

**COVENANTS AND RESTRICTIONS FOR
BLUESTREAM SUBDIVISION**

Recitals

A. Declarant is the owner of real property located in Colfax County, New Mexico as shown on the plat of survey entitled "Bluestream Subdivision" filed for record in the Office of the Colfax County Clerk, New Mexico as document number _____.

B. The Declaration of Protective Covenants for the Ash Mountain Subdivision, recorded in November 30, 2006 in the Office of the Colfax County Clerk, New Mexico as document number 200605807 and the First Amendment to the Covenants recorded in the Office of the Colfax County Clerk, New Mexico as document number 200705198, which apply to the Bluestream Subdivision, are included as an Exhibit to the Bluestream Restrictive Covenants.

C. The legal lot of record for Bluestream Subdivision was created as part of the Ash Mountain Subdivision, being Lots 8 and 9 within the Ash Mountain Subdivision Recorded in the Office of the Colfax County Clerk, New Mexico as document number 200605806.

D. Declarant further desires to create and implement a general plan for the improvement, development and use of real property for the benefit of the owners of Lots within the Bluestream Subdivision and the Declarant, and to establish procedures for the overall development, administration, maintenance and preservation of the Subdivision.

E. To avoid confusion and overlap between Exhibits to the Ash Mountain Subdivision and Bluestream Subdivision one set of Exhibits is included with the Bluestream Subdivision Covenants and Restrictions, which includes the following Exhibits:

- Exhibit A: Angel Fire Airport Standards and Restriction (Applies to Ash Mountain Subdivision and Bluestream Subdivision)
- Exhibit B: Road and Drainage Maintenance for Old Mike Road and Ash Mountain Loop (Applies to Ash Mountain Subdivision and Bluestream Subdivision)
- Exhibit C: Ash Mountain Covenants and First Amendment to Ash Mountain Covenants (Applies to Ash Mountain Subdivision and Bluestream Subdivision)
- Exhibit D: Fire Protection Standards and Restrictions (applies only to Bluestream Subdivision)

Now Therefore, Declarant Hereby Declares that the Subdivision shall be held, sold used, developed, occupied, leased and conveyed subject to the following Covenants and Restrictions contained herein and which shall run with the real property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

Article 1 Definitions

- 1.1 **Allocated Share:** the share allocated to each Owner for liability for Common Expenses based upon 1 share for each Lot or 1/22 or 4.54 percent for each Lot as modified by the Declarant's contributions as provided in Article 12.
- 1.2 **Architectural Control Committee or ACC:** the committee created pursuant to Article 7.
- 1.3 **Articles of Incorporation:** the articles of incorporation of the Association filed with the New Mexico Public Regulations Commission, as amended.
- 1.4 **Association:** The Subdivision Homeowners Association, a New Mexico nonprofit corporation
- 1.5 **Board:** the Board of Directors of the Association
- 1.6 **Bylaws:** the bylaws of the Association.
- 1.7 **Common Expenses:** the amount necessary to pay the cost of maintenance, management operation, repair and replacement of Common Property and any additional costs declared to be Common Expenses by this Declaration, the Bylaws or a resolution of the Board and Reserves Assessments.
- 1.8 **Common Expense Fund:** The fund created by the Board pursuant to Article 12.5.
- 1.9 **Common Expense Liability:** each Owner's share of liability for payment of Common Expenses based each Owner's Allocated Share as provide in Article 1.1.
- 1.10 **Common Property:** all easements on the Subdivision Plat, including, without limitation, those easements identified as utility easement", easement", shared well easement", drainage and pond maintenance easement", "open space", "easement for restriction on construction of wastewater systems", as shown on the Subdivision Plat, and all utility lines and easements related thereto, fire protection facilities, water storage tanks, fixtures, appliances, equipment, furnishings, fences, walls, landscaping, lighting utility equipment, water pumps, water hydrants, and any other real or personal property acquired by the Association.

- 1.11 **County Subdivision Regulation:** the Colfax County Land Subdivision Regulations, as amended.
- 1.12 **Declarant:** Bluestream Properties LLC, a New Mexico Limited Liability Corporation.
- 1.13 **Declaration:** this Amended Covenants and Restrictions for Bluestream Subdivision, as maybe amended or supplemented.
- 1.14 **Design Review Fee:** the fee paid to the Association in connection with review of a Development Plan as provided in Article 7.3.
- 1.15 **Development Plan:** the plan for development of a Lot.
- 1.16 **Easements:** all real property designated on the Subdivision Plat as either, open space, trails, conservation easements, drainage easements, archaeological and utility easements, shared well easements and any other easement included as part of the Common Property of the Association. Public roads will be considered as easements for road maintenance purposes.
- 1.17 **Improvements:** the residences, buildings, garages, carports, satellite dishes, solar collectors, HVAC units, flagpoles, basketball hoops and backboards, tennis courts, streets, roads, driveways, parking areas, walls, fences, hedges, plantings, planted trees and shrubs, lighting and all other Structures or landscaping Improvements of every kind and type affecting the natural condition of the land or the drainage of surface waters on, across, or from the land.
- 1.18 **Initial Well payment:** the payment to be collected by Declarant on behalf of the Well Administrator and described in Article 13.2.
- 1.19 **Initial Capital Payment:** the payment to be collected by Declarant on behalf of the Association as described in Article 13.2
- 1.20 **Lot:** Lots 1 through 22 as shown on the Subdivision Plat.
- 1.21 **Member:** all those Owners who are members of the Association as provided in this Declaration.
- 1.22 **Mortgagee:** the institutional holder of a first Security Interest in a Lot which has notified the Association, in writing, of its name and address, and that It holds a first Security Interest in a Lot.

- 1.23 **Owner:** the record owner, whether one or more Persons, associations, or entities, of legal, equitable, or beneficial title of or to any Lot. Owner shall include purchaser of a Lot under a recorded executory contract for sale of real property commonly referred to as a “real estate contract”. The forgoing does not include Persons or entities who hold a Security Interest in any Lot.
- 1.24 **Person:** a natural person, corporation, partnership, limited liability company, trustee or any other legal entity.
- 1.25 **Plat:** Subdivision plat” filed for record on _____ as document number _____ in the records of Colfax County County Clerk, Colfax County, New Mexico
- 1.26 **Property:** the Lots and Common Property shown identified on the Subdivision Plat.
- 1.27 **Ponds:** all detention ponds as shown on the Plat.
- 1.28 **Reserves Assessment:** an amount necessary to make capital improvements to or otherwise replace the Common Property.
- 1.29 **Security Interest:** an interest in real property created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, real estate contract, lease intended as security, assignment of lease or rents intended as security, and any other consensual lien or title retention contract intended as security for an obligation.
- 1.30 **Shared Well System:** the systems installed for delivery of domestic water to the Lots from the water wells identified as water wells 1A, 2A, 3A and 4A and further described in Article 2.
- 1.31 **Single Family Residential Use:** the occupation or use as residence or dwelling unit within a Structure built on a Lot and occupied by a Person or Persons, a family or family-sized unit in conformity with this Declaration and the requirements imposed by applicable zoning laws or any other state, county, or municipal laws, rules, regulations, codes, or ordinances.
- 1.32 **Special Expenses:** the special allocations and expenses charged against an owner as provided in 12.6.
- 1.33 **Structure:** anything erected, constructed, placed, laid or installed in, on, or over real property, the use of which requires a location on or in the ground or connected thereto, but not including vegetation, trees, shrubs or plantings.

- 1.34 **Subdivision:** all of the lands shown on those certain plats of survey and development plans filed for Subdivision filed in Colfax County, New Mexico as instrument number_____.
- 1.35 **Subdivision Plat or Plat or Final Plat:** the recorded plats for the Subdivision, as amended or re-platted from time to time, covering any or all of the Bluestream Subdivision.
- 1.36 **Water Use Limitations:** the limitations on use of water as described in Article 2.
- 1.37 **Water Well:** the shared water wells identified in Article 2.
- 1.38 **Well Administrator:** the owner designated as a administrator for each Water Well as described in Article 2.
- 1.39 **Well Assessment.** The assessment levied for both Well Operations Assessment and the Well Reserve Expenses and described Article 2.5 and Well Budget: the annual budget for Well Expenses and described Article 2, or Well Expenses: the combined expenses included in the Well Operations Assessment and the Well Reserve Expenses
- 1.40 **Well Operations Assessment:** the expenses related to utilities and regular maintenance of the Water Well
- 1.41 **Well Reserve Assessment:** an assessment based upon estimates for future major repairs replacement, rebuilding, deepening or reworking of the Water Well, the pressure tank pit, storage tank the shared delivery lines or related Water Well equipment and distribution facilities.
- 1.42 **Well Protection Zone:** the areas shown on the Subdivision Plat in which the installation of private wastewater systems is prohibited.

Article 2

Shared Wells; Water Use Limitations; Conservation Plan

- 2.1 **Shared Wells:** four shared wells provide water service to the lots with in the subdivision. These wells are maintained by the lots served by each well
- 2.1.1 A water well identified as 1A, located on Lots 4A & 5A, serves as the domestic water supply for Lots 1A through 6A. Owners of these Lots are entitled to use a maximum of .50 acre feet of water (162,925) per Lot per year. The total aggregate amount of water to be drawn for domestic use and fire suppression from Water Well 1A is 977,553 gallons per year.

- 2.1.2 A Water Well identifies as 2A, located on Lot 13A, serves as the domestic water supply for Lots 8A through 13A. Owners of Lots 8A through 13A are entitled to use a maximum of .50 acre feet of water (162,995 gallons) per lot annually. The total aggregate amount of water for Water Well 2A is 977,533 gallons per year.
- 2.1.3 A Water Well identifies as 3A, located on Lot 14A, serves as the domestic water supply for Lots 14A through 18A. Owners of Lots 14A through 18A are entitled to use a maximum of .50 acre feet of water (162, 995 gallons) per Lot annually. The total aggregate amount of water use from Water Well 3A is 814,975 gallons annually.
- 2.1.4 A Water Well identified as a 4A, located on Lots 20A & 21A, serves as the domestic water supply for Lots 19A through 22A and 7A. are entitled to use a maximum of .50 acre feet of water (162,995 gallons) per Lot annually. The total aggregate amount of water us from Water Well 4A is 814,975 gallons annually.
- 2.2 **Limited Production**: In the event any Water Well in unable to produce the maximum amount of water described in Article 2.1, the amount of water used by the Owners for the Owner's Lot shall be reduced proportionately to reflect the actual production from the Water Well serving the Owner's Lot.
- 2.3 **Reserved Easements**: The reserved nonexclusive Easement described in 3.3 shall include the purposes of maintaining, repairing, and replacing Share Water System facilities. These easements include the right of ingress and egress by the Administrator, Owners and their representatives to maintain and replace as necessary the Shared Well System facilities, including the right to use such vehicles and rigs as are commonly and reasonably used for the maintenance of the Water Wells, pumps, storage tanks, cisterns and appurtenant facilities.
- 2.4 **Well Administrator**: The owners of the Lots served by each water well shall appoint an Administrator. The first Owner to occupy a house served from a Water Well shall act as Administrator until three of the Lots served by the respective Water Well is improved by a residence, at which time the Owners of the Lots served by the Water Well shall elect by vote the Administrator. Each Owner of a Lot is entitled to one (1) vote on matters related to the Water Well serving the Lot. The Administrator has the following responsibilities:
- 2.4.1. Submit meter readings for the Water Well to the Office of the State Engineer on an annual basis.
- 2.4.2. Prepare the annual Well Budget reflecting the total annual Well Assessment and separately stating the Well Operations Assessment and the Well Reserve Assessment.

2.4.3. Collect the Well Assessment from each Owner to ensure the continued operation of the Shared Water Well.

2.4.4. Pay monthly utility bills

2.5 **Initial Water Well Budget; Well Assessment**. Until such time as a Well Budget is prepared by the Administrator and approved by a majority of the Owners benefited by the Water Well, the annual Well Assessment for each Lot shall be Two Hundred Dollars (\$200.00) for the Well Reserve Assessment and One Hundred Dollars (\$100.00) for Well Operations Assessments. Until an Owner connects to the Shared Water Well, the Owner shall be required to pay solely the Well reserve Assessment. The Assessment shall be paid by the Owner within thirty (30) days following receipt from the Well Administrator of the amount of the Owner's Well Assessment. If the Well Assessment is not paid within thirty (30) days, the Well Administrator shall notify the Board and such delinquent Well Assessment shall be deemed as Special Expense and the Association shall be entitled to collect the Well Assessment, on behalf of the Well Administrator, and have all remedies provided in this Declaration for collection of Common Expenses.

2.6 **Allocation of Costs Before and After Connection to Water Well**: All Owners shall pay the Well Reserve Assessment proportionately, based upon the total number of Lots to be served by the Water Well whether or not the Owner has connected the Owner's improvements to the Shared Well. In addition, those Owners who have connected their improvements to the Shared Well shall pay, in addition to the Well Reserve Assessment, the Well Operations Assessment, proportionately, based upon the total number of Lots connected to the Water Well.

2.7 **Connection Requirements**. Each Owner must connect to the waterline stubbed out to each Lot. A meter must be installed by the Owner at each Lot.

2.8 **Water Use Limitations**: No additional individual domestic wells under NMSA 1978, 72-12-1 may be drilled on any Lot. The following water conservation measures shall be observed by all owners.

2.8.1 Water savings fixtures shall be installed in all new construction. Water saving fixtures shall include, but not limited to, low flush toilets, low flow fixtures, and insulation of hot water pipes. Toilets shall use no more than 1.6 gallons per flush; shower head flows shall not exceed 2.5 gallons per minute; and faucet flow shall not exceed 2.5 gallons per minute.

2.8.2 Dishwashers shall use no more than 13 gallons in a regular cycle and shall have a cycle adjustment which allows reduced water to be used for reduced loads.

2.8.3 Washing machines shall use no more than 43 gallons in a regular cycle and shall have cycle or water level adjustments which permit reduced amounts of water to be used for reduced loads.

- 2.8.4. Low water landscaping techniques applying the principal of xeriscape shall be utilized. Drip irrigation is encouraged whenever possible. Low water use grasses, shrubs, and trees are recommended. Turf area shall not exceed 2000 square feet, trees, shrubs and gardens shall not exceed 1500 square feet of and area. The use of drought tolerant grasses such as buffalo grass is recommended. Use of gray water re-use systems meeting the requirements of the New Mexico Construction Industries Division and the Uniform Plumbing Code is encouraged.

Article 3
Rights of Owners, Nonexclusive Easements,
Easements in Favor of Association

- 3.1 **Easement of Enjoyment:** Every owner shall have a right and easement of enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association:
- 3.1.1 to suspend an Owner's voting rights and right to use the Common Property for any period during which any assessment against an Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of this Declaration and the Rules and Regulations of the Board;
 - 3.1.2 after notice to an Owner, to exclude from the Property any agent, employee or guest of any Owner, who the Association determines to be disruptive to the quiet enjoyment of the Property;
 - 3.1.3 to grant easements appurtenant to Lots for encroachments of improvements onto the Common Property; and
 - 3.1.4 to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Owners, agreeing to such dedication or transfer has been recorded.
- 3.2 **Delegation of use.** Any Owner may delegate, in accordance with the Bylaws, the Owner's right of enjoyment to the Common Property to the members of the Owner's family or tenants, or contract purchasers of a Lot who reside on the Lot.
- 3.3 **Easements in Favor of Declarant, Association and Owners Related to Water Wells**
- 3.3.1 Declarant reserves in favor of Declarant and the Association, and any Person authorized by either, and for the benefit of the Owners and related to each Water Well serving an Owner's Lot as described in 5.1,

nonexclusive easements for access to Lots, the Common Property and the Water Well Easements as may be reasonably necessary for the purpose of (i) inspecting any portion of a Lot for compliance with the provisions of this Declaration; (ii) performing installations, alterations, or repairs to water lines, water meters, ; (iii) readings, repairing, replacing utility meters and related pipes, valves, wires and equipment; (iv) for the purpose of performing or satisfying the duties and obligations of the Association and (v) for any other reasonable purpose. Requests for entry shall be made in advance and any such entry shall be at a time required and such right of entry shall be immediate, and with such force as is apparently necessary to gain entrance, whether or not the Owner is present at the time.

- 3.3.2 Any person authorized by the Board or Declarant shall have the right of access to all portions of the Subdivision for the purpose of correcting any condition threatening a lot, Common Property or Water Well.

Article 4 Land Use

- 4.1 **Single Family Residential Use.** The Lot shall be used, improved, and devoted exclusively to Single Family Residential Use. No business or commercial activity frequented by and open to the general public shall be permitted within a Lot except a limited home occupation, that complies with the provisions of the County Development Code; for which the Owner shall obtain a business license from the County of Colfax and which shall be restricted to one additional employee, no signage indicating the nature or location of the business, no traffic in excess of normal residential traffic for this type of residential area, and no environmental impacts inconsistent with the peace and harmony of the residential area (and no business or commercial activity which takes place outdoors) shall be conducted with the Subdivision. Nothing contained herein shall be deemed to prevent the leasing of all of a Lot to a single person, family, or family sized unit from time to time by the Owner thereof, the Owner's agent, subject to all provisions of this Declaration.
- 4.2 **Declarant's Limited Commercial Use Allowed.** Notwithstanding any provision of this Declaration to the contrary, Declarant shall have the right to have sales and administrative office and/or model home, with promotional signs and equipment deemed reasonably necessary for the conduct of marketing the Lots. This right in the Declarant shall exist so long as the Declarant owns any Lot.
- 4.3 **Decorative Easement.** Declarant and the Association shall have an easement within the building setback lines on the corner of each Lot which is located at an intersection of streets within the Subdivision to install decorative entrance treatment and street signs

Article 5 Structures

- 5.1 **Single Family Dwelling**. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling, studio, guest house, barn and horse shelter, a private attached and detached garage, recreational facilities, solar heating devices, landscaped areas, and improvements incidental to residential use are permitted on the Lot.
- 5.2 **House size and use**. The house exclusive of the required attached or detached garage shall be not less than sixteen hundred (1600) square feet of interior heated space. No construction of any other buildings or Structures shall commence until the House is substantially complete. Each house shall be occupied by no more than one (1) family and no House shall be used as a boarding house or divided into apartments or rooms for rental purposes. This subsection does not prevent the rental or lease of the whole House by the Owner thereof, but any such rental or lease must be by a written agreement which requires the tenant to observe the provisions of this Declaration and makes a breach of this Declaration and a breach of such rental agreement or lease.
- 5.3 **Prohibited Structures**. No modular home, prefabricated structure, mobile home or similar facility or structure shall be kept, placed, or maintained within the Subdivision at any time. No temporary House, dwelling, garage, outbuilding, trailer or other similar structure may be placed or erected within the Subdivision. The provisions of this subsection shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any work or improvement permitted by this Declaration.
- 5.4 **Construction and Design of Structures**. Any and all Structures shall be constructed on the Subdivision in accordance with the following restrictions:
- 5.4.1. **Height Limitations**. Maximum building height of any Structure shall be thirty (30) feet measured from any point where the Structure's foundation meets the natural undisturbed ground level, to the highest point of the Structure. Fireplace chimneys and antennas are excluded from this height restriction. Lot Owner should determine any height restrictions that may be imposed by FAA regulations or the “Zoning Ordinance to Limit Height of Objects Around Angel Fire Airport, Colfax County, New Mexico” a copy of which is attached as Exhibit A to these Covenants and Restrictions. For the purpose of this Declaration fireplace chimneys, and antennas are subject to the Angel Fire Airport height limitations set forth in Exhibit A.

- 5.4.2. Architectural Style. The architectural style of all Houses and similar structures (e.g. studios and guest houses) shall be based upon, northern New Mexico architecture, pitched roof. Flat roofed Houses may be permitted by the Architectural Control Committee but are not the preferred style given the heavy snow loads for the area. In the design of the House it is recommended that roof pitches have a minimum ratio of pitch of five (5) to twelve (12) The Architectural Committee shall have the final determination on the appropriate architectural design.
- 5.4.3. The color of the House shall include earth tones and pastel colors. Acceptable colors outside these color ranges shall be determined by the Architectural Committee. Checkerboard pattern and stripes of repetitive color(s) are not permitted. Stone surfaces shall be in their natural color and must be local earth tones. Stucco and wood facades are permitted
- 5.4.4. Roofing materials for any sloped roof area, shall be non-reflective Exterior materials of the Structure shall conform to the non-reflectivity requirements of the Angel Fire Airport height limitations set forth in Exhibit B.
- 5.4.5. Construction of Structures shall commence within six (6) months of the Committee approval or the approval shall be void. The exterior construction, including the final stucco color coat, paint, trim, and landscaping shall be fully completed within one (1) year after commencement of construction.
- 5.4.6. No Structure placed or erected on the Subdivision shall be occupied in any manner while in the course of construction or at any time prior to the time when the exterior is fully finished as herein required, and is fully functional for residential purposes.
- 5.5. **Reflective Materials.** No reflective material shall be used where it would affect any House or other Structure within the Subdivision. Exterior materials of the Structure shall conform to the non-reflectivity requirements of the Angel Fire Airport height limitations set forth in Exhibit A.

Article 6
Residential Structures on Lots; Development Plan

6.1 **Requirements.** Before construction of any Structure on a Lot, the Owner thereof shall comply with the requirements of this Article 6. The construction or placement of a Structure or Improvement shall not vary from the approved Development Plan in any material respect without written approval by the ACC.

6.2 **Development Plan; ACC Approval Required; Enforced**

6.2.1 Each Owner shall be required to submit a detailed Development Plan, in compliance with ACC Rules. Each Development Plan must be first approved, in writing, by the ACC prior to the commencement of construction of any improvement. No construction of any Structure whatsoever, including, without limitation, site preparation, clearing of trees, excavation, or remodeling shall commence without the prior written approval of the ACC. All construction and development shall comply strictly with the approved Development Plan.

6.2.2 Each person acquiring any portion of the Property acknowledges that the breach or violation of this covenant is likely to result in irreparable harm to the rights and interest of other Owners in the Subdivision, and other Owners, the ACC or the Association, on behalf of such Owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation. This provision shall be in addition to any other remedies available hereunder or at law or equity.

Article 7
Architectural Control Committee

7.1 **Architectural Control Committee.** An "Architectural Control Committee" (hereinafter sometimes referred to as the "Committee") for the Subdivision is hereby established and consists of three (3) persons. The initial members of said Committee are:

Position 1: Nancy Lemmond
Position 2: Stan Samuels
Position 3: James Siebert

The members of the Committee shall, during the first six (6) years after the date of execution of this Declaration, serve at the pleasure of Declarant, who shall have the right to appoint, reappoint and discharge members of the Committee at will, or until ninety (90) percent of the Lots have been sold at which time a majority of the Lot owners

shall appoint the members of the Committee for three (3) year terms. The initial members of the Committee are appointed as set forth below:

- Position 1: until the 2010 annual meeting of members;
- Position 2: until the 2011 annual meeting of members;
- Position 3: until the 2012 annual meeting of members.

The affirmative vote of a majority of the members of the Committee shall be required for approval of any matter; provided, however that a majority of the members of the Committee may designate one member to act on behalf of the Committee, or employ a qualified architectural reviewer to make a recommendation on the adequacy of the plans.

- 7.2 **Submittal Requirements.** No Structure shall be erected, constructed, installed, painted, stuccoed remodeled, reconstructed, altered or added on any Lot within the Subdivision, unless and until the final plans, specifications and elevations therefore shall have received written approval of the Committee. Additionally, no grading, tree cutting or other site disturbance may occur without the prior written approval of the Committee. Maintenance of previously approved Structures which do not materially alter the color or appearance of the Structures shall not require Committee approval.
- 7.3 **Filing Fee.** In connection with any submission and filing for plan approval, the Committee may require the Lot Owner to pay a filing fee sufficient to pay the Committee's costs and expenses incurred in having the materials so submitted and files examined by a person or firm designated by the Committee.
- 7.4. **Approval Standards.** The Committee shall act upon any submission within a time period of no more than thirty (30) days. The Committee shall have the right to disapprove any plans and specifications submitted to it for any one or more of the following reasons:
 - 7.4.1 If the plans and specifications are not in sufficient detail or are incomplete.
 - 7.4.2 If, in the opinion of the Committee, the architectural design of the proposed improvements as shown by the plans and specifications, plot plans, including exterior color scheme, or the location of any Structure, is not in harmony with the general surroundings, or with the improvements, or proposed improvements, near or adjacent to the location at which said improvements are intended to be erected.
 - 7.4.3 If the roof is of either a material or style different than that specified by this Declaration. Roofing materials and surfaces shall be of neutral color and non-reflective.
 - 7.4.4 If the solar collectors are not designed or located in an aesthetically pleasing manner or are not shielded from view from other Lots as much as practical.

- 7.4.5. If the work and/or Structures sought to be approved are not consistent, in the discretion of the Committee, with the concept of well-planned and integrated architectural environment.
- 7.4.6 If the plans and specifications are not in compliance with all requirements and provisions of this Declaration.
- 7.5 **Liability** Neither the Committee, or the Declarant nor any member thereof shall be liable to the any Owner for any damage, loss, or prejudice suffered or claimed on account of:
 - 7.5.1. The approval, conditioned approval or disapproval of any plans, drawings, and specifications, whether or not defective;
 - 7.5.2. The construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications;
 - 7.5.3 The development or manner of development of any property within the Subdivision.

By the acquisition of title to any Lot in the Subdivision, and in consideration thereof, each Owner thereby agrees not to file suit against the Committee, or any member thereof, to recover damages in connection with any of the foregoing events.

Without in any way limiting the generality of the foregoing, the Committee, or any member thereof may, but is not required to, consult with or hear any Owner with respect to any plans, drawings, or specifications, or any other proposal submitted to it.

- 7.6 **Variances.** When naturally or artificially occurring circumstances or the necessities of reasonable use and enjoyment of a Lot within the Subdivision require, the owner of said Lot may apply to the Architectural Control Committee for variance approval, and the Architectural Control Committee, upon showing of good cause and necessity therefore without significant possibility of detriment to others, and by the affirmative vote of a majority of its members, may allow reasonable variances with respect to provisions of this Declaration, except for restrictions set forth in the Angel Fire Airport height limitations, attached as Exhibit A, on such terms and conditions as the Committee shall specify by written report. The Committee's authority to grant variances is limited to matters within its jurisdiction under this Declaration.

Article 8 Common Scheme Restrictions and Requirements

- 8.1 **Native Growth Preservation.** The native growth of the property, including but not limited to piñon trees, pine trees and native shrubs and grasses, shall not be destroyed or removed, except such native growth as it may be necessary to remove for the construction and maintenance of roads, driveways, the House and other Structures.
- 8.2. **Setbacks.** No House, studio, guest houses, or garage, including porches shall be located on any Lot so that any part thereof shall be nearer than twenty-five (25)

feet from a front and rear yard lot line and any road construction maintenance and utility easements adjacent to the front yard line adjacent to the roadway, and nearer than twenty-five (25) feet to any other lot line.

8.3 **Nuisances.**

- 8.3.1 No Lot shall be used for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be visually offensive or obnoxious, toxic, dangerous, or unhealthy, and no substance, thing or article may be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of any occupants or owners of Lots in the subdivision.
- 8.3.2. No devices emitting noise levels exceeding decibel limits set for residential areas shall be permitted in the Subdivision.
- 8.3.3. During or after construction of improvements to any Lot, no concrete slurry shall be left on any Lot, on the public roads or within the Easements.

8.4 **Garages and Parking of Vehicles.**

- 8.4.1. A garage of sufficient size to accommodate at least two automobiles shall be constructed with each principal House.
- 8.4.2 The garage shall primarily be used for vehicles and not storage. Storage in garages cannot take precedence over the garage's primary function: to park automobiles. No garage shall be used or converted for any use other than parking of vehicles.
- 8.4.3 No trucks or other commercial vehicles, other than pick-ups, motorcycles, campers, motor homes, boats, trailers or similar vehicles shall be kept or maintained in the Subdivision, except within garages, or screened by fences or walls from view from Lots within the Subdivision and from private or public roadways within the Subdivision and except where customary or required for the limited purposes of building, repairing, refinishing, or maintaining the Subdivision or House, or for the purpose of moving household goods or other necessary or customary furnishings, equipment or supplies in or out of the Subdivision.
- 8.4.4 No vehicles of any type, or large unsightly equipment or machinery shall be parked in any portion of the Subdivision visible from other Lots or Easements for purposes of repairs or reconstruction or storage.
- 8.4.5. No vehicle of any type, except maintenance vehicles and machinery, motorized or otherwise, shall be operated on any except for public roadways shown on the Plat. No automobiles or other motor vehicles shall be parked on any dedicated roadway within the Subdivision. No vehicles shall be kept or stored on any dedicated roadway or driveway area within the Subdivision for purposes of accomplishing repairs thereto or the reconstruction thereof.

- 8.5 **Storage Tanks.** No tanks except butane/propane tanks and water storage tanks shall be erected, placed or permitted within the Subdivision. Butane/propane tanks shall be buried below grade, where feasible, and shall be enclosed by a solid wood fence or wall where not feasible to construct below ground.
- 8.6 **Utilities.** All extensions of utilities shall be underground to all Structures at all locations. No electrical or telephone lines shall be maintained above ground. Any disturbance of natural ground cover and vegetation necessitated by the installation of utility service lines on a Lot shall be restored by the Owner of the Lot by replanting. A percolation test and pit may be required to determine the absorption capacity of the soils and the depth of the soil. All liquid waste treatment systems must be installed in conformance with the New Mexico Environment Department standards for such systems, which are in force and effect at the time that an application for building permit is submitted to the State Construction Industries Division.
- 8.7 **Exterior Lights.** All exterior lights must be shaded or a cut-off variety so as not to directed toward surrounding Lots, properties or roads. Bright, glaring lights on roof tops and patio walls or elsewhere are prohibited. Exterior lights attached to any Structure shall not exceed twenty (20) feet and exterior lights attached to any free-standing poles are not permitted. All exterior lighting must be installed in conformance with the by FAA regulations or the "Zoning Ordinance to Limit Height of Objects Around Angel Fire Airport, Colfax County, New Mexico" a copy of which is attached as Exhibit A.
- 8.8. **Billboards and Signs.** No billboards or advertising signs will be permitted on any Lot or on any building except:
- 8.8.1 The name plate of the occupant and address of any House, but no sign or name plate shall exceed one square foot in size. All such signs must be of a uniform shape and location as designated by the Committee.
- 8.8.2 Such signs as may be required by legal proceedings or are useful for such proceedings.
- 8.8.3 During the time of construction of any Structure a job identification sign having a maximum face area of six (6) square feet and of the type usually employed by a contractor.
- 8.8.4 Appropriate safety, directional, and identification and safety signs installed adjacent to the Easements or public rights-of-way by Declarant, Colfax County, the Association, or required by law.
- 8.8.5. Not more than one "for sale" or "for rent" sign having a maximum face area of six (6) square feet to be placed on each Lot.
- 8.8.6. Such residential or commercial identification signs, e.g. street names and subdivision signs, as Declarant has the right to maintain
- 8.9 **Animals.** Except as provided herein, no animals of any kind may be kept on any Lot, whether for personal or commercial purposes. Each Lot may have a maximum of two dogs and/or cats more than sixteen (16) weeks old (exclusive of litters of such pets) which must be confined on the Lot. No animal, or pet training or trading as a business shall be carried on, directly or indirectly, on any part of

the Subdivision. Horses may be permitted by the Architectural Committee provided there is evidence that they have acceptable corrals and enclosures with no more than one (1) horse per acre.

- 8.10 **Home Occupations.** No business or commercial activity of any nature shall be conducted upon or from any Lot, except that so-called home occupations shall be permitted if such activity does not disturb Owners of other Lots or increase traffic upon public or private roadways to undesirable levels. Employees of the home occupation are limited to family members and no more than one person outside the family.
- 8.11 **Hunting and Firearms.** No hunting or discharge of firearms shall be permitted within the Subdivision, except in self defense and the defense of others.
- 8.12 **Mining and Drilling.** In no event shall the Subdivision be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.
- 8.13 **Solid Waste Collection.** The removal of construction waste from the site is the responsibility of the Lot Owner. For construction waste the Lot Owner must contract with a properly licensed waste removal company. Colfax County is responsible for the removal of household waste. A centralized location within the Ash Mountain Subdivision has been provided for the disposal of solid waste. The County will bill the Lot Owner for the disposal of solid waste.
- 8.14 **Motor Vehicles; Off-Road Vehicles.** No mini-bikes, motorcycles, off-road vehicles or any unlicensed vehicles of any kind shall be driven or permitted outside the public rights-of-way except for ingress and egress to an Owner's residence. Except for maintenance vehicles, no motor-driven vehicle shall be driven or permitted on drainage easements within the Subdivision. No person who is not licensed to operate motor vehicles by the State of New Mexico or other state shall be permitted to operate any motor-driven vehicle on any road within the Subdivision
- 8.15 **No Inconsistent Uses.** No uses are permitted that are or would be inconsistent with the single-family, residential character of the Subdivision.
- 8.16 **Utility Construction.** All utilities except for electric transformers and telephone pedestals shall be underground.
- 8.17 **Walls and Fences.** Perimeter walls and fences on the boundary of the lot are permitted subject to review and approval by the Architectural Control Committee. Barbwire fences are prohibited throughout the Subdivision. Patio enclosure walls are permitted providing they do not exceed six (6) feet in height and are consistent with the architectural style and color of the dwelling.

Article 9

Drainages, Easements and Dedicated Roads: Uses; Restrictions.

9.1 **Easements and Dedicated Roadways.** The Easements shall be reserved for the benefit of all Owners pursuant to this Declaration to enhance the value and desirability of the Subdivision, for vehicular and pedestrian access to the Lots, for hiking and other recreational activities, for watering, planting, cutting, removing and otherwise caring for the landscape, for maintaining the security of the Subdivision and for installing, maintaining and repairing signs identifying the Subdivision and roads therein, and utility lines necessary for the Houses and Structures and for the maintenance of the landscaping, subject, however, to the following limitations and restrictions:

9.1.1 The Dedicated Roadways and Easements shall be subject to the following:

- a. Such rights and easements as may have been offered for dedication for public use;
- b. Such easements as may have been reserved by Declarant;
- c. Such easements or other interests as may from time to time be taken under power of eminent domain;

9.1.2. The ownership and access rights of the Owners to the Easements shall be subject to the following easement and encroachment rights:

a. Each Owner of a Lot, served by utility connections, lines or facilities, including, but not limited to, those for telephone and electric, and drainage ditches and ponds, shall have the right and is hereby granted a non-exclusive easement, to the full extent necessary therefore, to enter upon the Easements and/or to have utility companies and/or Colfax County personnel enter upon the Easements where such connections, lines or facilities or any portion thereof may lie, to repair, replace and generally maintain the same. Declarant hereby reserves to itself easements over, under, through the Easements for installation of such utility connections, lines or facilities for the benefit of the Subdivision or as may otherwise be needed for the development of the Subdivision together with the right, as Declarant deems necessary or appropriate, to grant and transfer such easements to utility companies or governmental agencies, or authorities within whose jurisdiction the Subdivision lies, and other appropriate entities and individuals.

b. There is hereby reserved to Declarant, non-exclusive easements over the Easements and the facilities located thereon for all construction and sales activities relating to their development of the Subdivision. It is anticipated that said construction and sales

activities shall relate to individual projects developed from time to time on portions of the Subdivision and to the promotion or enhancement of either all or a portion of the Subdivision by Declarant.

- 9.2 **Declarant's Reservation of Easements.** Declarant reserves an easement and right-of-way in, through, over, under and across all portions of the Subdivision for the purpose of completing its development and improvement work on the Subdivision, and, towards this end, Declarant reserves the right to grant easements and rights-of-way in, through, under, over, on and across the Subdivision, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, gas or other utilities and for any other materials or services necessary for the completion of said development and improvement work. Declarant shall have the right to change the location, terms and conditions of any such easement or right-of-way with approval of the Colfax County. Declarant reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, and drainage lines which may from time to time be in or along the public roadways located within the Subdivision. In addition, Declarant reserves the right to continue to use the Subdivision and any sales offices, model homes, signs and parking spaces located on the Subdivision in its effort to develop and market portions of the Subdivision. This Section may not be amended without the prior written consent of Declarant. Any of the easements and rights reserved by Declarant in this section may be assigned to Merchant Builders and may be exercised by Declarant's agents, employees and representatives.
- 9.3 **Easement for Governmental Personnel.** There is hereby established a right of entry for public officials, police, fire, rescue, and other personnel to come upon the Subdivision to carry out and enforce their official duties.
- 9.4 **Declarant's Right to Dedicate.** Nothing contained in this Declaration shall be deemed to restrict or otherwise impede Declarant, at any time and from time to time, from dedicating portions of the Subdivision to any public or private agencies, authorities or utilities, prior to sale of such portion to an Owner.
- 9.5 **Maintenance of Dedicated Roads, and Easements.** Should Colfax County decide not to accept roads dedicated to the County for maintenance of such roads, and associated drainage ditches and drainage facilities, the maintenance responsibility of North Touch-me-Not Court, South Touch-me-Not Court, East Memorial Overlook Court, West Memorial Overlook and the drainage ponds and the drainage ditches within the Easements is subject to maintenance by the Bluestream Homeowners Association as set forth in the Articles and Bylaws for the Association. In order to maintain, Ash Mountain Loop and Old Mike Drive each Lot Owner shall pay 1.27 percent of the share of the maintenance costs for these off-site roadways as set forth in the Ash Mountain Road and Drainage Easement Maintenance Agreement (Exhibit B to these Covenants and Restrictions).

- 9.6 **Natural Drainageways.** With the exception of driveway access as reviewed and approved by the Architectural Control Committee, natural drainages shall not be disturbed. This shall include the placement of debris or other material that may impede the flow of the natural drainage. The Association shall have the right to enter on a Lot to enforce this provision.

Article 10 Duties and Responsibilities of Owners

- 10.1 **Owner's Responsibility to Repair.** Each Owner shall be responsible for the maintenance and repair of his House and his Lot including, without limitation, the exterior structure of, and surrounding the House, the glass doors, windows and screens, the interior structure, the plumbing, electrical, heating and air conditioning systems servicing the House, the parking areas, water laterals serving the Lot to the junction of the lateral with the utility line in the street, the House's exterior surface and roof, including painting and surfacing, and for the prompt rebuilding of the House, or clearing and cleaning of the lot in the event of partial or complete destruction of the House. All maintained areas shall be kept in clean and orderly condition.
- 10.2 **Parking Areas; Vehicles.** For overnight parking, each Owner shall park his vehicle in his garage, unless there are more vehicles used by the Owner than his garage will accommodate.
- 10.3 **Maintenance of Landscaping.** Each Owner shall maintain the landscaping of his Lot in a neat and attractive manner. All grass, mass plantings and other plantings shall be mowed, trimmed and cut as necessary at regular intervals.
- 10.4 **Observance of Responsibilities.** Each Owner shall comply with the provisions of this Article and will cause and be responsible for the Owner's family, agents, guests, contractors, employees and any person renting or leasing Owner's House doing likewise.
- 10.5 **Fire Protection.** Each Owner shall observe the minimum safety standards for fire protection and defensible space adjacent to the House. Exhibit C is a description of the fire protection measures that shall be used in proximity to the House and on the Lot.

Article 11

The Association; Membership; Voting Rights; Declarant Control

- 11.1 **Membership.** Membership in the Association is subject to the following rules and regulations:

- 11.1.1 Every owner of any Lot or tract within the Subdivision shall be a member of the Bluestream Homeowners Association, a New Mexico non-profit corporation. Membership shall be appurtenant to and may not be separated from ownership of any Lot or tract within the Subdivision.
- 11.1.2 The rights, duties, obligations and privileges of an owner of a Lot or tract within the Subdivision, as a member in the Association, shall be those set forth in, and shall be exercised and imposed, in accordance with the provisions of this Declaration, and the Articles of Incorporation and By-Laws of the Association.
- 11.2 **Voting Rights.** There shall be one class of member. Every member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.
- 11.3 **Special Control of Declarant.** Notwithstanding anything to the contrary in this Declaration or the Articles of Incorporation or By-Laws of the Association, Declarant shall designate the members of the Architectural control Committee, shall designate, remove and replace the members of the Board of Directors of the Association, and may alone take any action required to be taken by the members until the earlier of January 2, 2012, or the first day of the first month after Declarant or either of them, ceases to own, in the aggregate, eighteen (18) Lots, or thirty (30) days after written notice by Declarant of their voluntary relinquishment of Declarant' rights established by this Articles 11.
- 11.4 **Successor Organization.** In the event that the Association, as a corporate entity, lose its corporate powers or is dissolved, a non-profit, unincorporated association shall forthwith and without further action or notice, be informed and shall succeed to all rights and obligations of the Association hereunder until a qualified nonprofit corporation is formed. Said unincorporated association's affairs shall be governed by the laws of the State of New Mexico, and to the extent not inconsistent therewith, by the Declaration, the Articles of Incorporation and the Bylaws, respectively, as if they were created for the purpose of governing the affairs of an unincorporated association.
- 11.5 **Board of Directors.** The affairs of the Associations shall be managed by the Board of Directors, which shall exercise all of the rights and powers and perform all of the duties and responsibilities set out in this Declaration and the Articles and Bylaws for the Association. The Board shall, from time to time, make, establish promulgate, amend, and repeal the Subdivision Rules. The Association shall prepare an annual operating statement reflecting the money received by the Association and the expenditures of the Association for each fiscal year and distributes such statement to each member and each Mortgagee upon request. The Association shall take such action, whether or not expressly authorized by the Subdivision Restrictions, as may reasonably be necessary to enforce or carry out the purposes of this Declaration and the Subdivision Rules.
- 11.6 **Enforcement Power.** The Association has the power and duty shall take such action as may reasonably be necessary to enforce or carry out the purposes of this Declaration

Article 12 Assessments

- 12.1 **Mutual Covenants to Pay Assessments.** Each Lot Owner by acceptance of a deed to a Lot, covenants and agrees with each other Owner, the Declarant and with the Association, to pay all assessments levied by the Board, as required in this Declaration, whether or not such covenant is contained in such deed.
- 12.2 **Common Expense Fund; Initial Capital Payment; Well Payment**
- 12.2.1 The Board shall establish a Common Expense Fund to enable the Association and the Board to perform its administrative duties and exercise the powers and perform the rights, obligations and duties stated herein. Such fund shall be funded by assessments.
- 12.2.2 The Declarant, as the agent of the Board, will collect from each initial purchaser at the time of acquisition of a Lot from the Declarant, an Initial Capital Payment equivalent to Three Hundred Dollars (\$300.00). The Declarant will deliver the funds so collected to the Board to provide the necessary working capital for the Association. Such payment is not an assessment and shall not be credited against any Owner's obligation for assessments.
- 12.2.3 The Declarant, as the agent of applicable Well Administrator described in Article 2, will collect from each initial purchaser at the time of acquisition of a Lot from the Declarant, an Initial Well Payment equivalent to One Hundred Dollars (\$100.00). The Declarant will deliver the funds so collected to the Well Administrator to provide the necessary funds for maintenance of the Water Well serving the Lot. Such payment is not an assessment and shall not be credited against any Owner's obligation for assessment.
- 12.3 **Declarant's Obligation for Assessments.** Until all Lots are sold, Declarant, in its sole option, may annually elect to either pay regular assessments on unsold Lots or pay the difference between the amount of assessments collected on all other Lots subject to assessment and the amount of the actual expenditures by the Association during the fiscal year. Unless the Declarant notifies the Board, in writing, at least sixty (60) days before the beginning of the fiscal year, the Declarant shall continue paying on the same basis as the immediately preceding year. The Declarant's obligation hereunder under the same terms and conditions as the Association's lien against any Lot. The Declarant's obligations hereunder may be satisfied in the form of a cash by "in kind" contributions of services or materials, or by any combination of these
- 12.4 **Annual Budget.** Annually the Board shall prepare and adopt a proposed estimate of the total amount it deems necessary for the Association's next fiscal year to pay the Common Expenses of the Association. The annual budget shall be prepared as provided in the Bylaws.
- 12.5 **Assessments.** Effective the first day of each fiscal year after the first assessment made by the Association, each Owner, excepting the Declarant,

shall be assessed a sum equal to each Owner's Common Expense Liability. Such sum shall be paid by the Owner in such installments as determined by the Board under the Bylaws.

- 12.5.1 Contributions for assessments shall be prorated if the ownership of a Lot commences on the day other than the first of a fiscal year. The omission or failure of the managing agent or the Board to fix the assessment for any fiscal year shall not be deemed a waiver, modification or a release of the Owners from their obligations to pay the assessment for that period.
- 12.5.2 If the amount of the annual budget proves inadequate for any reason including, without limitation, non-payment of any Owner's assessment, the Board may at any time levy a further assessment by increasing the annual budget and each Owner shall be assessed a sum equal to the each Owner's Common Expense Liability; provided, however, extraordinary expenses omitted from the annual budget, which may become due during the fiscal year, shall first be paid from the replacement and contingency reserve; and provided further, if inadequate funds exist during a fiscal year, the Association may borrow sufficient funds from Declarant or otherwise. Declarant shall not be obligated to loan any funds to the Association. The Board shall give written notice of any such increase, and the reasons therefore, to each Owner, and shall state the date and terms of payment of such increase.
- 12.5.3 All such assessments collected shall be paid and expended for the purposes authorized herein, and (except for such special assessments as may be levied against less than all the Owners and for such adjustments as may be required to reflect delinquent or unpaid assessments) shall be deemed to be held for the benefit, use and account of all Owners in the same percentages as their percentage ownership of the total Subdivision. Notwithstanding any other provision contained herein, no Owner shall have the right to demand that more than the Owner's pro rata share of the assessments collected be used to benefit the Owner's Lot.

Article 13 **Account Management and Enforcement**

- 13.1 **Special Allocations of Common Expenses; Special Expenses.** The Board may adjust or revise the allocations of Common Expenses for the Lots, as provided or described in the Bylaws and as follows:
 - 13.1.1 Common Expenses benefiting fewer than all Lots or benefiting individual Owners may be assessed in proportion to usage.
 - 13.1.2 Upon recordation of a Supplemental Declaration, the Board shall allocate Common Expenses among the Owners, in accordance with use of the Common Property as provided in this Declaration or the Supplemental Declaration and the Bylaws.
 - 13.1.3 The cost of insurance may be assessed in proportion to risk.

- 13.1.4 An assessment to pay a judgment against the Association may be made only against the Lots at the time the judgement was entered, in proportion to the Common Expense liabilities appurtenant to a Lot.
- 13.1.5 Any Common Expense for services provided by the Association at the request of any Owner shall be assessed against the Lot which benefits from such service.
- 13.1.6 If a Common Expense is caused by the misconduct of an Owner, the Association may assess that expense exclusively against that Owner's Lot.
- 13.1.7 If any Owner exceeds the Water Use Limitations, the Board shall impose penalties or fines for such over usage or it shall assess the Owner for the cost of the water overage in an amount necessary to correct the overage as required by any agreements then in effect, by any court of competent jurisdiction, by the New Mexico State Engineer, or by Colfax County, or in such amount as it deems appropriate under the circumstances. In addition it may restrict future usage of the water by such Lot Owner.
- 13.1.8 In the event any of the Easements or Common Property, signage, landscaping, or Association property are damaged in any way through the intentional or negligent act or omission of any Owner or an Owner's agents, employees, or invitees, the expense incurred by the Association for the repair of such damage shall be deemed a Special Expense. Such Special Expenses shall be levied by the Board and assessed only to the Owner whose act or omission resulted in such damage, and shall be paid by the Owner together with the Owner's next annual assessment due the Association.
- 13.2 **Books of Account.** The Board shall maintain current, detailed books of account in accordance with the standards set forth in the Bylaws. Such books, records, purchase orders and payment vouchers shall be available for inspection by any Owner, or any duly authorized representative of any Owner, at reasonable times during normal weekday business hours. Any Owner's Mortgage shall be deemed an authorized representative of Owner. Upon ten (10) business days' notice to the Board and payment of a reasonable fee established by the Board, any Owner or Mortgagee may demand and be furnished a statement of any Owner's account reflecting the amount of any unpaid assessments or other charges due and owing from such Owner.
- 13.3 **Lien for Non-Payment of Common Expenses or Special Expenses.** All sums assessed and fines imposed by the Association, but unpaid, for the share of Common Expenses, including, without limitation, any assessment for Special Expenses or any other charge authorized by this Declaration or the Bylaws or for violations of this Declaration, and Bylaws, and chargeable to any Lot Owner, shall constitute a lien on such Lot having a priority as of the date of recording of this Declaration.
- 13.3.1 If any assessment (or any other amount owing under the terms of this Declaration) shall remain unpaid for thirty (30) days after the due date thereof, the board or managing agent shall assess interest thereon at a rate equal to eighteen percent (18%) per annum, commencing on the date such assessment was due, together with reasonable costs and any attorney's fees incurred in connection with the collection thereof.

- 13.3.2 In any foreclosure of such lien by judicial action, the Owner shall be required to pay the costs and expenses of such proceeding, all reasonable costs of collection and all reasonable attorneys fees.
- 13.3.3 The Owner shall also be required to pay to the Association any assessment due for the Lot during the period of foreclosure. The managing agent or Board shall have the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the same.
- 13.3.4 Any Mortgagee may pay, but shall not be required to pay, any unpaid Common Expenses or Special Expenses due with respect to such Lot, and upon such payment such Mortgagee shall have a lien on such Lot of the same rank as the lien of the Mortgagee's encumbrance for the amounts paid.
- 13.3.5 The Association shall give notice to the Lot Owner and the Mortgagee of a Lot of any unpaid assessments remaining unpaid for longer than thirty (30) days after the same are due.
- 13.4 **Personal Debt of Owner.** The amount of the Common Expenses of Special Expenses assessed against each Lot shall be the Personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses or Special Expenses, plus costs and reasonable attorneys fees, shall be maintainable without foreclosing or waiving the lien securing same.
- 13.5 **Statement of Unpaid Expenses.** Upon receipt of a written request, the Board shall promptly provide any Owner, contract purchaser or mortgagee identified in the written request a written statement of all unpaid charges and anticipated charges due from an Owner. Such statement shall be furnished within ten (10) business days after receipt of the request and the Owner of the Lot identified in the statement shall not be liable for, nor shall the Lot be subject to a lien for, any unpaid assessments in excess of the amount therein set forth by the Board. The Association shall be entitled to charge a reasonable fee for the preparation of statements of unpaid assessments.
- 13.6 **Joint Liability; Transfer of Lot.** The grantee of a Lot shall be jointly and severally liable with the prior Owner for all unpaid assessments against the latter for the Owner's proportionate share of the Common and or Special Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the Declarant the amounts paid by the grantee therefore; provided, however, that upon payment of a reasonable fee established by the Board, and upon written request, any such prospective grantee shall be entitled to a statement from the managing agent or Board setting forth the amount of the unpaid assessment, the date that such assessment becomes due, and credits for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association. If such statement is not tendered by the Association within twenty (20) business days of its actual receipt of such request, then such requesting grantee shall not be liable for, nor shall the Lot conveyed by subject to a lien for any unpaid assessments against the subject Lot unless such lien has been recorded with the Colfax County Clerk prior to the date the request is received by the Association.

- 13.7 **Transfer Fee.** Upon the closing of the sale of a Lot following the initial sale of the Lot by the Declarant, the purchasers of the Lot shall pay a Transfer fee to the Association, which shall be established initially at One Hundred Dollars (\$100.00) per Lot. The amount of this Transfer Fee may be adjusted from time to time by the Association.
- 13.8 **Waiver of Common Expenses or Special Expenses.** No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Easements or the Owners, Lot, by abandonment of the Owner's Lot or by any other means whatsoever.
- 13.9 **Subordination of Assessment Lien.** The lien of the assessments provided for herein shall be subordinate to the lien of a Mortgagee. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due, or from the lien thereof.

Article 14 General Provisions

- 14.1 **Enforcement.** The Board, Declarant and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by a party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board, Declarant and any Owner shall be entitled to recover all costs, expenses and reasonable attorney's fees incurred in the enforcement of the provisions of this Declaration.
- 14.2 **Notices.** Any notices required or permitted to be delivered to the respective addressee or upon deposit of the same in the United States mails, postage prepaid, certified or registered mail, return receipt requested, and addressed to the Owners at the respective addresses as shown in records maintained by Declarant. Any Owner may change his address by giving notice thereof to Declarant at: 333 Rio Rancho Blvd. NE Rio Rancho, NM 87124
- 14.3 **Severability.** Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
- 14.4 **Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, except that Declarant has the unilateral right to amend the covenants and restrictions of this Declaration for a period of two (2) years from the date of the recording of the plat. After the first twenty (20) year period the time they shall be automatically extended for successive periods of ten (10) years. The Declarant and Declarant's successors and assigns retain the authority to unilaterally modify the covenants and restrictions to reflect changing circumstances. . After the first two (2) year period amendments can be effected with the concurrence of sixty (60) percent of the Lot Owners. The Declarant and

Declarants successors and assigns retain the unilateral right to grant easements or rights-of-way to extend roads and utilities not shown on the plat as may be required by any governmental entity. Every amendment must be recorded in the Office of County Clerk, Colfax County, New Mexico.

- 14.5 **Annexation**. Declarant may, from time to time, and in its sole discretion, and without necessity of any approvals by any Lot Owner, subject real property which is contiguous to The Subdivision and which is owned by Declarant or owned by other persons with the permission of such other persons, to this Declaration whereby such property will have all of the rights and obligations of membership in the Subdivision, including the right to use the Easements. The annexation of any such property shall become effective when Declarant shall have recorded in the Office of County Clerk, Colfax County, New Mexico, an amendment to this Declaration which describes the real property to be annexed, declares that such property is held pursuant to this Declaration and states the amended total number of Lots within the Subdivision for assessment and voting purposes, and the filing of a subdivision plat of the property.

No property may be incorporated into the subdivision without Declarant's consent and thereby entitled to the use of the public roadways and Easements unless consented to by a majority of the voting power of the Association.

- 14.6 **Binding Effect**. This Declaration shall be binding upon and shall inure to the benefit of Declarant, the Owners, and their respective heirs, successors and assigns and shall run with the land.

IN WITNESS WHEREOF, Declarant has executed this Declaration this _____ day of _____, 2007.

By: _____
Bluestream Properties Inc
Nancy Lemmond, Vice-President

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO)
) SS.
COUNTY OF COLFAX)

The foregoing instrument was duly acknowledged before me this _____ day of _____, 2007, by and, on behalf of said persons.

Notary Public

My Commission Expires:
