

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

TIMBERLAKE RANCH

MCKINLEY & CIBOLA COUNTIES

NEW MEXICO

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**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TIMBERLAKE RANCH
IN CIBOLA AND MCKINLEY COUNTIES, NEW MEXICO**

This Amended and Restated Declaration is made as of the ___ day of _____, _____ by
TIMBERLAKE RANCH LANDOWNERS ASSOCIATION, a New Mexico Non-Profit
Corporation.

WITNESSETH:

WHEREAS, Timberlake Ranch, a subdivision in Cibola and McKinley countries, New Mexico, is located within a naturally beautiful area, and whereas it is desirable to impose certain restrictions to protect and enhance the natural beauty of Timberlake Ranch, through the adoption and establishment of covenants, conditions and restrictions upon said Property and each and every Lot and portion thereof and to establish a general plan for the development, use, occupancy and enjoyment thereof, all for the purpose of protecting the value, desirability and attractiveness of said Property: and

WHEREAS, Timberlake Ranch Landowners Association has deemed it desirable for the efficient preservation of the value, desirability and attractiveness of said Property and such additional Property as may in the future be annexed thereto, pursuant to the provisions of this Declaration, to provide for an association to which should be delegated and assigned the powers of maintaining, administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessment and charges hereinafter created and referred to.

NOW, THEREFORE, Timberlake Ranch Landowners Association hereby covenants, agrees and declares that:

Timberlake Ranch and each of the Lots therein shall be held, sold and conveyed subject to the covenants, conditions, restrictions, easements, liens and charges contained in this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Timberlake Ranch (the "Declaration"). The Declaration is declared to be for the benefit of the whole of Timberlake Ranch and the Owners of Lots therein and their successors and assigns. Said covenants, conditions, restrictions, easements, liens and charges shall run with said Property and shall be binding on all parties having or acquiring any right, title or interest in said Property or any part thereof and shall inure to the benefit of each Owner thereof and are imposed upon said Property and every part thereof as a servitude in favor of each and every part thereof as the dominant tenement or tenements. All covenants are intended as and are declared to be covenants running with the land as well as equitable servitudes upon the land.

ARTICLE I

DEFINITIONS

Whenever used in this Declaration, the following terms will have the following meanings.

Section 1: “Architectural Approval” means approval of plans and specifications by the Architectural Committee.

Section 2: "Association" means Timberlake Ranch Landowners' Association, a New Mexico nonprofit corporation, and its successors and assigns.

Section 3: “Board” means the Board of Directors of the Association.

Section 4: "Bylaws" means the Amended and Restated Bylaws of the Association adopted on November 3, 2007 and any subsequent revisions, restatements or amended versions thereof.

Section 5: “Cibola 1” (Timberlake Unit 1) located in Sections 7 & 18, T 11 N, R 15 W and “Cibola 2” - (Timberlake Unit 2) located in Section 18, T 11 N, R 15 W means the subdivision as shown on the plats recorded on December 29, 1978, in Volume C-11, Page 110, Valencia County, New Mexico.

Section 6: “CID” means the Construction Industries Division of the New Mexico Department of Regulation and Licensing, the agency that promulgates and enforces standards and issues approvals for construction, its successors and assigns.

Section 7: “Cloh Chin Toh” means the Subdivision located within Cibola County, New Mexico, as shown on the plats entitled Cloh Chin Toh in Sections 29 & 32, T 11 N, R 15 W, N.M.P.M. recorded on December 6, 1977, as Document No. 19141, in Vol. C-11, Page 64, Valencia County, New Mexico.

Section 8: “Common Area” means the real estate owned by the Association and located in Cibola and McKinley Counties, New Mexico and described on Exhibits A-1, A-2, A-3, A-4 and A-5 of the Amended and Restated Bylaws, true and correct copies of which Exhibits are attached hereto and incorporated herein by this reference.

Section 9: “Completed Residence” means a single-family residence for which a Certificate of Occupancy has been issued by the CID.

Section 10: "Front" means and refers to that boundary of a Lot which is adjacent to a road. If the Lot in question is a corner Lot and thereby has two or more sides adjacent to a road, then for setback purposes all sides adjacent to the roads shall be defined as the Front.

Section 11: “Livestock” in Timberlake Ranch means horses, mules, cows, pigs, donkeys, goats, sheep, cattle and any other animals which are defined as livestock by the Board pursuant to Article III, Section 4 of this Declaration.

Section 12: "Lot" means and refers to a recorded Lot within Timberlake Ranch, but does not mean or include the Common Area.

Section 13: “McKinley 1 –10” means the subdivision located within McKinley County, New Mexico, in Sections 1, 2, 3, 11, 12, 13, 14, T 11 N, R 16 W, N.M.P.M. as shown on the plats recorded on August 22, 1979 entitled as Timberlake Ranch Unit 1 No. 190,937 in Cabinet B-144, Unit 2 No. 190,938 in Cabinet B-145, Unit 3 No. 190,939 in Cabinet B-142, Unit 4 No. 190,940 in Cabinet B-147, Unit 5 No. 190,941 in Cabinet B-148, Unit 6 No. 190,942 in Cabinet B-149, Unit 7 No. 190,943 in Cabinet B-150, Unit 8 No. 190,944 in Cabinet B-151, Unit 9 No. 205,990 in Cabinet B-152, Unit 10 No. 205,991 Cabinet B-153 and plats filed on March 17, 1982 Unit 9 No. 205,990 Cabinet B –192 and Unit 10 No. 205,991 Cabinet B-193.

Section 14: "Member" means every person or entity who is an Owner and by such ownership is considered a member in the Association.

Section 15: "Member In Good Standing" means every person or entity who holds membership in the Association and is current in paying the annual Association assessments and is not currently in violation of the Declaration, the Association’s Articles and Bylaws, and/or rules, regulations, and guidelines for Timberlake Ranch adopted by the Association. Only Members in Good Sanding shall be entitled to vote on matters presented to or requiring a vote of the Members. Any reference to a vote of the Members, or to a required percentage vote of the Members, herein shall mean and refer to Members In Good Standing.

Section 16: "Owner" means and refers to any Owner, whether one or more persons or entities, of any Lot either in fee simple or as a beneficial Owner under the terms of any outstanding real estate contract, excluding those having such interest merely as security for the performance of an obligation. Unless the context otherwise requires, Owner shall include the family, invitees, licensees and tenants of any Owner for the purposes of applying the provisions of this Declaration.

Section 17: "Property" means and refers to all of the property known and defined herein as Timberlake Ranch.

Section 18: “Regulations” means written rules, regulations and guidelines (Board of Directors Policies and Procedures) adopted and enforceable by the Board for the interpretation, implementation and enforcement of the Declarations, the Articles, and the Bylaws, and the exercise of the Board’s powers, duties and responsibilities there under.

Section 19: "Residence” means any building or portion of a building situated on a Lot designed and intended for use as a single-family residence.

Section 20: “Timberlake Ranch” means and refers to the combination of all subdivisions known as and defined herein as Cloh Chin Toh, Cibola 1 (Timberlake Unit 1), Cibola 2 (Timberlake Unit 2), McKinley Units 1-10, Timberlake South and the Common Areas.

Section 21: “Timberlake South” means the subdivision located within Cibola County, New Mexico, known as Timberlake South Subdivision, as shown on the plats entitled, "Timberlake South (Revised), A Subdivision in Section 19 & 30, T 11N, R 15W, N.M.P.M., Cibola County, New Mexico," recorded on July 29, 1983 as Document No.8595, in Plat Cabinet Book 1, Page 62, in the Cibola County, New Mexico records, and thereafter revised and recorded at 1:01 PM on April 10,1996, Cabinet C, Slot 89, Records, Cibola County, New Mexico. Timberlake South is comprised of thirty-one (31) residential Lots, numbered 1 through 31A.

ARTICLE II

ARTICLES AND BYLAW PROVISIONS

All provisions of the Articles of Incorporation of the Association, filed on May 9, 1986 (the “Articles”), and the Amended & Restated Bylaws of the Association, adopted on November 3, 2007 (the “Bylaws”), are hereby ratified and confirmed by the Association and constitute covenants, conditions, restrictions easements, liens and charges under this Declaration. In the event of any conflict between these documents, the provisions of this Declaration shall control over the Articles and the Bylaws, and the provisions of the Articles shall control over the Bylaws. The Articles and the Bylaws may each be amended as provided in the document.

ARTICLE III

USE RESTRICTIONS

Section 1: Residential Use.

All Lots in Timberlake Ranch shall be used exclusively for private, single-family purposes and no other use unless expressly permitted under this Declaration

Section 2: Recreational Use and Storage.

Camping on a Lot, including the use and storage of recreational vehicles, motor homes, travel trailers, campers, and tents as overnight accommodations is permitted only under the following conditions:

- (a) Camping may not exceed a cumulative 5 month period and may not exceed 5 months in any calendar year.
- (b) No camping is allowed in setback areas.
- (c) No dumping of blackwater is allowed. Blackwater is defined as waste from a liquid flushing toilet, urinals or water contaminated with human excrement.
- (d) Landowners are responsible for the actions of family and friends when they are guests, whether the landowner is present or not.

(e)) Other than as allowed in subsection (a) above, camping vehicles may only be stored on a Lot if there is a residence, or if they are placed within an enclosed storage shed as defined in Section 6 of Article IV.

Section 3: Commercial & Home Business Use.

No commercial/home business use shall be allowed on any Lot where there is clear outward evidence of the business (e.g., advertising signs, special lighting, extra parking, increases in traffic, noise, temporary/permanent storage of heavy equipment, etc

Section 4: Livestock.

The Board may by regulation designate animals as “livestock”, in addition to those enumerated in the definition of ‘Livestock’ contained in Article I of this Declaration. The Board may also by regulation limit the number of particular kinds of livestock that may be kept on lots. Numerical limitations of livestock may occasionally be exceeded on a temporary basis, such as for the gathering of horses for a trail ride.

No livestock shall be permitted to run loose beyond the boundaries of the Owner’s Lot.

Section 5: Occupancy of Unfinished, Temporary or RV Structures Restricted.

Except as provided in Article III, Section 2 above and in this Section 5, no building or structure on any Lot, other than a completed single-family residence or guest house, shall be lived in or used for dwelling purposes.

Nothing herein shall prohibit a contractor or landowner from maintaining a temporary tool house/ shed and from using construction equipment on a Lot during construction. However, all such storage facilities and equipment must be removed from the Lot after the residence is completed unless the tool house or shed complies with all applicable requirements, including but not limited to architectural standards, and if appropriate, has been approved by the Architectural Committee as a permanent structure.

While a permanent residence is being constructed on a Lot, an outbuilding meeting the criteria of Section 6 of Article 4 may be stayed in, or a recreational vehicle/tent/or camper may be placed on said Lot to be used on a temporary basis while construction is underway. Such temporary housing may not be placed on a Lot for a period exceeding twenty-four consecutive (24) months from the time the initial foundations are laid. However, the temporary housing may not be moved onto the Lot until all building permits for construction of the permanent residence have been obtained from the appropriate governmental authorities and the written approval of the Architectural Committee has been obtained for the placement of the temporary housing.

Section 6: Limitation on Use of Signs.

No business or commercial signs or billboards of any kind shall be erected, permitted or maintained on any of the Property or roadways except upon prior written approval by the

Association. The Association may revoke such approval at any time.

However, the following signs may be displayed without such specific approval:

- (a) Provided building plans have been duly approved by the Association, professionally lettered signs naming the architect, construction company or subcontractors may be displayed on the Lot during actual construction, but no such sign shall exceed the dimensions of 24" X 24".
- (b) Only one "For Sale" or "For Lease" sign may be maintained at any time on a Lot provided it does not exceed the dimensions of 24" x 24",
- (c) No Trespassing signs
- (d) Up to four (4) pennants and one "open house" sign, may be displayed on the Lot while a licensed real estate broker or Owner has said property/home for sale,
- (e) After the closing of a sale a real estate broker may continue to display his/her sign with a "Sold" rider attached for a maximum of 30 days after which the entire sign must be removed from the Lot.

Signs that are allowed to deteriorate and become unsightly shall be considered unauthorized, even if originally approved or permitted.

Section 7: Land to be Kept Cleared of Rubbish.

Each Owner shall keep his/her Lot free and clear of all trash, debris, garbage and other rubbish including such material dumped on his/her Lot by others.

Trash, garbage and other waste shall be:

- 1) kept in sanitary containers;
- 2) screened and concealed from the view of other lots, common areas, and the public right of way;
- 3) removed regularly to a licensed landfill or dump transfer station; and
- 4) not be allowed to accumulate.

Section 8: Mining or Drilling.

No drilling, refining, quarrying or mining operations of any kind shall be permitted upon or in the property. The drilling of water well(s) on a Lot is allowed and requires a well drilling permit from the New Mexico State Engineer.

Section 9: Hunting and Firearms.

Except for pest control, and in accordance with applicable law, no hunting with gun, bow & arrow or otherwise is allowed in Timberlake Ranch.

No recreational discharge of firearms is allowed within Timberlake Ranch.

Section 10: Leasing or Renting of Lots.

Any Owner may lease his/her Lot to any tenant or lessee under such terms and conditions as they may agree, except that no lease or rental agreement shall relate to less than the whole of any Lot and the improvements located thereon. Any lease or rental agreement shall be in writing and shall by its terms provide that it is subject in all respects to the Covenants and Bylaws. Any failure by lessee to comply with the terms of Covenants and the Bylaws shall be a default under the lease, whether or not it is expressed therein, and the Owner shall be liable for any costs incurred which result from the lessee's actions.

Section 11: Lots Not to be Used for Storage.

No Lot shall at any time be used for open air storage of building materials, vehicles, implements, tools, junk vehicles, junk mechanical equipment, or rubbish.

Nothing in this section will preclude an Owner from placing and maintaining building and landscaping materials, tools or equipment on any Lot in pursuance of construction approved and properly pursued under all applicable requirements of the Association.

Section 12: Lots Not to be Subdivided.

No Lot shall be further split, divided, or subdivided by any Owner, provided, however, this shall not prohibit corrective deeds or similar corrective instruments which have the effect of moving Lot lines between adjoining Lots for the purpose of correcting errors, trading areas of land or similar purposes. In no case, however, can such movement of lines between Lots result in either an increase in the total number of Lots, or reduction of the size of any Lot below 5.0 acres. No Owner shall bring any legal action for partition or division of any Lot; provided, however, that an Owner may seek a Court-ordered sale of any jointly-owned property and the division of the sale proceeds.

Section 13: Fireworks

No Fireworks may be used in Timberlake Ranch.

ARTICLE IV

BUILDING RESTRICTIONS

Section 1: Private Single-Family Residences.

No Lot may contain more than one single-family residence, one private guest house as permitted in Section 3 of this Article, and outbuildings (including garages) as permitted in Section 6 of this Article.

No trailer, trailer house, motor home, mobile home, manufactured home, premanufactured home, modular home or other non-site built home shall be moved onto or placed upon any Lot in Timberlake Ranch for use as a temporary or permanent residence, regardless of whether such home meets any federal or state standards (such as those of the Department of Housing and Urban Development or the New Mexico Manufactured Housing Division) for construction of such homes and regardless of

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whether such home is placed on a permanent foundation. Notwithstanding the foregoing, conventional homes constructed offsite shall be permitted, provided that the home meets all regulations and standards promulgated by the New Mexico Construction Industries Division for such home and moving such residence onto any Lot shall be accomplished on the Timberlake Ranch roadways as they exist with no further modifications such as widening, clearing of trees, bridging washes, etc. The foregoing does not prohibit the use of certain recreational vehicles for camping as provided in Article III, Section 2 above and as a temporary residence during the construction of a permanent residence as set forth in Article III, Section 5 above.

Section 2: Minimum Size of Residence.

No residence shall be erected on any Lot in Timberlake Ranch with less than 600 square footage of interior heated space with the exception of Timberlake South Subdivision. All residences in Timberlake South must contain at least one thousand two hundred (1,200 square feet) of interior heated space. This excludes outside porches, sun porches, screened in porches, patios, attached or detached garages, or carports.

Section 3: Guest House

The purpose and intent of allowing the construction of a guesthouse is to provide additional housing for family members and visiting guests of the owners of the single dwelling. The rental, lease, or separate sale of the guesthouse is prohibited.

A guest house is defined as an adjunct living unit, with sleeping area(s), and with or without kitchen and sanitary facilities, which is attached to or detached from the single residence on the same Lot. A guesthouse may only be used for the housing of family members and guests without compensation. It may not be rented, leased or sold separately from the rental, lease or sale of the main single dwelling unit on the Lot.

The Owner, renter, or lessee of a property containing a residence and a guesthouse may live in either the residence or the guesthouse, but the other structure may only be used for the housing of family members or guests without compensation. If a Lot contains a guesthouse, the single residence may only be rented, leased, or sold in conjunction with and to the same party as the sale, lease, or rental of the guesthouse.

The maximum exterior size of a guesthouse is 40% of the total exterior size of the residence. In no case can a guesthouse exceed 1000 square feet in exterior size. Guesthouses can only be one floor in height, although they may be the second floor above a garage or other outbuilding. A residence can later become a guesthouse if a second structure is built as a residence and the size restrictions contained herein are met.

All guesthouses must be approved by the Architectural Committee under Article V Section 1.

Section 4: Front, Rear and Side Setback Lines.

Setbacks are required in order to maintain natural beauty and privacy on the Ranch. No residence, other building, or part thereof or other architectural feature shall be erected, placed, permitted or maintained within setback areas. Setbacks in Timberlake South are different and more specific than elsewhere because of the narrowness of the lots and their high visibility from the Community Center, the lake, and other common areas.

If unusual and major topological challenges to construction exist, the Board may give a limited waiver to setback requirements. This section does not create a right to such waiver, which will only be issued in rare cases and completely at the discretion of the Board.

- a) Everywhere except Timberlake South, that is in Cloh Chin Toh, Cibola 1 (Timberlake Unit 1), Cibola 2 (Timberlake Unit 2) and McKinley 1-10 Subdivisions, rear and side setbacks are 20 feet and front setbacks are 100 feet.
- b) In Timberlake South, side setbacks are 50 feet. Front and rear setbacks are listed for each Lot below.

SET-BACKS FOR ALL LOTS IN TIMBERLAKE SOUTH
(All numbers are in feet)

LOT NUMBER	FRONT SETBACKS	REAR SETBACKS
1	140/540	50
2	100	250
3	100	250
4	100	250
5	100	250
6	100	250/400
7	100	400
8	100	400
9	100	400
10	100	400
11	100	400/300
12	100	300/200
13	160/480	200/300
14	480/670	300/400
15	670/510	400/390
16	510/370	390/340
17	370/530	340/420
18	530/670	420/380
19	670/760	380/410
20	760/380	410/400
21	380/460	400
22	460/520	400/110
23	520/430	110/300
24	430/590	300/400
25	590/740	400/500
26	740/920	500

27	920/1020	500
28	1020/1040	500/600
29	1040/1010	600
30	1010/955	600
31-A	955/900	600

Where the chart contains two measurements, such as 460/520, the first is for the west side and the second for the east. Thus if 460/520 were in the Front Setback list it would indicate a western front setback of 460 feet and an eastern front setback of 520 feet. If it were in the Rear Setback list it would designate a western rear setback of 460 feet and an eastern rear setback of 520 feet.

Section 5: Roofing and Siding Material

No highly reflective material, including shiny silver metal, shall be used as roofing or siding material. Any metal materials used must be coated or painted as part of the original manufacturing process. Owners are encouraged to select a fire resistant material for all roofing and siding surfaces.

Section 6: Well Houses, Storage Sheds/Garages/Barns

Lots without residences may contain well houses, and no more than one enclosed storage shed per Lot. Well houses and or sheds shall not exceed 200 square feet.

Other than the structures authorized in the previous paragraph, outbuildings such as garages, barns, and large storage structures are allowed on lots which do not yet have a completed residence, only if construction plans have been approved as provided for in Article V of this document. The construction of the residence shall commence within two-and-one-half years of the date of initiation of construction of and/or placement of outbuildings on a Lot.

Section 7: Construction Diligently Prosecuted.

The process of construction of any building or structure shall be prosecuted diligently and continuously from the time of commencement until fully completed, and the exterior of all structures shall be constructed and enclosed and have a finished appearance not later than twenty-four (24) months from the time the initial foundations are laid. If construction is delayed, the landowner will notify to the Architectural Committee in writing.

Section 8: Lot Alterations.

Each Owner is responsible for installing appropriate culverts when a Lot's driveway is installed, so as to not adversely affect the surface water drainage from the property or roadside.

All survey pins and markers within the property, including those found within the lots, are to be left in the place and condition in which they were originally set unless an official resurveying of the Lot has been performed.

Section 9: Tanks and Receptacles.

Tanks and receptacles are not allowed in setback areas.

Every tank not inside a structure shall be screened or painted an earth color, if it can be seen from a roadside, a neighbor's Lot, or from a common area.

Section 10: Outdoor Lighting.

Our dark skies are an important asset to life in Timberlake Ranch, and we therefore encourage a minimum of exterior lighting and the use wherever possible of exterior fixtures designed to minimize light pollution. All exterior lighting must meet the requirements of the New Mexico Night Sky Protection Act and any other applicable requirements under federal, state, or county law.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1: Prior Approval

No construction or alteration of a structure on any Lot that requires CID approval, and no placement of any structure on any Lot that contains 200 or more square feet, shall occur without prior written approval of plans by the Architectural Committee.

Changes to construction or placement of structures on lots for which plans have been approved under this section, that involve or relate to any Timberlake Ranch requirement, must be submitted to and approved by the Architectural Committee in the same manner as the original plans.

Because some buildings for which prior approval is not required under this section may be subject to architectural standards regulations under Section 3 of this Article, the Board offers as a service the review of plans for the construction or placement of structures which do not require prior review, so the Owner can be assured that if the plans are followed, the structure will not be out of compliance.

Section 2: Review Procedures.

Submission of Plans. Two copies of plans shall be submitted to the Architectural Committee, containing information adequate to determine compliance with all applicable Timberlake Ranch requirements. "Request for Design Approval" forms and architectural restrictions are available through the Chairperson of the Architectural Committee.

Review of Plans. The Architectural Committee shall respond to an Owner in writing within 30 days after submittal of plans. The response will indicate whether the plan is approved or disapproved in whole or in part, the reasons for any disapproval, and/or whether further information is required to determine compliance with all Timberlake Ranch requirements.

Section 3: Architectural Standards

The Architectural Committee may propose adoption, amendment, or modification of regulations specifying architectural standards for buildings constructed, placed, or altered on any Lot, to the Board of Directors, which may adopt them pursuant to Article VI of this Declaration.

ARTICLE VI

ENFORCEMENT

Section 1: Powers of Association.

The Association has the power to administer and enforce this Declaration and collect and enforce the assessments, charges, and liens provided in the Articles and Bylaws. The Association consequently has:

- (a) the right to assess the owners and enforce the assessments by lien or otherwise as provided in the Articles and Bylaws; and
- (b) the right to enforce, by proceedings in law or equity, all covenants, restrictions, conditions, regulations, rights, assessments, liens and charges imposed by or pursuant to this Declaration or the Bylaws and,
- (c) the right to prevent the violation of any such covenants, restrictions, conditions, regulations, and rights.

Section 2: Powers of Owners.

Owners have the right to enforce, by proceedings in law or in equity, all covenants, restrictions, conditions, and regulations imposed by or pursuant to this Declaration or the Bylaws, and to prevent through judicial proceedings the violations of any such covenants, restrictions, conditions, and regulations.

Section 3: Adoption of Regulations.

Any regulation enforceable against owners, lessees, or guests may only be adopted, amended, or rescinded by the Board after a thorough opportunity for review and input by members, including at a minimum mailing or electronically providing to each member a copy of the proposed regulation, and at least one well-advertised meeting to discuss and take comments on it. This includes but is not limited to livestock regulations under Article III of this Declaration, architectural standards regulations under Article V of this Declaration, and regulations governing the use of the common areas under Article III of the Bylaws.

Section 4: Right of Entry to Determine or Correct Violations.

Board Members may enter on and inspect, within reasonable hours and with prior written notice to the Owner, any Lot to the extent necessary to determine whether a suspected or alleged violation exists of this Amended and Restated Declaration or of any other Timberlake Ranch legal requirement contained in the Bylaws, Architectural Standards, other rules or regulations, or elsewhere. This right of entry to inspect may only be exercised if the existence or nonexistence of the suspected or alleged violation cannot be determined by visual inspection from common or public property. Prior written notice is not required if the Owner verbally consents to the inspection.

If, because of inspection or otherwise, the Board finds violation of a Timberlake Ranch legal requirement and the violation continues after notice to the Owner and opportunity for the Owner to correct the violation, the Board and/or its employees or agents may, after prior written notice to the Owner, enter the Lot and correct the condition that creates the violation.

Section 5: Association Costs and Expense To Cause Compliance.

If any covenant, condition, restriction, or regulation of this Declaration is not performed as required by this Declaration, and the Association takes such action under the Article as is necessary or desirable in order to cause compliance with this Declaration the Board will send written notice of the amount of the compliance costs and expenses incurred by the Association to the Owner of the Lot at the last known address of the Owner in the Association records and such amount will be due upon receipt. The total amount of such costs and expenses, plus interest at the rate of one and one-half percent (1 1/2%) per month (or at the highest lawful rate if less than one and one-half percent per month) from the due date will constitute a lien on the Lot until paid, and the Association may enforce its lien in the manner provided in the Bylaws for enforcing liens for non-payment of assessments.

Section 6: Litigation.

The Association has the power and authority to commence judicial or administrative proceedings: (a) to enjoin or seek damages for injury to the common areas or trespass on the common areas; (b) to enforce the provisions of this Declaration, the Bylaws, and any regulations established hereunder; (c) to collect the assessments provided in the Bylaws;

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(d) to challenge property or other taxes or liens assessed against the common areas or the Association; (e) to assert or protect any interest of the Association.

Section 7: Remedies Provision.

In the event any claims, disputes and other matters in question arising out of, or related to, this Declarations, the Articles, these Bylaws and the Regulations cannot be resolved by direct discussions, they shall be settled and finally determined by any Court of having proper jurisdiction and venue within the State of New Mexico. The prevailing party in any Court proceeding shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees, any gross receipts tax thereon, and legal costs and expenses incurred in connection with the therewith, including those incurred in any collection action or on appeal. Notwithstanding the foregoing, the parties to a dispute may voluntarily and mutually agree to mediate or arbitrate a dispute, but such mediation or arbitration shall not be required of any party.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 1: Severability.

Invalidation of one or more of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 2: Construction.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community or tract and common areas. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to as resolving questions or interpretation or construction.

Section 3: Amendments. Except for this Section, this Declaration may be amended at any time, only by the affirmative written assent or vote of members in good standing having not less than fifty-one percent (51%) of the voting power of the Association.

This section may be amended at any time, only by the written affirmative assent or vote of members in good standing having not less than seventy-five percent (75%) of the voting power of the Association.

In order for any amendment of or under this section to be valid, it must include an Owner participation process that includes at a minimum all the elements required for adoption of a regulation under Article VI.

Section 4: Mortgage Protection Clause.

No breach of the covenants, conditions or restrictions contained in this Amended and Restated Declaration nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage or deed of trust encumbering a Lot made in good faith and for value, but all of the covenants, conditions and restrictions contained in this Amended and Restated shall be binding upon and effective against any Owner whose title is derived through foreclosure, trustee's sale or otherwise. Any lien of the Association granted under the terms of this Amended and Restated will be subject to the lien of any mortgage, deed of trust or real estate contract encumbering a Lot.

Section 5: Failure to Enforce Not a Waiver. Each and all of the covenants, conditions and restrictions contained in this Amended and Restated Declaration shall be deemed and construed to be continuing and the extinguishments of any right for any breach shall not impair or affect any of said covenants or restrictions so far as any future or other breach is concerned. The failure by the Association or any Owner in Timberlake Ranch or any tracts within such real property as may be annexed thereto or their legal representatives, heirs, successors or assigns at any time or upon any occasion, to enforce any of said restrictions, covenants and conditions, in whole or in part, shall in no event be deemed a waiver of the right to do so thereafter, nor shall any waiver, change or exception granted to any Owner give rise to claim by any other Owner to be granted the same or similar waiver, change or exception.

Section 6: Retroactivity.

No provision or requirement contained in this document, or regulation adopted hereunder, will apply retroactively.

Section 7: Prior Covenants Superseded. This Amended and Restated Declaration supercedes and entirely replaces any and all prior covenants, conditions and restrictions (except for those contained in the Articles and the Bylaws) for Timberlake Ranch, Cloh Chin Toh, Cibola 1 (Timberlake Unit 1), Cibola 2 (Timberlake Unit 2), McKinley Units 1-10, Timberlake South and the Common Area, including but not limited to the following: the Declarations of Covenants, Conditions and Restrictions recorded on June 7, 1979, in Book 253, Pages 7571 to 7576, Valencia County, New Mexico, records; recorded on July 2, 1979, Book 253, Pages 7772 to 7777, Valencia County, New Mexico, records; recorded in July 2, 1981, in Book 79, Pages 260 to 268, McKinley County, New Mexico, records; recorded on July 28, 1981, in Book 262, Pages 7193 to 7201, Valencia County, New Mexico, records; and recorded on April 3, 1978, as Document No. 6159 in Book 253, Pages 3027 to 3035, Valencia County, New Mexico, records, and the Addendum to the Declaration of Covenants, Conditions and Restrictions, recorded on July 11, 1978, as Document No. 12462 in Book 253, Pages 4182 to 4183, Valencia County, New Mexico, records (all, the "Prior Covenants").

Section 8: Property Subject to Declaration. All real property subject to the Prior Covenants, including, but not limited to, all real property located in Timberlake Ranch, Cloh Chin Toh, Cibola 1 (Timberlake Unit 1), Cibola 2 (Timberlake Unit 2), McKinley Units 1-10, Timberlake South and the Common Area, shall be, and hereby is, subject to each and every provision of this Amended and Restated Declaration.

