

**SECOND AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR THE CLIFFS AT PADRE SPRINGS**

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made on this 30<sup>th</sup> day of January 2023 by the individuals and entities signing at the end of this document and is effective as of the date of recording of this document in the offices of the County Clerk of Santa Fe County, New Mexico.

**RECITALS**

WHEREAS, as of October 22, 2007, Declarant was the owner of those certain parcels of real property located in Sections 1, 2, 11, 12 and 13 T15N, R11E, NMPM in Santa Fe County, New Mexico, more commonly known as:

Lots 1 through 24 as shown and delineated on that certain plat of survey entitled "SUBDIVISION PLAT THE CLIFFS AT PADRE SPRINGS" filed for record October 22, 2007 in Plat Book 667, Page 21-37 records of Santa Fe County, New Mexico."

WHEREAS, on October 22, 2007, Declarant filed the Declaration of Covenants, Conditions, Restrictions and Easements for The Cliffs at Padre Springs (the "Declaration") with the County Clerk of Santa Fe County, New Mexico, duly recorded as Instrument# 1503736, thereby subjecting the above described property, including all buildings, improvements and other permanent fixtures of whatever kind located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (the "Property"), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained therein;

WHEREAS, on December 19, 2016, Declarant filed the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for The Cliffs at Padre Springs (the "Amended Declaration") with the County Clerk of Santa Fe County, New Mexico, duly recorded as Instrument# 1812530, thereby subjecting the Property, including all buildings, improvements and other permanent fixtures of whatever kind located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained therein;

WHEREAS, the Declaration and the Amended Declaration established a plan of development in accordance with the Plat and the Declaration, and imposed certain covenants, conditions and restrictions upon the Property ("CC&R's"), with respect to the proper use, occupancy and enjoyment thereof, to be implemented, managed and enforced by Declarant and/or a Homeowner Association, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property;

WHEREAS, the Declarant and a majority of eligible Owners desire to update, amend and restate the Amended Declaration with this Second Amended and Restated Declaration of Covenants, Conditions, Restrictions, Restrictions and Easements for The Cliffs at Padre Springs

(the "Second Amended and Restated Declaration" or the "Declaration"); and

WHEREAS, Declarant and a majority of eligible Owners desire and intend that the owners and mortgagees, occupants and all other Persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights set forth in this Second Amended and Restated Declaration, all of which are declared to be in furtherance of a plan to promote and protect the Property.

NOW THEREFORE, the Declarant declares, covenants, and agrees as follows:

### **SECOND AMENDED AND RESTATED DECLARATION**

The Property shall be used only for single family residential and recreational use, and shall hereafter be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights set forth in this Amended Declaration, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of Declarant and every other owner of any interest in the Property or any part thereof.

**1. DEFINITIONS.** The following terms used in this Declaration are defined as follows:

A. "Articles" means the articles of incorporation, and all amendments thereto, of the Homeowners Association.

B. "Assessments" shall mean assessments applicable to the Lots and Owners of Lots as imposed pursuant to this Declaration. Assessments include Regular Assessments and Road and Trail Improvement Assessments.

C. "Assessment Lien" shall mean the liens that are created and imposed herein with respect to amounts payable by Owners pursuant to the terms of this Declaration, and shall include but not be limited to Regular Assessments, Road and Trail Improvement Assessments and Individual Charges levied against a single Owner.

D. "Board" means the Board of Directors of the Homeowners Association.

E. "Building Envelope" means the maximum developable area of a Lot, as shown on the Plat.

F. "Business Use" shall be construed to have its ordinary, generally accepted meaning and shall include any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) is intended to or does generate a profit, or (iii) a license is required therefor. Notwithstanding the foregoing, activity shall not be considered "Business Use" if it meets all of the following requirements:

- i. It is not apparent or detectable by sight, sound or smell from outside the Lot on which it occurs,
- ii. It does not involve more than two individuals coming onto the Lot per day who do not reside in the Lot or solicitation of residents of the Property by anyone, whether or not a resident, and
- iii. It is consistent with the residential character of the Lot and not a nuisance, or a hazardous or offensive use, as may be determined in the sole discretion of the Board.

By way of illustration, but not limitation, activities conducted from within a residence solely by telephone, facsimile, or computer, without the use of employees other than those who reside on the Lot, to outside parties off of the Property (or wholly without communication to outside parties) are not considered "Business Use" but "Business Use" will exist if the activity involves or requires more than two visits to the Lot per day by actual or prospective customers, clients, or patients, or by others (and excluding once a day document delivery services), as a result of business activities by the Owner or Occupant of the Lot. Similarly, the fact that family members or other occupants of a residence are employed in business affairs within the Lot will not make such employment a "Business Use" of the Lot but visits to the Lot by employees who do not reside there will be "Business Use" if the individuals are employed for the business purposes of the Owner or Occupant of the Lot. The leasing of an Owner's own residence on a Lot shall not be considered a trade or business. The definition of "Business Use" for purposes of this instrument may be clarified, supplemented and interpreted by the Board from time to time, as it may choose in its sole discretion, so long as not materially inconsistent with the terms set forth above.

G. "Bylaws" means the code of rules adopted for the regulation and management of the Homeowners Association.

H. "Common Area Easement" means those areas of the Property that are shown as such on the Plat, or are shown as "Common Park", "Common Area" or "Maintenance Area" and are to be used for the purposes of park/community recreation and amenities and maintenance uses. Common Area Easements include easements within Lots granted to the Association for equestrian areas, greenhouses and recreation purposes.

I. "Common Expenses" means the expenditures made by, or the financial liabilities of, the Homeowners Association, together with any allocations to reserves, including but not limited to:

- i. The costs of management and administration of the Homeowners Association, including, but not limited to, compensation paid by the Homeowners Association to managers, accountants, attorneys and employees;
- ii. The costs of any maintenance, management, operation, repair and replacement of Common Roads and Trails and improvements within Common Easement Areas within the Property, and also including any such costs incurred pursuant to an agreement with the County related to the Property. The Association may charge a use fee for Member use of the equestrian area on Lot 1, with funds generated to be designated for maintenance and repair of improvements within the equestrian easement;

- iii. The costs of common area utilities and services for the Property, which are provided to the Homeowners Association and not individually metered, assessed, or billed by Lot;
- iv. Unpaid Assessments;
- v. The costs of insurance maintained by the Homeowners Association;
- vi. The costs which the Board may elect to incur to bond the members of the Board, officers of the Homeowners Association, any professional managing agent or any other Person handling the funds of the Homeowners Association;
- vii. Reasonable reserves for contingencies;
- viii. Additional costs incurred by the Design Review Committee, not covered by the Design Review fees;
- ix. The costs incurred by any other officers of the HOA or committees established by the Board or the President;
- x. The costs of patrol services, construction and operation of any manned gates, key gates and or mechanical gates at entrances to the Property, and any other access-control or safety systems or services installed, operated or contracted for by the Homeowners Association other than security service to individual Lots; and
- xi. The cost of snow removal, if approved by the Board.
- xii. The cost of grading maintenance, cleaning out drainage ditches and culverts and landscape maintenance in common areas, Common Area Easements and along Common Roads.
- xiii. Other expenses incurred by the Homeowners Association for any reason whatsoever in connection with its duties and obligations, or the costs of any other item or items designated by, or to be provided or performed by, the Homeowners Association for the Property pursuant to this Declaration, the Articles, Bylaws, Homeowners Association Rules or Design Guidelines, or in furtherance of the purposes of the Homeowners Association or in the discharge of any duties or powers of the Homeowners Association with respect to the Property.

J. "Common Road" means The Cliffs View and Padre Canyon or any other road or right-of-way within, or partly within, the Property which has not expressly been dedicated to the public use and accepted by a government entity, excluding any individual or shared driveway. Glory Lane is considered a Common Road, but is subject to the Road Maintenance Agreement with Luz del Sol Homeowners' Association and is thus treated differently for maintenance purposes.

K. "Common Trail" means any pedestrian, equestrian or recreational trail existing or

hereafter created on the Property for the use of the Owners, Occupants and their guests and other individuals pursuant to a shared trail agreement.

L. "Compound" means the ownership of two or more contiguous Lots by the same owner, which shall permit a clustering or other relocation of dwellings. Compound lots may but are not required to dissolve the adjoining lot lines through the approval process with Santa Fe County. Each Compound lot shall have one vote and shall pay dues as if it were a single lot. If one or more lots are resold then the new owner shall be required to pay the annual HOA assessments as a separate lot. Any new buyer purchasing two or more contiguous lots shall also have the right to combine lots into a Compound Lot and pay dues as a single lot owner.

M. "Declarant" means Padre Springs, LLC, its successors and assigns, or any Person to whom Declarant's rights hereunder are hereafter assigned, in whole or in part, by recorded instrument, or any Mortgagee of Declarant which acquires title to or succeeds to the interest of Declarant in any Lot or other portion of the Property by reason of the foreclosure (or conveyance in lieu of foreclosure) or sale under the Mortgage of said Mortgagee.

N. "Declarant has ceased to offer Lots for sale in the ordinary course of business" means Declarant's written public announcement of its decision to cease all sales of Lots, but does not include the Declarant's decision to hold Lots in inventory for future sales.

O. "Declaration" means this instrument and all supplements, addenda and amendments, including this Second Amended and Restated Declaration.

P. "Design Review Committee" means the committee provided for in paragraph 7 of this Declaration.

Q. "Design Guidelines" means the rules, regulations, restrictions, architectural standards and design guidelines adopted and from time to time amended by the Design Review Committee and applicable to the Property.

R. "Designated Equestrian Envelope" means a designated area on a Lot where horses are maintained, including corrals, stables, barns, tack rooms, turnout areas and related improvements on designated equestrian homesites.

S. "Gate Agreement" means that certain agreement between Luz del Sol Homeowners' Association and Robert Sherwin and Denise Sherwin dated February 16, 2006 and entitled "Agreement for Purchase and Maintenance of Electric Gate", a copy of which shall be provided with this Declaration to Owners upon their request.

T. "Homeowners Association" means The Cliffs at Padre Springs Homeowners Association, Inc. II, a New Mexico nonprofit corporation, formed on October 18, 2012, and as thereafter amended, merged, or reconstituted by the Declarant or Owners.

U. "Lot" means a portion of the Property shown as a subdivided lot on the Plat. A Lot includes the residential dwelling unit, accessory structures and other improvements constructed thereon.

V. "Member" means a Member of the Homeowners Association whose Membership is appurtenant to a Lot in the Property.

W. "Occupant" means any Person, other than an Owner, in rightful possession of a Lot in the Property, whether as a guest, tenant or otherwise.

X. "Owner" means the owner of record, whether one or more Persons, of fee simple title, whether or not subject to a mortgage, of any Lot within the Property, including contract purchasers but excluding those having such interest merely as security for the performance of an obligation. If fee simple title to any Lot in the Property is vested of record in a trustee, legal title shall be deemed to be in the beneficiary.

Y. "Plat" means that certain plat of survey entitled "SUBDIVISION PLAT THE CLIFFS AT PADRE SPRINGS" that is filed of record on October 22, 2007 in Plat Book 667, Page 21-37 of the records of Santa Fe County, New Mexico. As to Lots 5, 6, 7, 8 and 9, the term "Plat" includes the Lot Line Adjustment Plat recorded on August 28, 2008 as Instrument No. 1536509 in Plat Book 688, Page 050 of the records of Santa Fe County, New Mexico. As to Lots 13-16 and 21-24, "Plat" includes the Lot Line Adjustment Plat filed on September 16, 2009 in Plat Book 708, Pages 014-015 of the records of Santa Fe County, New Mexico.

Z. "Road Maintenance Agreement" means that certain agreement between Luz del Sol Homeowners' Association and Robert Sherwin and Denice Sherwin dated February 16, 2006, as amended from time to time and entitled "Road Maintenance Agreement", a copy of which shall be provided to all Owners.

## **2. EASEMENTS.**

A. Access Easements; Utility Easements. Each Owner shall have the nonexclusive right to use the Common Roads and Trails in common with all other Owners as required for the purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Lot owned by the Owner. The right to use the Common Roads and Trails for such purposes shall, subject to the Homeowners Association Rules, extend to each Owner, Occupant and the agents, servants, tenants, family members and invitees of each Owner. This right to use the Common Roads shall be appurtenant to each Lot, subject to and governed by the provisions of this Declaration, the Articles, Bylaws and Homeowners Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein. Each Owner shall also have the nonexclusive right to use of the Common Roads in common with all other Owners as required for the purposes of placement of utility lines, pipes, cables or the like. Any excavation of the Common Road surface shall only be pursuant to written approval of the Homeowners Association, which approval shall be solely for the purposes of ensuring that the Common Road surface is properly restored. The Common Road Easements may be granted to Santa Fe County or other governmental entity for public use and maintenance upon the majority vote of the Members. The Common Roads may be maintained and improved as deemed necessary and desirable by the Board.

B. Common Trail Easements. There is hereby created an affirmative easement in

favor of each Owner upon, over and across each Lot for reasonable ingress, egress, installation, replacement, maintenance and repair of pedestrian, equestrian or recreational, non-motorized trails. The general location of the Common Trails is shown on the Plat. However, the specific location of the Common Trails is subject to modification as required for ease of construction and reduced impact. If and when the Common Trails are constructed, a Trail Easement Plat shall be filed by the Homeowners Association. Thereafter, the Common Trail Easements shall be only as shown on the Trail Easement Plat. Each Owner shall have the nonexclusive right to use the Common Trails in common with all other Owners as required for the intended purposes. The right to use the Common Trails for such purposes shall, subject to the Homeowners Association Rules, extend to each Owner, Occupant and the agents, servants, tenants, family members and invitees of each Owner. This right to use the Common Trails shall be appurtenant to each Lot, subject to and governed by the provisions of this Declaration, the Articles, Bylaws and Homeowners Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein. This easement shall also run in favor of the owners of Lot 1-A as shown on the Plat as defined in paragraph 1.X of this Declaration. The easement shall also run in favor of the owners of lots within the adjacent Luz del Sol subdivision subject to any reasonable requirements and access/maintenance fees imposed by the Board. The Board may grant a similar easement for use of the Common Trails by other adjacent or neighboring developments or property owners as it sees fit.

C. Common Area Easements. There is hereby created an affirmative, exclusive easement in favor of Declarant, the Homeowners Association, their employees and agents and each Owner, Occupant and the agents, servants, tenants, family members and invitees of each Owner upon, over and across each Lot for the purposes of park/community recreation and amenities and maintenance uses. However, such easement is limited to areas noted as Common Area Easements, Common Park Areas or Maintenance Areas on the Plat or on separate recorded easements. The Homeowners Association shall carry reasonable and adequate comprehensive liability insurance coverage for all uses made of such easements naming the affected Lot Owner(s) as additional insureds and shall indemnify, hold harmless and defend any Owner against any claim or suit arising from the common use of the Common Area Easements. Use of the Common Area Easements shall be pursuant to the Homeowners Association Rules.

D. Wall or Fence Easements. There is hereby created an affirmative easement in favor of Declarant and the Homeowners Association, their employees and agents, upon, over and across each Lot affected for reasonable ingress, egress, installation, replacement, maintenance and repair of a perimeter wall, fence or other boundary control for the Property.

E. Declarant Easements. There is hereby created an affirmative, nonexclusive easement in favor of Declarant (and the employees, agents, invitees, licensees, contractors and guests of Declarant) upon, over and across the Property for all purposes reasonably related to Declarant's rights and obligations hereunder and to the development, management, administration, operation, maintenance, advertisement and sale or rental of the portions of the Property.

F. Homeowners Association Easement. There is hereby created an affirmative, nonexclusive easement in favor of the Homeowners Association for ingress and egress over all the Property for the purpose of enabling the Homeowners Association and its contractors,

employees, representatives and agents to implement the provisions of this Declaration.

G. Re-vegetation Easements. There are hereby created affirmative, nonexclusive easements in favor of Declarant and the Homeowners Association and their contractors, agents and employees:

- i. To go upon any Lot which contains areas that prior to the date hereof were parts of roadways that have been abandoned or are otherwise not in use, or that were cleared or partially cleared of vegetation in the past for some other reason, to grade, shape, level or fill the areas or portions thereof to change them to a more natural appearing terrain, and to remove such earth or bring in such fill as Declarant or the Homeowners Association deems appropriate to accomplish the work; and
- ii. To go upon any Lot to plant or seed, and to provide temporary maintenance for, indigenous vegetation and grasses of Declarant's choice (so long as Declarant owns any property subject to this Declaration and thereafter, of the Board's choice) on any areas of the Property in order to:
  - a. Replant areas that prior to the date hereof were parts of roadways that have been abandoned or are otherwise not in use, or that were cleared or partially cleared of vegetation in the past or by the Owner thereof for some other reason, or
  - b. Maintain the aesthetic integrity of the Property and to provide temporary water to such vegetation at the expense of the party causing the re-vegetation to be performed or at the expense of the Owner, as an Individual Charge, if the area was cleared by the Owner or Occupant of the Owner's Lot, or the invitee, guest, contractor, or other authorized visitor of either in violation of this Declaration or the Design Guidelines. However, nothing in this Section shall be construed or deemed to create any obligation or responsibility for Declarant or the Homeowners Association to do replanting, reseeding, or maintenance or to provide water, in any areas of the Property.

### **3. ASSESSMENTS.**

A. Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot and/or title thereto, is deemed to covenant and agree to pay to the Homeowners Association all Assessments and Individual Charges imposed herein or otherwise pursuant to this Declaration. All such Assessments and Individual Charges will be established and collected from time to time as provided in this Declaration. The Assessments and Individual Charges, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien (the Assessment Lien) upon any Lot (or combined Lots) against which the Assessments and Individual Charges are made. Each Assessment and Individual Charge, together with such interest and other costs, shall also be the personal obligation of the Owner to whom the Assessment or Individual Charge relates. The personal obligation for delinquent payments shall not pass to an Owner's successor in title unless expressly assumed by him.



B. Purpose of Assessments. The Assessments levied by the Homeowners Association pursuant to this Declaration shall be used to promote the health, safety and welfare of the Owners, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Homeowners Association with respect to the Property and all other Common Expenses for the Property, and otherwise to further the interests of the Homeowners Association with respect to the Property. Where a Lot has separate security, gas, electrical, sewer or other similar services, all costs related to them shall be the personal obligation of the Owner and shall not be a part of the Common Expenses to be paid through Regular Assessments.

C. Regular Assessments.

- i. Levy; Obligation to Pay. Assessments payable under this Declaration shall commence at the beginning of the first regular interval established by the Board that occurs no less than sixty (60) days after the first sale of a Lot by Declarant to an Owner. Except as otherwise specifically provided herein, each Owner shall pay as his Regular Assessment for his Lot the Owner's Proportionate Share of the Common Expenses. (Each Owner's Proportionate Share of the Common Expenses means that fraction wherein the numerator is one and the denominator is the total number of Lots subject to this Declaration at the time of the calculation.) Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Board for the purpose of paying and satisfying Common Expenses, other than expenses related to the purposes of Road and Trail Improvement Assessments. The Regular Assessment is currently set at \$1,000.00 per year for each Lot, with the next payment due at that amount on January 1, 2024.
- ii. Annual Calculation. Prior to the beginning of each fiscal year of the Homeowners Association, and within thirty (30) calendar days after adoption of the proposed budget, the Board shall make available for review by each Owner of a Lot of the Property a summary of the budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for the fiscal year. The Board shall at that time determine the amount of the Regular Assessment to be paid by each Owner for his Lot and notify the Owner thereof. The Regular Assessment to be paid by each Owner for each Lot subject to Assessments hereunder shall equal the Owner's Proportionate Share of the estimated total Common Expenses. Each Owner shall thereafter pay his Regular Assessment to the Homeowners Association at such intervals as may be fixed by the Board. If an Assessment is paid in two annual installments, the first half of assessment is due on January 1, and the second half shall be due on July 1<sup>st</sup>, however, the full amount of the assessment shall be a lien from the time the first installment becomes due. Each such installment shall be due and payable on the date set forth in the written notice sent to Owners, such notice being sent at least forty-five (45) days prior to the date the first installment is due.
- iii. Adjustment During a Year. Regular Assessments payable hereunder may be adjusted during any fiscal year as follows:

- a. If the Board determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Homeowners Association's budget for the Property for that year, the President of the Board shall then immediately determine the approximate amount of such inadequacy and, with the consent of the Board, issue to Owners a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid for each Lot for the balance of the year, and the date or dates when due.
- b. If the estimated total Regular Assessments for any current year prove to be excessive in light of the actual Common Expenses, the Homeowners Association may, at the discretion of the Board, retain the excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for such period as it deems appropriate. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.
- c. Individual Charges. Individual Charges shall be levied by the Homeowners Association against an Owner and his Lot pursuant to this Declaration for:
  - i) Costs incurred in bringing an Owner or his Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, Homeowners Association Rules or Design Guidelines;
  - ii) Any other charge designated as an Individual Charge in this Declaration, the Articles, Bylaws or Homeowners Association Rules;
  - iii) Fines levied or fixed by the Design Review Committee; and
  - iv) Attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, an Individual Charge in accordance with this Declaration, the Articles, Bylaws, Homeowners Association Rules or Design Guidelines.
  - v) In the event the Homeowners Association undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be an Individual Charge.
- d. Road and Trail Improvement Assessments. In addition to the Regular Assessments, the Board may levy Road and Trail Improvement Assessments pursuant to this Declaration against Lots and Owners for the purpose of defraying, in whole or in part, the cost of any maintenance, repair, reconstruction, replacement, surfacing (including hard surfacing) or

resurfacing, upgrade or betterment of the Common Roads and Trails. Any reserves collected by the Homeowners Association hereunder for the future improvement of the Common Roads and Trails, or any portion thereof, shall not be included in determining the foregoing limitation on any annual Road and Trail Improvement Assessment. Any assessment imposed pursuant to this section may be used for purposes of offsetting the Homeowners Association's, or Owners', obligations under the Road Maintenance Agreement or the Gate Agreement.

- e. Uniform Assessment. Except as provided herein, Regular Assessments and Road and Trail Improvement Assessments shall be uniform for all Lots.
- f. Exempt Property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a governmental entity or public authority or utility (whether public or private) shall be exempt from the Assessments and charges created herein for so long as they continue to be in such ownership.
- g. Time and Manner of Payment; Late Charges and Interest. Assessments and Individual Charges hereunder shall be due and payable by Owners in such manner and at such times as the Board shall designate. If not paid when due, each such Assessment and Individual Charge shall have added to it a late charge equal to 10% of the amount of Assessment or Individual Charge, or such other charge as the Board may specify from time to time. Thereafter, any such delinquent Assessment or Individual Charge and the applicable late charge shall bear interest from the tenth day after the due date at the rate of two percent (2%) per month, or such other lower rate as fixed by statute, until paid. The Board may, in its discretion, waive the late charge and/or interest in any particular instance. A delinquent Owner shall also be liable for attorneys' fees and other related costs incurred by the Homeowners Association as a result of his delinquency and, if any suit is brought to collect and/or foreclose the Assessment Lien for any such Assessment or Individual Charge, there shall be added to the amount thereof the costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.
- h. No Offsets. All Assessments and Individual Charges provided for herein shall be payable in the amount specified in the Assessment or by notice and no offsets against the specified amount shall be permitted for any reason, including, but not limited to, a claim that the Homeowners Association, the Board, the President or Declarant is not properly exercising its duties and powers as provided in this Declaration or that Assessments for any period exceed Common Expenses
- i. Reserves. Any reserves included in the Common Expenses, which are collected as part of the Regular Assessments provided for herein, shall be maintained by the Board in an account maintained for the purpose. The responsibility of the Board shall be only to provide for such reserves, if any, as the Board in good faith deems reasonable for the Property, and neither Declarant nor the Board (nor any member thereof) shall have any liability to any Owner or to the Homeowners Association if reserves for the Property prove to be inadequate after the Board satisfied the

obligations provided for in this sentence. Any reserves collected as part of a Road and Trail Assessment shall be maintained in a separate account subject to the same conditions.

- J. Certificate of Payment. Any person acquiring an interest in any Lot shall be entitled to a certificate from the Board setting forth the amount of due but unpaid Assessments and Individual Charges relating to the Lot, if any, and such a person shall not be liable under this Declaration for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments and Individual Charges which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to such previously imposed Assessments and Individual Charges.
- k. Enforcement of Lien. An Assessment Lien may be foreclosed by the Homeowners Association in the manner that mechanics' and materialmen's liens are foreclosed. Nothing herein shall be construed as requiring that the Homeowners Association take any action required hereunder in any particular instance, and the failure of the Homeowners Association to take such action at any time shall not constitute a waiver of the right to take the same or similar action at a later time or in a different instance.
- l. Pledge of Assessment Rights as Security. The Homeowners Association shall have the power to pledge its assessment powers and rights provided for in this Declaration as security; provided, however, that any such pledge shall require the prior affirmative vote or written assent of a majority of Owners.
- m. Exemption of Unsold Lots. Notwithstanding anything else herein to the contrary, no Assessments or Individual Charges shall be levied hereunder upon, or payable with respect to unsold lots prior to January 1, 2024.
- n. Exemption of Compounds. Assessments shall be levied on Compound Lots as if they were a single Lot beginning January 1, 2024.

#### **4. INSURANCE**

A. Authority to Purchase. The Board shall have the power and authority to purchase and maintain such public liability, casualty, officers' and directors' liability and indemnity, workmen's compensation and other insurance, and such fidelity bonds as the Board shall deem necessary or appropriate from time to time with respect to the Property, or as otherwise required herein. Policies shall be on such terms and conditions as the Board shall direct. All such policies and claims thereunder shall be administered by the Board. To the extent reasonably available, the Homeowners Association shall maintain insurance in commercially reasonable limits against liability incurred as a result of death or injury to Persons or damage to property on the Common Roads and Trails and Common Area Easements. The Homeowners Association shall make information available to Owners regarding the coverage of the Homeowners Association's policies in order to permit Owners to determine which particular items are included within the coverage so that Owners may insure themselves as they see fit if certain items are not insured by the Homeowners Association.

B. Owner's Responsibility. It shall be each Owner's responsibility to provide any insurance on his own Lot, additions and improvements thereto, furnishings and personal property therein, his personal liability and such other insurance as the Owner desires.

C. Non-Liability of Homeowners Association, Board and Officers. The Homeowners Association, Board members and officers of the Homeowners Association and Declarant shall not be liable to any Owner, Mortgagee or other person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner, Mortgagee and other person to ascertain the coverage and protection afforded by the Homeowners Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner, Mortgagee or other person may desire.

D. Premiums. Premiums for insurance policies purchased by the Board for the Property shall be paid by the Homeowners Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the Common Areas, by an Owner, or an Occupant of the Owner's Lot, or the agent, employee or invitee of either, shall be assessed against the Owner as an Individual Charge.

E. Insurance Claims. The Homeowners Association, through such Persons as the Board may delegate to represent the Owners in connection therewith, is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Homeowners Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing, except as to any additional insureds under such policy. The Board, at its discretion, may appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Homeowners Association.

F. Benefit. Except as otherwise provided herein, all insurance policies purchased by the Homeowners Association with respect to the Property shall be for the benefit of, and any proceeds of insurance received by the Homeowners Association shall be held or disposed of for, the Homeowners Association and the Owners, or other interested Persons, as their interests may appear.

## **5. MEMBERSHIP IN HOMEOWNERS ASSOCIATION**

A. Every owner of any Lot within the Subdivision shall be a member of the Cliffs at Padre Springs Homeowner's Association II, Inc., 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.

B. 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 Homeowners Association. In the event of a conflict between

the community documents, this Declaration shall control.

C. 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, including Compound Lots.

D. Control by Declarant. Notwithstanding anything to the contrary in this Declaration or Articles of Incorporation or Bylaws, Declarant shall have control of the Homeowner Association, and may appoint and remove the officers and members of the Board, for a period of time which shall terminate no later than the earlier of:

- i. Sixty days after conveyance of seventy-five percent of the Lots that are part of the development and any additional lots that may be added to the development to lot owners other than Declarant;
- ii. Two years after the Declarant has ceased to offer Lots for sale in the ordinary course of business;
- iii. The day that the Declarant or the Declarant's designee, after giving written notice to the Homeowners Association, records an instrument voluntarily terminating all rights to declarant control.

E. Board Membership.

- i. Not later than sixty (60) days, after conveyance of twenty-five percent (25%) of the Lots in the Subdivision to Lot Owners other than the Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board shall be elected by the Lot Owners.
- ii. Not later than sixty (60) days after conveyance of fifty (50%) percent of the Lots in the Subdivision to Lot Owners other than the Declarant, no less than thirty-three percent (33%) of the members of the Board shall be elected by Lot Owners other than the Declarant.
- iii. Not later than the termination of the period of Declarant Control, the Lot Owners shall elect a Board of at least three (3) members, at least a majority of whom shall be Lot Owners. The Board shall elect the officers. The Board members and officers shall take office upon election.

F. Amendments. No amendment to the Declaration that would limit, prohibit or eliminate the exercise of a development right shall be effective without the concurrence of the Declarant.

G. Declarant may not use cumulative or class voting for the purpose of evading any limitation imposed on Declarant by New Mexico law, nor shall Lots constitute a class because they are owned by the Declarant.

## 6. MAINTENANCE OBLIGATIONS AND RIGHTS.

A. Owner's Responsibility. Each Owner shall furnish and be responsible for, at his own expense, all of the lot maintenance to the Owner's property boundaries, including weeding along common roadways, cleaning and maintaining the drainage ditches on Owners lot, and repairs and replacements within his own Lot.

B. Homeowners Association's Responsibility. Maintenance, repair, reconstruction or replacement of the Common Roads and Trails and Common Area Easements shall be the responsibility of the Homeowners Association as part of the Common Expenses, subject to the Bylaws and Homeowners Association Rules. If, due to the act or neglect of an Owner or Occupant of an Owner's Lot, or the invitee, guest or other authorized visitor of either, damage is caused to the Common Roads and Trails or Lots owned by others, or maintenance, repairs or replacement shall be required which would otherwise be a Common Expense, then the Owner shall pay for the damage and for such maintenance, repairs and replacements as may be determined necessary or appropriate by the Board. This obligation shall be an Individual Charge secured by Assessment Lien.

C. Assumption of Road Maintenance Agreement and Gate Agreement. The Homeowners Association has assumed all obligations of Declarant or Robert and Denice Sherwin or other owner of the Property under the Road Maintenance Agreement and Gate Agreement, as amended, and shall be considered the successor of the Sherwins under such agreements.

D. Right of Access. An authorized representative of the Homeowners Association, and all contractors, repairmen or other agents employed or engaged by the Homeowners Association, shall be entitled to reasonable access to each of the Lots as may be required in connection with maintenance, repairs or replacements of or to the Common Roads and Trails, and to perform any of the Homeowners Association's duties or responsibilities hereunder, including, but not limited to, the administration and enforcement of the Design Guidelines.

E. Trash and Garbage Removal. It shall be the responsibility of each Owner to contract for and utilize such trash, garbage and recycling removal services as may be necessary to keep the Owner's Lot clear of trash, garbage and debris and otherwise in compliance with applicable requirements of this Declaration. If any Owner fails to cause the proper removal of such trash and garbage, the Homeowners Association may cause the trash and garbage to be removed and bill the cost of enforcement as an Individual Charge against the Owner. Solid waste must be removed by licensed haulers who shall carry it to an approved landfill site certified by the New Mexico Environment Department. The Homeowners' Association may, at its option, contract for any such trash, garbage or recycling removal services as it deems necessary and efficient, and such costs will be Common Expenses.

## 7. ARCHITECTURAL AND LANDSCAPE CONTROL.

A. Appointment of Design Review Committee. The Homeowners Association shall have a Design Review Committee consisting of an odd number of no less than three (3) members. Declarant initially shall appoint the members of the Design Review Committee. Declarant shall retain the right to appoint, augment or replace all members of the Design Review Committee until such time as Declarant has sold sixty percent (60%) of the Lots. Thereafter, members of the Design Review Committee shall be appointed by the Board. Any member appointed by the Board shall be an Owner, Occupant, Mortgagee or other holder of an interest in a Lot. Design Review Committee members may only be removed by a vote of two-thirds (2/3) of the Members.

B. Rules; Procedures; Design Guidelines. The Design Review Committee shall establish reasonable procedural rules, regulations and Design Guidelines consisting of such restrictions, architectural standards and design standards which the Design Review Committee may deem necessary or advisable, and may from time to time in its sole discretion, amend, repeal or augment such Design Guidelines. The Design Guidelines are incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all Owners, Members and other persons as if expressly set forth herein. A copy of the current Design Guidelines shall at all times be a part of the Homeowners Association's records. The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

- i. Requirements for Build Green New Mexico Bronze level and energy efficient construction and design may include compliance with third-party certification processes.
- ii. Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required pursuant to the Design Guidelines.
- iii. Procedures for assuring conformity of completed improvements to drawings and specifications approved by the Design Review Committee; provided, however, as to purchasers and encumbrancers in good faith and for value, unless notice of noncompetition or nonconformance identifying the violating Lot and specifying the reason for the notice, executed by the Design Review Committee, is recorded with the County Clerk of Santa Fe County, New Mexico, and given to the Owner within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within the one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the Design Review Committee and in compliance with the architectural standards of the Design Guidelines and this Declaration.
- iv. Such other limitations and restrictions as the Design Review Committee, in its reasonable discretion, shall adopt, including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, but



not limited to, the nature, kind, shape, height, massing, materials, exterior color, surface texture, and location of any such improvement, exterior artwork and works of art visible from other Lots and Common Roads and Trails including, but not limited to, sculpture and statues.

- v. Subjective determinations and/or criteria bearing on compatibility with northern New Mexico architecture, style, design and appearance generally, other residences, the terrain within the property or visible from it and such other matters as the design review committee may conclude, in good faith but in the exercise of the committee's abundant discretion, are relevant or appropriate to a harmonious appearance and lifestyle within the property.

C. General Provisions.

- i. The Design Review Committee may assess reasonable fees to offset costs in connection with its review of drawings and specifications for the Property.
- ii. The Design Review Committee may delegate its responsibilities for review of drawings and specifications for any Lot, except final review and approval as may be required by the Design Guidelines, to one or more of its members or professional consultants retained by the Design Review Committee. Upon any such delegation, the interim approval or disapproval of drawings and specifications by the member or consultants shall be equivalent to interim approval or disapproval by the entire Design Review Committee.
- iii. The address of the Design Review Committee shall be the address established for giving notice to the Homeowners Association, unless otherwise specified in the Design Guidelines or by written notice to Owners. The Design Review Committee's address shall be the place for the submittal of drawings and specifications and the place where the current Design Guidelines shall be kept.
- iv. The establishment of the Design Review Committee provided for in this Declaration and the procedures set forth herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Declaration, the Bylaws or Homeowners Association Rules.
- v. The Design Review Committee shall approve or disapprove any drawings and specifications submitted to it in accordance with the Design Guidelines within such period as may be specified in the Design Guidelines.

D. Approval and Conformity of Drawings and Specifications. No residence, accessory structure, building, fence, wall or other structure or improvement of whatever type shall be commenced, erected or maintained upon the Property, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot, landscaping, grading or drainage thereof, including, but not limited to, the painting (other than

painting with the same color and type of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with drawings and specifications therefor which have been submitted to and approved by the Design Review Committee, in accordance with the Design Guidelines, as to harmony of external design and location in relation to surrounding structures and topography.

E. Non-Liability for Approval of Drawings and Specifications. Drawings and specifications shall be approved by the Design Review Committee as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such drawings and specifications neither the Design Review Committee, any member thereof, the Homeowners Association, any member thereof, any officer or director of the Homeowners Association, nor Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such drawings and specifications. Neither the Design Review Committee, any member thereof: the Homeowners Association, any member, any officer or director of the Homeowners Association, nor Declarant shall be liable to any Owner or other person for any damage, loss or prejudice suffered or claimed on account of:

- i. the approval or disapproval of any drawings and specifications, whether or not defective,
- ii. the construction or performance of any work, whether or not pursuant to approved drawings and specifications,
- iii. the development, or manner of development of any property within the Property,
- iv. the change in the size, configuration or location of any Building Envelope or the changing of the natural grade of any Lot or
- v. the execution and filing of an estoppel certificate pursuant to the Design Guidelines (whether or not the facts therein are correct) if the action, with the actual knowledge possessed by him, was taken in good faith.
- vi. approval of drawings and specifications by the Design Review Committee, or the approval of any change in the size, configuration or location of any Building Envelope, or a change in the natural grade of any Lot is not and shall not be deemed to bet a representation or warranty that the drawings specifications or changes comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

F. Inspection and Recording of Approval. Any member or authorized consultant of the Design Review Committee, or any authorized officer, director, employee or agent of the Homeowners Association may at any reasonable time enter upon any Lot, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on the Lot, or any changes in the grade thereof, to ascertain that such improvements or changes have been or are being built or changed in compliance with the Design Guidelines and this Declaration. The

Design Review Committee shall cause such an inspection to be undertaken within fifteen (15) days of a request from any Owner as to his Lot. If such an inspection reveals that the improvements or changes located on the Lot have been completed in compliance with the approved plans and specifications, and the Design Guidelines, the Design Review Committee shall provide the Owner a notice of approval in recordable form which, when recorded, shall be conclusive evidence of such compliance as to the improvements or changes described in the recorded notice, but as to such improvements or changes only.

G. **Additional Powers of the Design Review Committee.** The Design Review Committee may promulgate as a part of the Design Guidelines such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration. Without limiting the generality of the preceding sentence, the Design Review Committee may fix a reasonable, uniform fine for failure to obtain required approval from the Design Review Committee or failure to comply with the requirements of such approvals. The Design Review Committee may require security deposits to assure compliance with restoration and other requirements as a prerequisite to any further work after a violation.

H. **On-Lot Drainage Retention.** The Owner of the Lot must also include in improvement plans and specifications sufficient on-Lot drainage retention or detention satisfactory to the County and the Design Review Committee. Maintenance and repair of any such on-Lot retention or detention facilities shall be the responsibility of the Lot Owner.

I. **Pesticides/Rodenticides/Herbicides.** No chemical pesticides, rodenticides or herbicides shall be used. Only natural, organic solutions shall be permitted.

J. **Landscape Watering.** Only harvested (roof catchment cisterns), grey water or treated wastewater may be used for landscape watering except for a period not to exceed one (1) season for establishment of newly planted plants. No potable water shall be used for landscape watering. Thus, any landscaping plan submitted that includes plants that will require any irrigation should include adequate provisions for water supplies for irrigation. This requirement may exceed any water catchment systems required by the County. If no harvested water, grey water or treated wastewater is available through no fault of the Owner's even though such systems have been installed, the Owner may use potable water in sufficient quantities to keep landscaping alive until the systems can be repaired.

## **8. CONSTRUCTION PROCESS.**

Procedures and policies for the construction process for all structures proposed to be constructed within the Property are set forth in the Design Guidelines.

## **9. USE AND OCCUPANCY RESTRICTIONS.**

A. **Establishment and Modification.** The Board may restrict and regulate the use and occupancy of the Property and Lots by reasonable rules and regulations which shall be incorporated into the Homeowners Association Rules. The Board may from time to time in its sole discretion amend, repeal or augment the Homeowners Association Rules. The Homeowners Association Rules are incorporated herein by reference and shall be deemed to be a part of this Declaration and shall be

binding on all Owners, Members and other persons as if expressly set forth herein. A copy of the current Homeowners Association Rules shall at all times be a part of the Homeowners Association's records and shall be made available for Owner review upon request.

B. Enforcement. The Homeowners Association or its authorized agents may enter any Lot in which a violation of the restrictions exist or may exist and may correct the violation at the expense of the Owner. The Homeowner's Association's expenses, and such fines as may be imposed pursuant to the Declaration, Bylaws, Homeowners Association Rules or Design Guidelines, shall be an Individual Charge secured by a lien upon a Lot enforceable in accordance with this Declaration, and all other rights and remedies available at law or equity shall be available in the event of any breach by an Owner, Member Occupant or other person of any provision of this Declaration.

## **10. ANIMALS**

Current allowances and restrictions for the keeping of Animals on Lots are set forth in the Homeowners Association Rules.

## **11. RIGHTS OF MORTGAGEES**

A. General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, Bylaws, Homeowners Association Rules or Design Guidelines, the following provisions shall apply to and benefit each holder of a First Mortgage (the first and most senior of all Mortgages on the property) and, as indicated, any holder of any Mortgage upon a Lot. A Mortgage is any recorded, filed or perfected instrument securing an interest in a Lot as defined by New Mexico law, including a deed of trust, but not to include an instrument evidencing a security interest under the Uniform Commercial Code.

B. Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any Assessment or Individual Charge shall be subordinate to the lien of a prior recorded First Mortgage on the Lot, acquired in good faith and for value, except to the extent the lien secures the amount of any unpaid Assessment or Individual Charge (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto) which accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first. If any lien for unpaid Assessments or Individual Charges that become payable after recordation of the First Mortgage and prior to the date the First Mortgagee comes into possession of or acquires title to the Lot is not extinguished, to the extent it secures the unpaid Assessments or Individual Charges, by the process by which the First Mortgagee acquired title to the Lot, neither the First Mortgagee nor a third party purchaser shall be liable for the unpaid Assessments or Individual Charges, and, upon written request to the Homeowners Association by the First Mortgagee or purchaser, the lien shall be released in writing by the Homeowners Association to the extent it secures the unpaid Assessments or Individual Charges. Nevertheless, in the event the Owner against whom the original Assessment or Individual Charge was made is the purchaser or redeemer, the lien shall continue in effect and may be enforced by the Homeowners Association, or by the Board, for the respective Lots. Further, any such unpaid Assessment or Individual Charge that was due prior to the final conclusion of any such foreclosure or equivalent proceedings shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Homeowners

Association, and the Board may use reasonable efforts to collect it from the Owner even after he is no longer the Owner. Any unpaid Assessments and Individual Charges which are extinguished pursuant to this section may also be reallocated by the Board among all Owners as part of the Common Expenses. Except as above provided (and except for liens for taxes and other public charges which by applicable law are made prior and superior), the lien provided for herein shall be prior and superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed on any Lot.

C. No Personal Liability. A First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Homeowners Association hereunder, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by prohibitory injunction or other equitable actions, not requiring the payment of money, except as specifically provided in this section.

D. Enforcement After Foreclosure Sale. An action to abate the breach of any of the covenants, conditions, restrictions, and reservations in this Declaration may be brought against any Person who acquires title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to any such purchaser, even though the breach existed prior to the time the purchaser acquired an interest in the Lot.

E. Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption), the First Mortgagee, or a receiver appointed in any such action, may, but shall not be required to exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member of the Homeowners Association in the place and stead of the defaulting Owner if the First Mortgagee or receiver gives the Homeowners Association written notice of its claimed rights and such evidence as the Board may reasonably request demonstrating the existence of the claimed rights.

F. Subject to Declaration. At such time as a Mortgagee comes into possession of or becomes record Owner of a Lot, whichever first occurs, the Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay (and be personally liable for) all Assessments and charges accruing thereafter, in the same manner as any other Owner.

## **12. EXEMPTION OF DECLARANT FROM RESTRICTIONS.**

Notwithstanding anything in this Declaration to the contrary, none of the covenants, conditions, restrictions, easements or other provisions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its members, employees, agents and contractors, or parties designated by it in connection with the administration, management, construction, use, completion, sale or leasing of the Lots or residences constructed by Declarant, its members, employees, agents and contractors, or parties designated by it, including the

placement of any mobile or manufactured sales office, or residential units. This exemption shall apply to all existing structures on Lot 10 regardless of the record ownership..

### **13. REMEDIES**

A. General Remedies. In the event of any default or violation by any Owner, Occupant or other person under the provisions of this Declaration, the Articles, Bylaws, Homeowners Association Rules or Design Guidelines, the Homeowners Association, or its successors or assigns, or its agents, and Declarant shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, Bylaws, Homeowners Association Rules or Design Guidelines, or which may be available at law or equity, and may prosecute any action or other proceedings against the defaulting Owner, Occupant or other person for an injunction, whether affirmative or negative, or for enforcement or foreclosure of the lien herein provided in the manner provided under the laws of the State of New Mexico, or for damages or specific performance, or for judgment for payment of money and collection thereof, all without notice and without regard to the value of the Lot or the solvency of the Owner. The proceeds of any foreclosure sale shall first be paid to discharge court costs, other litigation costs, including, but not limited to, reasonable attorneys' fees, expert witness fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid Assessments and Individual Charges hereunder and any liens shall be paid to the Owner.

B. Removal of Animals. In addition to, and not in lieu of, any other rights or remedies that may be provided for in this Declaration, the Articles, Bylaws, Homeowners Association Rules or Design Guidelines, or that may be available at law or equity, Declarant, so long as Declarant owns any property subject to this Declaration, or the Board may require or cause the removal of all or animals from a Lot upon the violation of the terms and provisions of this Declaration by an Owner, Occupant or other Person.

C. Expenses of Enforcement. All expenses of the Homeowners Association or Declarant, or other Person granted rights of enforcement hereunder, in connection with any action necessary to bring any Lot Owner into compliance with the Declaration, or the Articles, Bylaws, Homeowners Association Rules or Design Guidelines or other proceeding described or permitted by this section, including court costs, reasonable attorneys' fees, expert witness fees, costs and expenses incurred in connection with the removal of Permitted Animals, and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid, shall be charged to and assessed against the defaulting Owner and shall be an Individual Charge against the Owner and his Lot and the Homeowners Association shall have a lien as provided herein. Therefore In the event of any such default by an Owner or other Person, the Homeowners Association and Declarant, and the manager or managing agent of the Homeowners Association, if so authorized by the Board, shall have the authority to correct the default and to do whatever may be necessary for such purposes, and all expenses in connection therewith shall be charged to and assessed against the defaulting Owner and his Lot as an Individual Charge, which shall constitute a lien against the defaulting Owner's Lot. Any and all such rights and remedies may

be exercised at any time and from time to time, cumulatively or otherwise, by the Homeowners Association or Declarant.

D. Legal Action. In addition to any other remedies available, if any Owner (either by his conduct or by the conduct of any Occupant of his Lot or family member, guest, invitee or agent) violates any of the provisions of this Declaration, or the Articles, Bylaws, Homeowners Association Rules or Design Guidelines, as then in effect, then the Homeowners Association, Declarant and any affected or aggrieved Owner, shall each have the power to file an action in court against the defaulting Owner for a judgment or injunction against the Owner, or such other Person, requiring the defaulting Owner or other Person to comply with this Declaration, or the Articles, Bylaws, Homeowners Association Rules or Design Guidelines, and granting other appropriate relief, including money damages and attorney fees and such other relief shall be available to the prevailing party pursuant to this Declaration. If any Owner files an action in court challenging any provision of this Declaration, the Bylaws, Association Rules or Design Guidelines or against the Association or the Declarant related to this Declaration, the Articles, Bylaws, Homeowners Associations Rules, Design Guidelines or other acts or claimed failures of to act of the Association or Declarant related in any way to the Property or the conduct of the Homeowners Association or Declarant in carrying out their roles related to the Property and if the Association or Declarant is the prevailing party, the Association and/or the Declarant shall be entitled to recover from the plaintiff their reasonable attorneys fees and costs incurred in defending against such action.

E. Effect on Mortgage. Notwithstanding anything to the contrary herein, any breach of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of reentry by reason thereof shall not defeat or adversely affect the lien of any Mortgage upon any Lot, but, except as herein specifically provided, each and all of the covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by sale, foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

F. Limitation on Declarant's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed, and each Owner, by accepting title to a Lot and becoming an Owner, and each other person acquiring an interest in the Property including, but not limited to, Mortgagees, by acquiring the interest in the Property, acknowledges and agrees that Declarant (including, but not limited to, any assignee of the interest of Declarant hereunder) shall not have any personal liability to the Homeowners Association, or any Owner or other person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) this Declaration, the Design Review Committee or the Homeowners Association except to the extent of its interest in the Property; and, in the event of a judgment no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

#### **14. AMENDMENT.**

A. Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" or the like, which sets forth the entire amendment. Except as otherwise specifically provided in this Declaration, any proposed

amendment must be approved by a majority of the Board prior to adoption by a majority of Members. Amendments may be adopted only with the affirmative vote or written consent of a Majority of Owners (other than Declarant but not excluding any members or agents of the Declarant if they are record owners, directly or indirectly, of Lots) who are not in default of their financial or other obligations to the Homeowners Association and are, therefore, eligible to vote at the time the amendment is proposed, and with the affirmative vote or written consent of Declarant (so long as Declarant owns any Lot subject to this Declaration). In all events, the amendment when adopted shall bear the signature of the President and shall be attested by the secretary of the Homeowners Association, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Homeowners Association. Amendments once properly adopted shall be effective upon recording in the Office of the County Clerk of Santa Fe County, New Mexico, or at such later date as may be specified in the amendment.

B. Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions, restrictions and easements contained herein which may be affected and any or all clauses of this Declaration or the Plat, unless otherwise specifically provided in the section being amended or the amendment itself.

C. Amendment of Plat. Except as approved by the Declarant and otherwise provided herein, the Plat may not be amended by revised versions or revised portions thereof referred to and described as to effect in an amendment to this Declaration adopted as provided for herein. If approved by Declarant, such an amendment to the Plat shall be effective, once properly adopted, upon recordation in the appropriate governmental office in conjunction with an amendment to this Declaration.

D. Required Approvals. Notwithstanding the provisions of the foregoing subsections of this section:

- i. If this Declaration or any applicable provision of law requires the consent or agreement of all Owners and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall only be effective if signed by all or the specified number of the Owners and/or all lienholders.
- ii. Declarant's Right to Amend. Notwithstanding any other provision of this section, until and through December 31, 2024, for so long as Declarant owns any Lot, Declarant reserves the right to amend this Declaration or the Plat with the approval of the Board, but not the approval of, or execution by, the Owners.

E. Notwithstanding the above, no amendment purporting to amend Section 7(1) shall become effective until signed by all Owners, as that term is defined herein.

## **15. TERM; TERMINATION.**



This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect until November 1, 2107 and thereafter shall continue for consecutive periods of 25 years each, unless there is an affirmative vote, not more than 360 days prior to the date otherwise scheduled for commencement of the next extension of the term of this Declaration, to terminate this Declaration by a vote of a majority of Owners with or without a meeting of the Owners pursuant to the provisions and procedures of the Bylaws. This Declaration may be terminated at any time upon a vote in favor of termination by 90% of all of the Owners except Declarant and by Declarant, so long as the Declarant owns any Lot, at a duly held meeting of the Members for such purpose. Notwithstanding anything to the contrary herein, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period of 180 days prior to the vote to 180 days after the vote, from the holders of recorded First Mortgages on 75% of the Lots upon which there are such recorded First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Clerk of Santa Fe County, New Mexico, and/or other appropriate governmental offices, a Certificate of Termination, duly signed by the President or a vice president of the Homeowners Association and attested by the secretary or an assistant secretary of the Homeowners Association, with their signatures acknowledged. Thereupon, this Declaration, as of the date of recordation of the Certificate of Termination (or such later date as may be specified in the Certificate of Termination), shall have no further force and effect.

## **16. RIGHTS AND OBLIGATIONS.**

A. Each grantee of Declarant, and each Owner, by the acceptance of a deed of conveyance, and each purchaser under any contract for such a deed of conveyance, and each purchaser under any agreement of sale, and each Person acquiring a Membership in the Homeowners Association hereunder, and each person acquiring any other interest in the Property, and the heirs, successors and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any person having at any time any interest or estate in the land, and shall inure to the benefit of any such person in like manner as though the provisions of this Declaration were set forth in every deed of conveyance, purchase contract or instrument evidencing or creating the interest.

B. An assignment by recorded instrument of all of Declarant's rights shall vest in the assignee all of Declarant's rights hereunder (including, but not limited to, all of Declarant's easements, rights of consent or approval and voting rights) on the same terms that they were held by Declarant pursuant hereto. An assignment by recorded instrument of part of Declarant's rights shall vest in the assignee the specific Declarant's right(s) named in the instrument of assignment on the same terms that they were held by Declarant pursuant hereto. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Declarant's rights shall not deprive Declarant of any protection, indemnity or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of the Declarant's rights hereunder.

## **17. GENERAL PROVISIONS.**

A. Notices. Notices to the Homeowners Association provided for in this Declaration,

the Bylaws, or Homeowners Association Rules, shall be in writing and shall be addressed to the Homeowners Association at the address specified in the Bylaws. The Homeowners Association may designate a different address or addresses for notice under this Declaration by giving written notice to all Owners of Lots in the Property. All notices to Owners shall be to the address on file with the Santa Fe County Assessor. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person.

B. Captions; Construction. Captions given to various sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

C. Severability. If any provision of this Declaration, the Articles, Bylaws, Homeowners Association Rules or Design Guidelines, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws, Homeowners Association Rules or Design Guidelines, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Articles, Bylaws, Homeowners Association Rules or Design Guidelines shall be construed as if the invalid part were never included therein.

D. Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration is unlawful, void or voidable for violation of the rule against perpetuities, then the provision shall continue until 21 years after the death of the survivor of the now living heirs of Robert Sherwin or Keith Schauder, M.D.

E. Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot.

F. Power of Attorney. Unless otherwise specifically restricted by the provisions of this Declaration, in any instance in which the Homeowners Association is empowered to take any action or do any act, including, which may at any time be deemed to require the act of an Owner, the Owners and each of them hereby constitute and appoint the Homeowners Association (acting through the Board) as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming an Owner or by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, or a Membership, each Owner shall be deemed and construed to have ratified and expressly granted the above power of attorney.

G. Gender. Masculine, feminine and neuter references herein each shall include the others as the context requires.

H. New Mexico Law. This Declaration, the Articles, Bylaws, Homeowners Association Rules and Design Guidelines shall be subject to, and construed in accordance with, New Mexico law.

I. This Amended and Restated Declaration supersedes and replaces the original Declaration and all prior Amendments thereto.

IN WITNESS WHEREOF, this Amended and Restated Declaration is hereby executed by the Declarant the President and the Secretary of The Cliffs at Padre Springs Homeowners Association, II, Inc., after the affirmative unanimous approval of the Board of Directors and a majority of the eligible Members entitled to vote at a duly noticed meeting.

**DECLARANT:**

**HOMEOWNERS ASSOCIATION**

Padre Springs, LLC

The Cliffs at Padre Springs Homeowners Association II, Inc.

By: Robert C. Sherwin  
Its Managing Member

By: Robert C. Sherwin  
Its President

By: \_\_\_\_\_  
Its Secretary

**ACKNOWLEDGMENT**

STATE OF NEW MEXICO        )  
  ) ss.  
COUNTY OF SANTA FE        )

The foregoing Second Amended and Restated Declaration was acknowledged before me this 30<sup>th</sup> day of January, 2023 by Robert C. Sherwin, in his capacity as Managing Member of Padre Springs, LLC.

Joseph M. Karnes  
Notary Public

My Commission Expires:  
NA

STATE OF NEW MEXICO  
NOTARIAL OFFICER  
JOSEPH M. KARNES  
NEW MEXICO  
STATE BAR # 27080

New Mexico law.

I. This Amended and Restated Declaration supersedes and replaces the original Declaration and all prior Amendments thereto.

IN WITNESS WHEREOF, this Amended and Restated Declaration is hereby executed by the Declarant the President and the Secretary of The Cliffs at Padre Springs Homeowners Association, II, Inc., after the affirmative unanimous approval of the Board of Directors and a majority of the eligible Members entitled to vote at a duly noticed meeting.

**DECLARANT:**

**HOMEOWNERS ASSOCIATION**

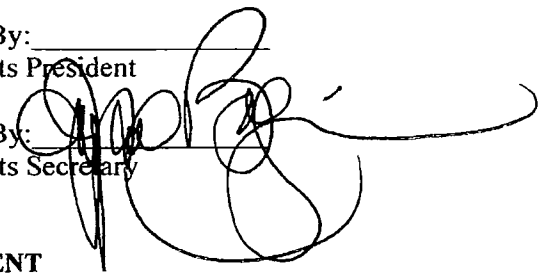
Padre Springs, LLC

The Cliffs at Padre Springs Homeowners Association II, Inc.

By: \_\_\_\_\_  
Its Managing Member

By: \_\_\_\_\_  
Its President

By: \_\_\_\_\_  
Its Secretary



**ACKNOWLEDGMENT**

STATE OF NEW MEXICO            )  
  ) ss.  
COUNTY OF SANTA FE         )

The foregoing Second Amended and Restated Declaration was acknowledged before me this \_\_\_\_ day of January, 2023 by Robert C. Sherwin, in his capacity as Managing Member of Padre Springs, LLC.

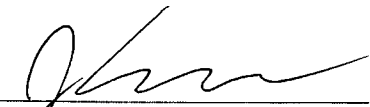
\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SANTA FE )

The foregoing Second Amended and Restated Declaration was acknowledged before me this 30<sup>th</sup> day of January, 2023 by Robert E. Sherwin, in his/her capacity as President of The Cliffs at Padre Springs Homeowners Association, Inc. II.

  
\_\_\_\_\_  
Notary Public

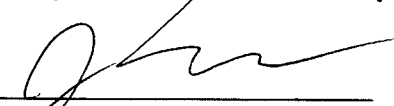
My Commission Expires:  
NA

STATE OF NEW MEXICO  
NOTARIAL OFFICER  
JOSEPH M. KARNES  
NEW MEXICO  
STATE BAR # 27080

**ACKNOWLEDGMENT**

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF SANTA FE )

The foregoing Second Amended and Restated Declaration was acknowledged before me this 30<sup>th</sup> day of January, 2023 by Joyce Boyer, in his/her capacity as Secretary of The Cliffs at Padre Springs Homeowners Association, Inc. II.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
NA

STATE OF NEW MEXICO  
NOTARIAL OFFICER  
JOSEPH M. KARNES  
NEW MEXICO  
STATE BAR # 27080

COUNTY OF SANTA FE } SECOND AMEND DECLAR CO  
STATE OF NEW MEXICO } ss PAGES: 29

I Hereby Certify That This Instrument Was e-Recorded for  
Record On The 2ND Day Of February, A.D., 2023 at 11:08:07 AM  
And Was Duly Recorded as Instrument # 2005913  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Katharine E. Clark  
County Clerk, Santa Fe, NM

Deputy - GLUJAN



**AMENDMENT TO THE SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE CLIFFS AT PADRE SPRINGS**

THIS AMENDMENT TO THE SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made on this 27<sup>th</sup> day of April 2023 by the individuals and entities signing at the end of this document and is effective as of the date of recording of this document in the offices of the County Clerk of Santa Fe County, New Mexico.

**RECITALS**

WHEREAS, as of October 22, 2007, Declarant was the owner of those certain parcels of real property located in Sections 1, 2, 11, 12 and 13 T15N, R11E, NMPM in Santa Fe County, New Mexico, more commonly known as:

Lots 1 through 24 as shown and delineated on that certain plat of survey entitled "SUBDIVISION PLAT THE CLIFFS AT PADRE SPRINGS" filed for record October 22, 2007 in Plat Book 667, Page 21-37 records of Santa Fe County, New Mexico."

WHEREAS, on October 22, 2007, Declarant filed the Declaration of Covenants, Conditions, Restrictions and Easements for The Cliffs at Padre Springs (the "Declaration") with the County Clerk of Santa Fe County, New Mexico, duly recorded as Instrument# 1503736, thereby subjecting the above described property, including all buildings, improvements and other permanent fixtures of whatever kind located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (the "Property"), to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained therein;

WHEREAS, on December 19, 2016, Declarant filed the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for The Cliffs at Padre Springs with the County Clerk of Santa Fe County, New Mexico, duly recorded as Instrument# 1812530 (the "Amended Declaration"), thereby subjecting the Property, including all buildings, improvements and other permanent fixtures of whatever kind located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained therein;

WHEREAS, on January 20, 2023, Declarant filed the Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for The Cliffs at Padre Springs (the "Second Amended Declaration") with the County Clerk of Santa Fe County, New Mexico, duly recorded as Instrument # 2005913, thereby subjecting the Property, including all buildings, improvements and other permanent fixtures of whatever kind located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights contained therein;

WHEREAS, the aforementioned Declaration, Amended Declaration and Second Amended Declaration established a plan of development in accordance with the Plat and the Declarations, as amended, and imposed certain covenants, conditions and restrictions upon the Property ("CC&R's"), with respect to the proper use, occupancy and enjoyment thereof, to be

implemented, managed and enforced by Declarant and/or a Homeowner Association, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and enhancing the quality of life within the Property;

WHEREAS, the Declarant and a majority of eligible Owners desire to amend Second Amended Declaration as follows:

NOW THEREFORE, the Declarant declares, covenants, and agrees as follows:

- 1. The language set forth in Section 1.H of the Second Amended Declaration is deleted and is replaced with the following:

H. "Common Area Easement" means those areas of the Property that are shown as such on the Plat, or are shown as "Common Park", "Common Area" or "Maintenance Area" and are to be used for the purposes of park/community recreation and amenities and maintenance uses.

- 2. The language set forth in Section 1.I.ii of the Second Amended Declaration is deleted and is replaced with the following:

ii. The costs of any maintenance, management, operation, repair and replacement of Common Roads and Trails and improvements within Common Easement Areas within the Property, and also including any such costs incurred pursuant to an agreement with the County related to the Property.

- 3. Section 1.R of the Second Amended Declaration is deleted.

- 4. The language set forth in Section 10 of the Second Amended Declaration is deleted and is replaced with the following:

10. Animals. No animals, including but not limited to livestock, domestic farm animals, fowl or reptiles, may be kept, bred or maintained on any Lot, except a reasonable number of commonly accepted household pets and reasonable number of domestic fowl in accordance with the Homeowners Association Rules, which may in the discretion of the Board entirely limit the ability to keep domestic fowl on certain, generally smaller, Lots. No animals shall be kept, bred or raised within the Property for commercial purposes. In no event shall any animal be allowed to roam free away from its owner's Lot without a leash or other form of proper physical restraint, or conduct itself so as to create an unreasonable auditory or olfactory annoyance. All such domestic pets shall be registered and shall have proof of proper immunization.

- 5. All other provisions of the Second Amended Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment to the Second Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements is hereby executed by the Declarant the President and the Secretary of The Cliffs at Padre Springs Homeowners Association, II, Inc., after the affirmative unanimous approval of the Board of Directors and a majority of the eligible Members entitled to vote at a duly noticed meeting.

**DECLARANT:**

**HOMEOWNERS ASSOCIATION**

Padre Springs, LLC

The Cliffs at Padre Springs Homeowners Association II, Inc.

By: Bob Sherwin  
Its Managing Member

By: Bob Sherwin  
Its President

By: \_\_\_\_\_  
Its Secretary

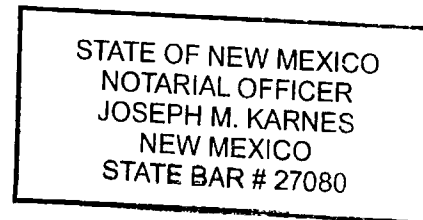
**ACKNOWLEDGMENT**

STATE OF NEW MEXICO        )  
  ) ss.  
COUNTY OF SANTA FE        )

The foregoing Second Amended and Restated Declaration was acknowledged before me this 20<sup>th</sup> day of April, 2023 by Robert C. Sherwin, in his capacity as Managing Member of Padre Springs, LLC.

Joseph M. Karnes  
Notary Public

My Commission Expires:  
1/1/24





**DECLARANT:**

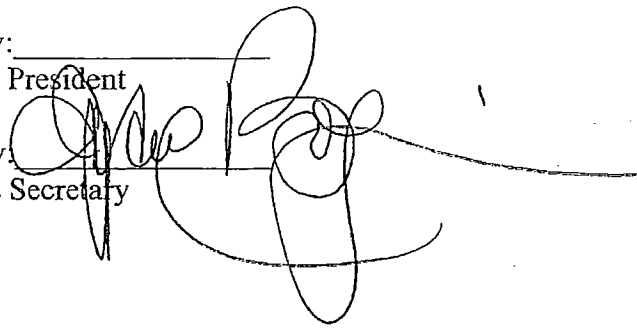
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Its President

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Its Secretary

**ACKNOWLEDGMENT**

STATE OF NEW MEXICO     )  
  ) ss.  
COUNTY OF SANTA FE     )

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\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

