

EXHIBIT A  
AMENDED AND RESTATED PROTECTIVE COVENANTS AND BUILDING  
RESTRICTIONS FOR ELDORADO AT SANTA FE

This Amended and Restated Declaration, (hereafter "Restated Declaration") is made by the Eldorado Community Improvement Association, Inc., a New Mexico non-profit corporation, (hereafter "the Association" or "ECIA") for the express purposes of protecting the natural beauty and environment of the community of Eldorado at Santa Fe, providing an attractive rural setting for residential neighborhoods and home sites and preserving property values. This Restated Declaration seeks to maintain the unique natural character of the community for all who acquire property therein, while encouraging individual expression consistent with the historical traditions of the region. This Restated Declaration assumes that, by virtue of their purchase of property in the Eldorado community, all such property owners are motivated by these unique qualities of its natural environment and agree, for and among themselves, that these qualities must be preserved for all present and future residents.

ARTICLE I  
DEFINITIONS

Section 1. "Architectural Styles of Santa Fe" shall mean and refer to the design motifs of Santa Fe, New Mexico, characterized by stucco or adobe walls, flat or pitched roofs, red tile or metal roofs, earth colors, vigas, portals, verandas, courtyards, patios and walkways, occasionally incorporating design elements of metal, stone, brick, wood and stained glass. These design motifs are derived from the Spanish Pueblo, Mexican Colonial, Northern New Mexico, Territorial and Mission styles of architecture (Reference: "Design & Preservation in Santa Fe", January 1977, City of Santa Fe Planning Department). In the event of inconsistency between the City of Santa Fe guidelines and this Restated Declaration, this declaration shall control.

Section 2. "Association" or "ECIA" shall mean and refer to the Eldorado Community Improvement Association, Inc., a New Mexico non-profit corporation, and its successors and assigns.

Section 3. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of Eldorado Community Improvement Association, Inc., a New Mexico non-profit corporation, and its successors and assigns.

Section 4. "Developer" shall mean and refer to Eldorado at Santa Fe, Inc., its successors and assigns of legal or equitable interests of Eldorado at Santa Fe, Inc., who are designated as such by an instrument in writing by Eldorado at Santa Fe, Inc., and recorded among the public records of Santa Fe County of the

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Clerk of Santa Fe County, State of New Mexico.

Section 5. "Home Occupation" shall mean a business or commercial activity of any nature conducted upon or from any lot in Eldorado.

Section 6. "Lot Owner" shall mean an entity who has title to one or more lots in Eldorado.

Section 7. "Structure" shall mean and refer to anything constructed or erected at a more or less permanent location on a lot.

Section 8. "Arbitration" shall mean the referral of a dispute by the voluntary agreement of the parties to one or more impartial arbitrators for a final and binding decision.

Section 9. "Mediation" shall mean the advisory intervention by a third party in dispute negotiations with the purpose of helping the parties concerned find a solution.

#### ARTICLE II - PROTECTIVE COVENANTS AND BUILDING RESTRICTIONS

Section 1. Residential Use. The lots designated in Schedule A attached hereto shall be used for no purpose other than residential use, except as otherwise provided in Article II, Section 15. No structures shall be erected, altered, placed, or permitted to remain on any residential lot other than single family dwellings, accessory buildings such as studios, garages, greenhouses, recreational facilities and storage sheds, and stables on lots on which horses are permitted to be kept. No trailer, mobile home, tent, shack, garage, barn or other outbuilding, nor any temporary structure erected on any residential lot, shall be used at any time as a residence, either temporarily or permanently.

Section 2. Placement of Accessory Buildings. Large accessory buildings, such as studios and garages, shall be located close to the dwelling house, and shall be architecturally integrated therewith. Small accessory buildings, such as storage sheds and greenhouses, shall be located so as to minimize their visual impact on the surrounding neighborhood, and shall be obscured by screening in some reasonable manner, for example by the dwelling house and/or with plantings or fencing.

Section 3. Lot Size, Setbacks. No residential lot shall have an area of less than 43,560 square feet and no lot shall be further subdivided nor permitted to have more than one single family residence together with accessory buildings as defined in Article II, Section 1 above. No buildings or other types of structures, nor portions thereof, shall be located nearer than 50 feet to the

front lot line, nearer than 20 feet to the rear lot line or nearer than 10 feet to any drainage easement (whichever is greater), or nearer than 20 feet from a side lot line, except that variances may be made by the E.C.I.A. Board of Directors or its designee(s). On corner lots, the front lot line shall be deemed to be the narrower frontage facing a street and the 50 foot setback shall apply to all adjoining streets. Access to the main residential structures located on corner lots shall be from the secondary street as determined by the Architectural Committee.

**Section 4. Garages.** There shall be provided garage space sufficient for the parking of at least one car for each residential unit.

**Section 5. Architectural Approval.** a) Construction of a building on a lot in Eldorado shall not commence until its siting, design, exterior colors and building materials have been approved in writing by the E.C.I.A. Board of Directors or its designee(s), nor shall construction commence until water is available for immediate use at the lot from either an individual well or a public utility water system.

b) No additions nor exterior alterations above the natural grade shall be made to an existing building until the design, location, exterior colors and building materials for such additions and alterations have been approved in writing by the E.C.I.A. Board of Directors or its designee(s).

c) A swimming pool shall not be installed on any residential lot without the prior written approval of the E.C.I.A. Board of Directors or its designee(s).

d) Architectural approval aforesaid shall be requested by filing a written application with the E.C.I.A. Board of Directors or its designee(s). All buildings, additions and exterior alterations thereto shall be characterized by the Architectural Styles of Santa Fe. Roofs shall not be constructed of highly reflective or glare producing materials, but may include skylights, solar panels and clerestories.

e) Architectural approval shall not be unreasonably withheld. In the event the E.C.I.A. Board of Directors or its designee(s) fails to approve or disapprove any application made pursuant to Article II, Section 5 a) to 5 d) above within 30 days after filing, approval by the Board no longer shall be required.

f) No more than 1,000 square feet of any lot shall be landscaped as lawn requiring watering from an individual well or a public utility water system.



g) No two story building and no building exceeding eighteen feet in height as measured from either the floor of the lowest story of the building to the highest point of the building, excluding chimneys or stove pipes, or from the lowest point where the natural grade of the lot meets the building to the highest point of the building, whichever is more restrictive shall be allowed except with the prior written approval of the E.C.I.A. Board of Directors or its designee(s). The factors to be considered by the Board in reviewing requests for such approval may include, but shall not be limited to, the following: the location of the lot, the proposed placement of the building on the lot, the varying elevations of the lot, the proximity of and impact on existing buildings on adjoining or neighboring lots, the degree to which the building may restrict or block the view from an adjoining lot, and the objections of neighboring lot owners. No denial of a request for approval of plans for such a building shall be valid unless acted upon by a two-thirds majority of the whole E.C.I.A. Board of Directors. Any disputes by persons or entities who claim to be aggrieved by the decision of the E.C.I.A. Board of Directors or the application of this height restriction shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. By mutual agreement, the parties may select an alternative arbitration process. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The prevailing party in such arbitration shall be entitled to recover his costs, expenses and attorneys' fees.

Section 6. Construction Deposit. The E.C.I.A. Board of Directors or its designee(s) is empowered to require the submission of a new home construction deposit prior to the original construction of a building on any lot in Eldorado. Such deposit shall be filed concurrently with each application for approval required by Article II, Section 5. Construction shall not commence until the deposit has been approved in writing by the E.C.I.A. Board of Directors or its designee(s). The purpose of the deposit is to guarantee that the submitter(s) thereof shall comply with these Protective Covenants and Building Restrictions. The principal of the deposit may be used to correct any unrectified violations of these covenants and restrictions and to repair unrectified damage caused by the construction. The owner shall notify the Board upon completion of construction and request inspection by the Board's covenants compliance officer. If forfeiture is not initiated, the Board shall return the new construction deposit within (30) days of its inspection.

Section 7. Completion of Construction. No structure with an unfinished exterior shall be permitted to remain on any lot for more than six (6) months from the time of commencement of construction, with the exception that upon written request, one six (6) month extension may be granted by the E.C.I.A. Board of

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Directors or its designee(s). No further extensions will be granted. Failure to commence and complete construction within the time periods specified in this section shall require resubmission and re-approval of plans by the E.C.I.A. Board of Directors or its designee(s).

Section 8. Fences and Walls. No fences or walls shall be erected or installed on any lot without the prior written approval of the E.C.I.A. Board of Directors or its designee(s). No perimeter plantings extending along more than 50% of the aggregate boundary lines of a lot shall be installed without the prior written approval of the E.C.I.A. Board of Directors or its designee(s).

Section 9. Signs. Except as specifically set forth below, no sign of any kind shall be erected or maintained on any lot, nor on any common area, without the prior written approval of the E.C.I.A. Board of Directors or its designee(s). The following signs do not require approval under this section when erected on a lot: community interest signs such as neighborhood watch or beware of dog signs; nameplates; address signs; one-time-only signs, such as signs for garage sales, lost animals, birthday parties and the like, which shall be removed after 72 hours; one only for rent, for sale, and/or builder's construction sign; and one only open house sign to be removed daily. Real estate and construction signs on a lot shall not exceed 2' x 3' in size. Public election signs are allowed on a lot 14 days prior to a public election, and shall be removed within 72 hours after said election.

Section 10. Exterior Lights. Exterior lights are prohibited unless they are 75 watt or less and are properly shielded so as to direct light downward. The lighting of signs on a lot is prohibited.

Section 11. Household Pets. No animals, birds or poultry shall be kept or maintained on any lot, except recognized household pets which may be kept thereon in reasonable numbers as pets for the pleasure and use of the occupants but not for any commercial use or purpose. It is forbidden to permit dogs to run at large in Eldorado. At all times, dogs must be kept, restrained and controlled by their owners in the manner described in the Santa Fe County Animal Control Ordinance. A maximum of two horses may be kept on any lot which has an area in excess of three acres and which has been properly designated, pursuant to these covenants, as a horse area on any recorded subdivision map or by majority vote of the Board of Directors. A stable for such horses may be erected upon such lot.

Section 12. Home Occupation. a) No residential lot shall be used in whole or in part for any commercial or business purpose, with the exception of home occupations.

b) No home occupation shall commence nor be maintained unless it complies with Santa Fe County regulations and has the prior written approval of the E.C.I.A. Board of Directors or its designee(s), except such approval is not required when:

- i) there is no more than one outside employee; and
- ii) customers shall not visit the premises as a result of the home occupation.

c) Home occupations are permitted in accordance with Article II, Section 12 b) above, provided such occupations shall be:

- i) incidental and subordinate to the residential use of the lot;
- ii) carried on inside of the buildings on the lot, and do not involve the exterior storage of materials nor change the exterior appearance of the lot or its buildings;
- iii) served by sufficient parking on the lot for normal home occupation activities; and
- iv) devoid of the use of equipment and processes which violate Article II, Section 14 hereof.

**Section 13. Storage and Screening of Vehicles and their Accessories.** a) Recreational vehicles, such as motor homes, RVs, campers, camper shells, vehicle accessories, trailers, horse trailers, airplanes, boats and the like, when stored on a lot shall be located so as to minimize their visual impact on the surrounding neighborhood and roads, and shall be obscured by screening in a reasonable manner, for example by the dwelling house and/or with plantings or fencing. No more than three such vehicles shall be stored outside on any lot at any time. No more than one additional vehicle shall be parked temporarily on a lot for a period not to exceed three weeks. This paragraph shall be applicable to recreational vehicle accessories, such as camper shells and the like.

b) No vehicles not licensed for use on a public road, nor any type of earth moving equipment, nor any tractor-trailer or part thereof, nor similar large vehicles inconsistent with single-family residential use, shall be parked, stored or repaired outside of a building on any lot provided, however, such vehicles may be parked temporarily on a lot for a period not exceeding two weeks. Construction trailers may be parked on a lot during the period of the construction or alteration of a dwelling house on a lot.

c) No more than one satellite dish in excess of 24 inches shall be permitted on a lot without the prior written approval of

the E.C.I.A. Board of Directors or its designee(s). All satellite dishes shall be located so as to minimize their visual impact on the surrounding neighborhood and roads, and shall be obscured by screening in some reasonable manner, for example by the dwelling house and/or with plantings or fencing.

d) No radio antenna or similar tower-like structure shall be erected, installed or maintained on any lot without the prior written approval of the E.C.I.A. Board of Directors or its designee(s). In any case, such structures shall not extend more than eight feet above the roof line of any building on the lot.

e) Propane tanks shall either be buried or enclosed by a masonry wall, wood fence or screening composed of suitable plantings. Propane tank enclosures shall comply with the regulations or guidelines of the New Mexico Construction Industries Division or any successor entity, and shall have the prior written approval by the E.C.I.A. Board of Directors or its designee(s).

Section 14. Nuisances Clause. No lot shall be used in any way for the storage or dumping of trash or debris, nor for any purpose which may endanger the health of, or unreasonably disturb, other lot owners, or which creates or constitutes a nuisance. No unsightly or offensive objects shall be erected, placed, stored or permitted to remain on any lot, nor shall any lot be permitted to appear in an unclean or untidy condition. Construction sites must be maintained in a clean and orderly fashion; litter, trash and construction debris, when retained on site, shall be stored in covered containers. All construction debris shall be removed from the site and disposed of in an appropriate manner. No activity shall be conducted, nor equipment or process used, nor substance or animal kept which emits foul or obnoxious odors, or which creates noise, glare, fumes or electrical interference.

Section 15. Use of Lots for Non-Residential Purposes. - The lots described on Schedule A attached hereto may be used for purposes other than residential purposes as determined by the E.C.I.A. Board of Directors or its designee(s). The design, location, kinds of material used in construction, landscaping, parking facilities and other criteria governing improvements to be placed upon such lots shall be subject to the approval of the E.C.I.A. Board of Directors or its designee(s). Prior to authorizing residential lots to be used for other than residential purposes, the E.C.I.A. Board of Directors or its designee(s) shall publish notice and conduct an open forum no sooner than fifteen days after publication of notice at which owners may express to the Board their comments regarding the purpose change.



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ARTICLE III  
COVENANT ENFORCEMENT

Section 1. Adoption of Rules, Regulations and Guidelines. The E.C.I.A. Board of Directors or its designee(s) is empowered to adopt and enforce written rules, regulations and guidelines for the interpretation, implementation and enforcement of this Restated Declaration and the exercise of the Board's powers and duties hereunder, which shall be consistent with this Restated Declaration. Prior to adopting such rules, regulations or guidelines, the Board shall publish notice and conduct an open forum no sooner than fifteen (15) days after the published notice at which owners may express to the Board their comments regarding the proposed rules, regulations or guidelines. Each complaint of noncompliance with the covenants, building restrictions or guidelines shall be dealt with fairly and as uniformly as circumstances permit or require throughout the Eldorado community.

Section 2. Enforcement Actions. a) To ensure compliance therewith, the E.C.I.A. Board of Directors has the power to levee fines against violators of this Restated Declaration.

b) Whenever the E.C.I.A. Board receives notice of an alleged violation of this Restated Declaration, the E.C.I.A. Board of Directors or its designee(s) shall initiate an investigation to confirm whether such violation has occurred and not been corrected.

c) If the investigation reveals that an uncorrected violation exists, the E.C.I.A. Board or its designee(s) shall send written notice to the owner or person(s) responsible for such violation specifying the nature of the violation and requesting that such owner or person(s) take action, within a reasonable period of time stated in the notice, to correct it. Said owner or person(s) who contest the existence of such violation will undergo with the E.C.I.A. Board of Directors a mediation or arbitration process. When arbitration is used, the three person arbitration committee shall be chosen as follows: 1) the E.C.I.A. Board will submit a list of three candidates to the plaintiff from which the plaintiff will choose one member; 2) the plaintiff will submit a list of three candidates to the E.C.I.A. Board from which the Board will choose one member; 3) these two committee members will then choose the third member. The decision of this committee will be final and binding. By mutual agreement, the parties may select an alternative process to resolve the dispute, such as mediation or formal litigation.

Section 3. Recovery of Costs and Fees. In the event judicial action is taken by the Board to enforce this Restated Declaration against an owner or other person(s) violating this Declaration, a



reasonable attorney's fee may be recovered in addition to the costs incurred by the prevailing party, if the court finds that the unsuccessful party has acted in bad faith or in willful violation of this Restated Declaration.

#### ARTICLE IV GENERAL PROVISIONS

Section 1. Amendment. The E.C.I.A., its successors and assigns, hereby reserves the right to amend these covenants and building restrictions in whole or in part, provided that the then owner or owners of a majority of the lots covered by this Restated Declaration consent to such amendments. As used in these covenants and building restrictions, the owner of a lot shall be deemed to be the fee title owner of record of any lot in the subdivision. The E.C.I.A. Board of Directors shall have the authority to promulgate rules, regulations and provisions governing the use of the common areas and facilities of the Eldorado community, including the imposition of charges and assessments for the installation, improvement and maintenance of common areas and facilities, including community roads and other community infrastructure.

Section 2. Duration of Reservations and Restrictions. All of the covenants and restrictions contained herein shall be deemed covenants running with the land described hereinabove, and shall be binding upon all successive owners thereof and all persons claiming under them until January 1, 1999, at which time said covenants and restrictions shall automatically be extended from year to year, unless by a vote of a majority of the then owners of the above described lots, it is agreed to change this Restated Declaration in whole or in part.

Section 3. Easements and Rights-of-Way. Easements and rights of way are hereby reserved unto ELDORADO AT SANTA FE, INC., its successors and assigns for construction, installation and maintenance of any and all utilities, such as electric lines, gas lines, drains, sewers, central and/or community well, water system or systems, water supply lines, telephone and telegraph, cable television or the like, necessary or desirable for public health and welfare. Such easements and rights of way shall be confined to a 10 foot width along the rear and sidelines of every lot and along the front lot line adjoining every street, road or highway abutting the premises, unless otherwise designated on the plat.

Section 4. Successors or Assigns to Developers. As used in these restrictions, the words "successors and assigns" shall not be deemed to refer to an individual purchaser of a lot or lots from ELDORADO AT SANTA FE, INC. but shall be deemed to refer to the successors or assigns of legal or equitable interests, rights or obligations of ELDORADO AT SANTA FE, INC., who are designated

as such by an instrument in writing signed by ELDORADO AT SANTA FE, INC., and recorded among the public records of Santa Fe County, New Mexico, specifically referring to this provision of these restrictions.

Section 5. Non-Waiver. The failure to enforce any provision contained in this Restated Declaration shall not be deemed to be a waiver of the right to enforce it, nor shall such failure bar or affect its enforcement, irrespective of how long such failure continues.

Section 6. Severability. Invalidation of any one of the covenants contained herein by judgment, court order or for any other reason shall in no way affect any of the other covenants, all of which shall remain in full force and effect.

Section 7. Recording. This Restated Declaration, and all revisions thereof and amendments thereto, shall be recorded in the Office of the County Clerk, Santa Fe County, New Mexico.

Section 8. Prior Covenants Superseded. This Restated Declaration supersedes and entirely replaces those Protective Covenants and Building Restrictions for Eldorado at Santa Fe dated July 11, 1972 and recorded in the records of Santa Fe County, New Mexico at Book 292, page 611, and any and all amendments and supplements thereto, including, but not limited to, those filed in the records of Santa Fe County on July 23, 1979 at Book 383, page 398; on July 30, 1979 at Book 384, page 349; on September 24, 1986 at Book 561, page 851; on October 9, 1986 at Book 563, page 229; and on January 22, 1988 at Book 602, page 372; as well as those certain Protective Covenants and Building Restrictions for Eldorado at Santa Fe (Revised November, 1995) and recorded in the records of Santa Fe County, New Mexico at Book 1220, page 857 on December 1, 1995 (jointly the "Prior Covenants").

Section 9. Property Subject to Restated Declaration. All residential lots in the Eldorado at Santa Fe Subdivision and all lots subject to the Prior Covenants (as set forth and defined in Article IV, Section 8 above), including, but not limited to, the real property set forth on Schedule A-1, attached hereto and incorporated herein by this reference, shall be, and hereby are, subject to each and every provision of this Restated Declaration.

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IN WITNESS WHEREOF, the undersigned has caused this Restated Declaration to be executed as of the 16<sup>th</sup> day of April, 1996.

ELDORADO COMMUNITY IMPROVEMENT ASSOCIATION, a New Mexico nonprofit corporation

By: Rick Adesso

Rick Adesso, Secretary

ACKNOWLEDGMENT

State of New Mexico )

County of Santa Fe ) ss

The forgoing Amended and Restated Protective Covenants of Eldorado at Santa Fe were acknowledged before me this 16<sup>th</sup> day of April, 1996 by Rick Adesso, Secretary of the Eldorado Community Improvement Association, Inc., a New Mexico nonprofit corporation, on behalf of said corporation.

Rafina Ortega  
Notary Public

My commission expires:

4-20-96

