vote of the Members.

F. Board Rules. The Board may adopt, amend and repeal such rules ("**Board Rules**") as are reasonable and appropriate concerning (i) the use, operation and administration of Los Caminitos Subdivision Common Area, (ii) interpretation and clarification of any ambiguous or otherwise unclear provision of the Restrictive Covenants, and (iii) provisions dealing with emergencies or safety, security or environmental matters, in each case in accordance with the procedures in this Section 7F; provided that the Board Rules shall not be inconsistent with, change, limit, or negate these Restrictive Covenants (except to the extent of changes permitted in subparts (ii) and (iii) above), the Articles or the Bylaws. The Board shall provide to the Members thirty (30) days' advance written notice of any proposed adoption, amendment, or repeal of a Board Rule, during which period Members may provide comments to the Board. After such thirty (30) day period, any proposed adoption, amendment, or repeal of a Board Rule may be accomplished upon the vote of a majority of the full Board. The Board Rules shall have the same force and effect and be subject to the same enforcement as if set forth in these Restrictive Covenants, unless and until repealed or modified at an annual or special meeting of the Members in accordance with the procedures set forth in the next sentence of this Section 7F. If any Member owning a Lot with respect to which such Owner is eligible to vote requests in writing that a specified Board Rule be presented to the Owners for a vote on repeal, then a vote on such proposed repeal shall be taken at the next annual meeting of the Association to be held at least sixty (60) days following such request, and the specified Board Rule shall be repealed upon the affirmative vote of Members owning at least two-thirds (2/3) of the Lots with respect to which the Owners are eligible to vote. The Board shall notify the Members of any new, amended or repealed Board Rules no later than ten (10) days after such adoption, amendment or repeal. Any new Board Rule shall not take effect until the Board has provided notice to the Members. A copy of the Board Rules, as from time to time adopted, amended or repealed, shall be maintained with the corporate records of the Association and shall be available for inspection by any Member.

G. Creation of Architectural Control Committee. The Architectural Control Committee is hereby created as a committee of the Board for the purposes set forth in

these Restrictive Covenants and shall consist of at least three members, at least two of whom are Owners. The Board shall appoint the members of the Architectural Control Committee.

H. Architectural Control Rules. The Board may adopt, amend and repeal such rules and regulations (“**Architectural Control Rules**”) as are reasonable and appropriate concerning construction and architectural matters, including, among other things, location, design, materials, exterior colors and finishes, construction, alteration, modification and demolition of Structures, procedures and requirements for submittals, required deposits, and fees or charges to alleviate costs. The Board shall provide to the Members thirty (30) days’ advance written notice of any proposed adoption, amendment or repeal of an Architectural Control Rule, during which period Members may provide comments to the Board. After such thirty (30) day period, any proposed adoption, amendment or repeal of an Architectural Control Rule may be approved by the vote of a majority of the full Board. The Architectural Control Rules shall be deemed incorporated in, and have the same force and effect and be subject to the same enforcement as if set forth in, these Restrictive Covenants, unless and until repealed or modified at an annual or special meeting of the Members in accordance with the procedures set forth in the next sentence of this Section 7H. If any Member owning a Lot with respect to which such Owner is eligible to vote requests in writing that a specified Architectural Control Rule be presented to the Members for a vote on repeal, then a vote on such proposed repeal shall be taken at the next annual meeting of the Association to be held at least sixty (60) days following such request, and the specified Architectural Control Rule shall be repealed upon the affirmative vote of Members owning at least two-thirds (2/3) of the Lots with respect to which the Owners are eligible to vote. The Board shall notify the Members of any new, amended or repealed Architectural Control Rules no later than ten (10) days after such adoption, amendment or repeal. Any new Architectural Control Rules shall not take effect until the Board has provided notice to the Members. A copy of the Architectural Control Rules, as from time to time adopted, amended or repealed, shall be maintained with the corporate records of the Association and shall be available for inspection by any Member.

I. Indemnification. The Association shall indemnify every current or former officer, director and committee member against all reasonable costs and expenses (including counsel fees) reasonably incurred in connection with the defense of any action, suit or other proceeding, civil or criminal, (including amounts paid to satisfy a judgment or to compromise or settle such a claim, if approved by the Board) to which he or she may be a party by reason of being or having been an officer, director or committee member; provided that no such indemnification shall be made available if the current or former officer, director or committee member is adjudged by a court to be liable on the basis that the current or former officer, director or committee member breached or failed to perform the duty of the office of the current or former officer, director or committee member and if a court adjudges that the breach or failure to perform on the part of the current or

former officer, director or committee member constitutes willful misconduct or recklessness. This indemnification obligation is an obligation of the Association, and not of the Owners (except to the extent of indemnity amounts indirectly funded through an Assessment).

J. Compliance with Law. Los Caminitos Subdivision and all Lots shall at all times be subject to, and all Owners shall abide by, all Laws applicable to Los Caminitos Subdivision and the Lots, including State of New Mexico Laws and County of Santa Fe ordinances, regulations, rules and other applicable Laws, as the same may be amended from time to time, and to the extent County permit or approval shall be required for any matter governed hereby, then no decision of the Association shall be deemed to supersede any such Law or required permit or approval.

K. Financial Records. If and as required by the Act, the Association shall obtain a financial audit, review or compilation of the Association's financial records by an independent certified public accountant. The Association shall make available to all Owners any such financial audit, review or compilation within the time period required by the Act.

## **8. Association Assessments**

A. Assessments Generally. The Association shall have the right and power to assess each Owner for the purpose of improvement, maintenance and protection of the desirability, attractiveness and safety of Los Caminitos Subdivision; for the improvement, maintenance and protection of the Common Area and the Structures within the Common Area, consistent with the standard generally prevailing for similar developments; to reimburse the Association for the costs incurred in bringing an Owner into compliance with these Restrictive Covenants and the other Governing Documents; to carry out the duties, rights and obligations of the Association, including the Board and the Architectural Control Committee; and for other reasonable and customary uses for the common good and benefit of Los Caminitos Subdivision, the Association and its Members, as determined by the Board (all of the foregoing, "Assessments").

B. Personal Obligation of Assessments and Creation of Lien. Each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments and other charges provided for in the Governing Documents. The Assessments and such other charges provided for in the Governing Documents, and any judgment for money damages as contemplated in Article VIII of the Bylaws, together with interest, collection costs, court costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien (hereinafter sometimes called the "Association Lien") upon the applicable Lots of the Owner. Such amounts shall immediately become a lien upon such Owner's Lot from the date the Assessment or other such charge is made and/or levied or judgment for money damages rendered and from the date such interest, collection costs,

court costs and reasonable attorneys' fees are incurred, and shall continue to be a lien until fully paid. The Association Lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by applicable Law would be superior, and (b) the lien or charge of any first priority mortgage of record (meaning any recorded mortgage in favor of an unrelated third party for a bona fide loan with first priority over other mortgages where the proceeds are used exclusively to purchase or improve the Lot or any Structure thereon) made in good faith and for value. The Association may enforce the Association Lien, when delinquent, by suit, judgment and foreclosure. Each such Assessment or such other charge or judgment, together with interest, collection costs, court costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot. If more than one person is the Owner of the Lot, the personal obligation to pay the Assessment or such other charge or judgment shall be joint and several. No Owner may exempt himself from liability for the Assessments or such other charges or judgments that become due while he is the Owner by failure or waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Lot or otherwise. Except as provided in Section 8L below with respect to foreclosure under a first priority mortgage, the sale or transfer of title to a Lot shall not affect the Association Lien and, upon such sale or transfer, the grantee shall be jointly and severally liable for any unpaid Assessments and other charges established as provided in these Restrictive Covenants that are due prior to the time of conveyance. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the Association Lien thereon.

C. Annual Assessments. The Association shall have the power to levy an Assessment each year for such purposes as determined by the Board ("**Annual Assessments**"). The amount of an Annual Assessment will be determined annually by the Board and approved by the Members at a meeting of Members. Annual Assessments shall be fixed at a uniform rate for all Lots. The Board shall prepare an annual budget of estimated revenues and expenses and provide a copy to the Members at or prior to the Association's annual meeting of Members. Such budget and Annual Assessment shall become effective unless not approved by the Members at the annual meeting. If the proposed budget and Annual Assessment is not approved at the annual meeting, then until such time as a budget and Annual Assessment is approved by Members at a meeting of Members, the budget and Annual Assessment in effect for the immediately preceding year shall continue for the current year. A copy of the annual budget applicable for the current year shall be provided to Members within thirty (30) days after adoption, together with a summary of Assessments and other charges provided for in the Governing Documents.

D. No Waiver or Release. Failure by the Board to establish the amount of Annual Assessments before the expiration of any fiscal year shall not be deemed either a waiver or modification in any respect of the terms and provisions hereof or a release of the Owners from the obligation to pay any and all installments of Annual Assessments, for

that or any later year, but the Annual Assessment fixed for the preceding year shall continue until a new Annual Assessment is fixed.

E. Supplemental Assessments. It is recognized that extenuating circumstances may arise under which the Association requires additional funds beyond those provided for by the Annual Assessments and the Board may determine that it is not prudent to utilize existing reserves. The Association shall have the power to levy supplemental Assessments from time to time for such purposes as determined by the Board (“**Supplemental Assessments**”). The amount of a Supplemental Assessment will be determined by the Board. Supplemental Assessments shall be fixed at a uniform rate for all Lots.

F. Assessments Per Lot. Special Assessments pertain to a specific Lot and are personal to the Owner of such Lot. With respect to all Assessments other than Special Assessments, there shall be one (1) such Assessment for each Lot owned by an Owner. When any of the Lots is divided or subdivided, in whole or in part, in accordance with these Restrictive Covenants, such original Lot, as so modified, shall remain subject to its one (1) full Assessment and each additional Lot created by the division or subdivision of such original Lot shall be subject to its own additional one (1) full Assessment. When any of the Lots is combined with another Lot, in whole or in part, in accordance with these Restrictive Covenants, the one (1) full Assessment attributable to each of the formerly uncombined Lots that is involved in the combination shall be allocated among the affected Owners of the resulting combined Lots as such Owners determine in writing among themselves (with notice to the Board), and if the affected Owners do not agree, then such Assessments shall be allocated proportionately among the affected Owners according to the number of Lots so combined (and their respective ownership percentages in such Lots), but in no event shall less than one (1) full Assessment be due after such combination with respect to each of what were formerly the uncombined Lots that were involved in the combination. As of August 2019, the Association has 78 total Lots and an aggregate of 78 total Assessments.

G. Special Assessments. The Association shall have the power to levy special Assessments (“**Special Assessments**”) against a particular Lot to seek recompense from the Owner of such Lot for non-compliance with the Governing Documents, including by (i) recompense, damages and reimbursement of costs incurred to bring the Lot into compliance with these Restrictive Covenants or as a consequence of the conduct of the Owner or Lessees of the Lot, their agents, contractors, employees, licensees, animals, invitees or guests, and (ii) imposition of the amounts set forth in Article VI Section 6 of the Bylaws in order to incentivize the Owner’s compliance with the Governing Documents; provided that, before levying any Special Assessments, the Board shall provide the Owner with (a) written notice of violation and such opportunity to dispute as may be required by the Act and (b) a grace period of thirty (30) days after the giving of such notice of violation to remove or otherwise cure such violation; provided, however,

as to those violations that cannot reasonably be removed or cured within such thirty (30) day grace period, a special assessment shall not be levied if, within such thirty (30) day grace period, the Owner commences the removal or curing thereof and thereafter prosecutes same diligently and continuously to completion, all within the time and in a manner reasonably satisfactory to the Board. Notwithstanding the foregoing, no such notices or grace periods shall be required in the case of violations that pose an imminent threat to public health or safety.

H. Lot Transfer Fee. In addition to the Assessments, there will be a Lot Transfer Fee payable to the Association upon the resale of Lots, such fee to be paid by the buyer. The amount of the Lot Transfer Fee is presently \$750 per Lot, such amount being subject to modification as applicable to any particular calendar year by resolution adopted by the Board. The Lot Transfer Fee shall be in addition to any Disclosure Certificate Fee. The Association shall advise any Owner upon request of the then current amount of the Lot Transfer Fee as established by the Board. In the event of Lot combinations, the Lot Transfer Fee shall be treated consistently with the manner in which Assessments are handled as described in Section 8F. As of August 2019, the Association has 78 total Lots with respect to which Lot Transfer Fees could be applied.

I. Disclosure Certificate and Charge. If and as required by the Act and requested by an Owner or Owner's representative, the Association shall provide a disclosure certificate in connection with sales of Lots. To the extent the disclosure certificate is required by the Act to address any items such as rights of first refusal, Leases, covenant violations or other matters that would reasonably be expected to be primarily matters known to Owner rather than the Association, Owner shall confirm in writing to the Association any such items concurrent with the request for the Association to provide a disclosure certificate (or any update thereof). The Association may charge a fee, in an amount not greater than that allowed by the Act, in connection with preparation and delivery to Owner of the disclosure certificate. The Association shall advise any Owner upon request of the then current amount of the Disclosure Certificate Fee as established by the Board.

J. Due Dates of Assessments and Other Amounts. Annual Assessments shall be due on September 1, and other Assessments or other charges provided for in the Governing Documents shall be due on the date sixty (60) days following the mailing of notice thereof to the Owner of each Lot. Any Annual Assessment not paid on or before October 31, and any other Assessment or other charge provided for in the Governing Documents not paid within thirty (30) days after the due date, shall bear interest from the respective due date until paid at the rate of eighteen percent (18%) per annum. Delivery of notices of Assessments or other charges shall be sent to the last mailing address of an Owner provided to the Association or if no mailing address has been provided to the address of an Owner as shown on the most recent deed of record on file in the office of the County Clerk of Santa Fe County, and if no address is shown, then by posting such notice on the most public portion of the Lot owned by such Owner.

K. Effect of Nonpayment: Remedies of the Association. In the event an Owner fails to pay an Assessment or other charge provided for in the Governing Documents when due, or a judgment for money damages as contemplated in Article VIII of the Bylaws, the Owner shall not be eligible to vote or use clubhouse facilities, swimming pool and tennis courts unless and until all outstanding unpaid Assessments and other charges or judgments, together with any interest thereon, have been paid, and the Association, by and through its Board, may enforce the payment thereof in any manner provided by applicable Law or in equity including, without limitation of the foregoing, by either or both of the following actions concurrently or separately (and the exercise any such remedies shall not be deemed an election of remedies nor to have prejudiced or waived the Association's right to exercise any other remedies):

i. Enforcement by Lawsuit. Commence a lawsuit in the name of the Association against an Owner (or former Owner) personally obligated to pay an Assessment or other charge provided for in the Governing Documents, to enforce collection of each such Assessment or other charge or judgment for money damages, together with any interest thereon. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon from the date of delinquency, collection costs, lien fees, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner (or former Owner).

ii. Enforcement by Foreclosure. Foreclose the Association Lien against the Lot in accordance with the then prevailing New Mexico Law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), subject to the right of redemption of the Lot as provided by applicable Law. The Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey the foreclosed Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its other Assessments, its equal pro rata share of the Annual and Supplemental Assessments that would have been charged with respect to such Lot had it not been acquired by the Association.

L. Subordination of the Lien to Certain Mortgages. The Association Lien shall be subordinate to the lien of any first priority mortgage of record (meaning any recorded mortgage in favor of an unrelated third party for a bona fide loan with first priority over other mortgages where the proceeds are used exclusively to purchase or improve the Lot or any Structure thereon) made in good faith and for value. The holder of such a first priority mortgage who obtains title to a Lot pursuant to foreclosure in accordance with the terms of its mortgage shall not be liable for, and the Association Lien shall be extinguished as to, unpaid installments of Assessments and other charges due prior to the time of foreclosure.

M. Estoppel Certificate. The Association shall execute and acknowledge a certificate stating the indebtedness secured by the Association Lien upon any Lot, and such

certificate shall be conclusive upon the Association and the Owners, in favor of all persons who rely thereon in good faith, as to the amount of such indebtedness on the date of the certificate.

**9. Single-Family, Private Residential Uses; Circumstances Violating Covenants**

Except for Leases permitted in accordance with Section 10, any use of a Lot or of any Structure located on any such Lot which involves consideration flowing to an Owner, or any Lease which involves consideration flowing to an Owner, any of which have the effect of creating more than one single-family, private residential use of the Lot or Structures located on the Lot within a single calendar year, is a violation of these Restrictive Covenants, including Article 3A (requiring dwellings on Lots to be used only for private residential purposes), Article 4E (prohibiting certain commercial activities) and Article 4M (prohibiting uses inconsistent with the residential character of Los Caminitos Subdivision). The following situations shall be considered by the Association to be a part of the single-family, private residential use of a Lot by an Owner and shall not be considered by the Association to be a violation of the single-family, private residential use requirement:

- A. Residence on a Lot or in a Structure on a Lot by a caretaker employed by or working as an independent contractor for the Owner for the purpose of caring for the Lot or Structures on the Lot, whether the caretaker is compensated by the Owner in cash or in kind;
- B. Residence on a Lot or in a Structure on a Lot by visitors and guests of the Owner, provided that the visitor or guest gives no consideration to the Owner or any other person or entity in return for the privilege of residing on the Lot or in the Structure on the Lot;
- C. Residence on a Lot or in a Structure on a Lot by a healthcare professional employed by or working as an independent contractor for the Owner for the purpose of caring for the Owner or persons related to the Owner by affinity or consanguinity, whether the healthcare professional is compensated by the Owner in cash or in kind;
- D. Residence on a Lot or in a Structure on a Lot by persons related to the Owner by affinity or consanguinity, provided that the person related to the Owner gives no consideration to the Owner or any other person or entity, and the Owner receives no consideration, in return for the privilege of residing on the Lot or in the Structure on the Lot;
- E. Residence on a Lot or in a Structure on a Lot by custodial persons, including nannies, maids, drivers, gardeners, cooks and butlers, employed by or working as independent contractors for the Owner for the purpose of providing custodial services to the Owners or persons related to the Owner by affinity or consanguinity, and persons described in Subsections A, B and C above.

## **10. Leases**

A. Subject to compliance with these Restrictive Covenants, a Lease is permitted only in accordance with this Section 10. Short-term Leases, which shall be considered Leases with a term of less than one month, shall not be permitted. Long-term Leases, which shall be considered Leases with a term of one month or more, shall be permitted by an Owner no more than one time per year; provided that, if a long-term Lease entered into in compliance with this Section 10 is terminated early, the Owner shall be permitted to enter into a second long-term Lease that year with a term not to expire after the intended term of the terminated long-term Lease. Under no circumstances shall a Lessee of the Lot, any Structure located thereon or any room or portion thereof be permitted to enter into any sublease or other type of Lease. In the event of a Lease, Owner shall notify the Association in writing prior to the time when the Lessee takes possession, such notice to include the name, mailing address, email address and phone number of the Lessee and a copy of the lease or other applicable agreement (with the rental amount permitted to be redacted).

B. Any lease or other applicable agreement for a Lease shall be subject to the Governing Documents, and must provide that any violation of the Governing Documents or applicable Laws shall be a default under the lease or other applicable agreement. Owner shall remain liable for any violation of the Governing Documents committed by any Lessee, invitee, guest or other person. All notices from the Association shall be sent to the Owner and, if the Owner provided the Association with the required notice and copy of the lease or other applicable agreement, to the Lessee.

## **11. Water Conservation**

All Owners and occupants shall utilize reasonable water saving techniques, shall refrain from excessive water use and waste and shall install totalizing water meters on their wells of the type required by applicable Law. In connection with initial construction or the replacement of appliances and fixtures, if upgraded water saving devices are commercially available and reasonably conform to the needs of the Owner, same shall be installed and utilized.

## **12. Road and Fire Safety**

A. Road Safety. Natural growth of trees and vegetation may impede transportation or the ability to see approaching vehicles. As to driveways on all Lots and as to Lots located at road intersections in Los Caminitos Subdivision, Owners are encouraged to trim trees and other vegetation on their Lots to improve sightlines to approaching vehicles. In the case of Lots located at road intersections in Los Caminitos Subdivision and after attempted consultation with the applicable Owner, the Association may, but shall not be obligated to, engage in judicious trimming of trees and other vegetation within an easement along the roadway on such Lots (not to exceed 12 and one-half feet from the edge of the road) to improve sightlines to approaching vehicles. The Association shall use reasonable efforts to contact the Owner for consultation and

to notify the Owner in writing at least ten (10) days in advance of its intent to enter upon the property for the purposes of such trimming.

B. Fire Safety. Owners are encouraged to remove or trim trees and other vegetation around residences and other buildings on their Lots to minimize potential fire hazard. To the extent damage or destruction of trees and other vegetation on a Lot creates a fire hazard on the Lot or to Los Caminitos Subdivision, whether due to fire, natural cause, disease (including beetle or other infestation) or drought, the Owner shall take reasonable steps to mitigate any such fire hazard within a reasonable period of time. In the event of such a fire hazard to Los Caminitos Subdivision and after attempted consultation with the applicable Owner, the Association may, but shall not be obligated to, engage in judicious trimming of trees and other vegetation within an easement along the roadway on such Lot (not to exceed 12 and one-half feet from the edge of the road) to mitigate such fire hazard to Los Caminitos Subdivision. The Association shall use reasonable efforts to contact the Owner for consultation and to notify the Owner in writing at least ten (10) days in advance of its intent to enter upon the property for the purposes of such trimming.

### **13. Insurance**

A. Owner Insurance Requirements. Each Owner shall purchase such liability, fire or other casualty insurance as such Owner desires or as may be required by the Owner's mortgage lender. The Association shall not be obligated to insure all or any portion of any Lot or its Structures.

B. Association Insurance Requirements. The Association shall maintain, to the extent reasonably available, the following insurance coverage in amounts to be determined by the Board:

- i. Comprehensive general liability insurance;
- ii. Property insurance for any Structures within any Common Area;
- iii. Directors' and officers' liability insurance;
- iv. Fidelity or employee theft coverage, to cover the individuals or companies who have access to the Association's funds; and
- v. Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners.

### **14. Enforcement**

A. Enforcement. The Association shall have the right to enforce all provisions of the Governing Documents. In addition, any Owner may enforce the provisions of the Governing Documents. This right of enforcement shall be in any manner provided for in

the Governing Documents or by applicable Law or in equity, including by an action to obtain an injunction to compel removal of any Structures constructed or altered in violation of these Restrictive Covenants or to otherwise compel compliance with any provisions of the Governing Documents and by seeking recompense or recovery of damages and costs arising out of the Owner's non-compliance with the Governing Documents, including recompense, damages and costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, Lessees, licensees, animals, invitees or guests that is not in compliance with the Governing Documents. Nothing herein shall be construed as meaning that recompense or damages is an adequate remedy where equitable relief is sought. Each remedy provided by the Governing Documents is cumulative and not exclusive (and the exercise any such remedies shall not be deemed an election of remedies nor to have prejudiced or waived the Association's right to exercise any other remedies). Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. Costs. In the event of a dispute between the Association and one or more Owners based upon any provision in the Governing Documents, the prevailing party(ies) shall be entitled to recover from the non-prevailing party(ies), in addition to any other remedy granted or settled upon in such dispute, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith. In the event the Association is the prevailing party in any such dispute, attorneys' fees, costs and expenses shall be imposed and collectible against the non-prevailing Owner(s) in the same manner as Assessments and shall be secured by the Association Lien. If there is more than one non-prevailing Owner, such attorneys' fee, costs and expenses shall be allocated in equal amounts to the Lots owned by such non-prevailing Owners therewith.

## 15. General Provisions

A. Severability. The invalidity or unenforceability of any covenant, restriction, terms or other provision hereof by a court of competent jurisdiction shall not impair or adversely affect the validity or enforceability of any other covenant, restriction, term or provision hereof, which shall be and remain valid and enforceable to the fullest extent permitted by applicable Law.

B. Change of Circumstances. No change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of these Restrictive Covenants.

C. Non-Waiver. The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of these Restrictive Covenants shall not constitute a waiver of any right to enforce any such provision or any other provision of these Restrictive Covenants thereafter.

D. Notices. All notices or other communications required or desired to be given under these Restrictive Covenants must be in writing and sent by U.S. Mail, delivery service such as Federal Express or UPS, personal delivery or electronic mail, and will be deemed effective on the date when received by the addressee. Notices to an Owner shall be given to the Owner at the address contained in the most recent Owners List maintained by the Association unless the Owner has notified the President of the Association of a different address, and notices to the Association shall be given to the President of the Association.

E. Gender and Number. Unless the context otherwise requires, the gender of all words used in these Restrictive Covenants includes the masculine, feminine, and neuter, the singular shall include the plural, and the plural shall include the singular. All captions, titles or headings of the Articles and Sections in these Restrictive Covenants are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof. References herein to Articles, Sections or subdivisions thereof shall refer to the corresponding Article, Section or subdivision thereof of these Restrictive Covenants unless specific reference is made to such Articles, Sections or subdivisions of another document or instrument. Unless the context of these Restrictive Covenants clearly requires otherwise, the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation,” and the words “hereof,” “herein,” “hereunder” and similar terms in these Restrictive Covenants shall refer to these Restrictive Covenants as a whole and not any particular Article or Section in which such words appear.

F. Miscellaneous. These Restrictive Covenants shall be governed by and interpreted under the Laws of the State of New Mexico. These Restrictive Covenants shall be binding upon each Owner, his, her or its successors and assigns.

*[signature page follows on next page]*

