

**AMENDED  
DECLARATION OF PROTECTIVE COVENANTS  
FOR  
HIDDEN LAKE  
COLFAX COUNTY, NEW MEXICO**

**HIDDEN LAKE**, the owner of real property situated in the County of Colfax, and State of New Mexico, known as Hidden Lake and legally described on Exhibit 'A', attached hereto, in order to protect the living environment and preserve the values in Hidden Lake, hereby declares that the land shall be held, leased, sold, and conveyed, subject to the Covenants, Restrictions and Provisions and conveyed shall inure and run with the land and shall apply to and bind the successors and assigns of the present owners. The property composing the above mentioned land is made specifically subject to the following described covenants and the owner of any interest in the property shall have standing to seek enforcement of these covenants.

**I. INTENT:** It is the intent of these covenants to protect and enhance the value, desirability and attractiveness of said property, and to prevent the construction of improper or unsuitable improvements. Restrictions are kept to a minimum while keeping in constant focus the right of property owners to enjoy their property in attractive surroundings free of nuisance, undue noise and danger. Further, it is intended that the natural environment be disturbed as little as possible.

All remaining covenants shall be read in harmony with Covenant I.

**II. DWELLINGS:** Unless as otherwise described herein, all dwellings shall be permanent structures. A permanent structure is one which cannot be removed and shall be built on a permanent foundation and shall contain at a minimum, 1000 square feet, of living space, electrical, plumbing, and heating systems and a two car garage, attached or unattached. No trailers shall be allowed in Hidden Lake, unless said trailers are temporary residences as defined in paragraph VIII of this document. Furthermore, no dwelling that falls within the following definition, no matter the label applied to it commercially, shall be allowed in Hidden Lake: a single-family dwelling which is totally constructed and substantially completed (fitted with electrical, plumbing, and sanitary facilities) off-site and typically transported in one to three pieces by special permit over public highways to an alternate site or resting spot. In constructing residences, vehicles with loads that exceed the standard maximum weight allowance provided by law shall NOT be transported over Hidden Lake roads.

**III. SETBACKS:** No structure may be erected within fifty feet of the right-of-way line of any road bordering Hidden Lake nor within fifty feet of the perimeter of any parcel.

**IV. TRASH AND RUBBISH:** The HLPOA shall have the right to require each owner to haul his/ her own garbage and/or trash. No garbage or trash shall be placed or kept on any Lot except in covered containers designed to exclude animal intrusion. In no event shall such containers be maintained so as to be visible from neighboring property. All rubbish, trash, and garbage shall be removed from Lots in a timely manner and shall not be allowed to accumulate thereon. Construction waste shall be deposited in a dumpster designated for construction use during the construction period and shall be removed when the construction is over. No incinerator, other than an external wood-fired boiler, shall be kept or maintained on any Lot. No garbage, trash, or debris shall be permitted to be buried on any Lot at any time nor shall the burning thereof be permitted, except as provided by the HLPOA. All burning must be approved by the Moreno Valley Fire Department and a copy of the permit provided to the caretaker.

**V. NUISANCES:** No owner shall cause or allow the origination of excessive odor, sound, or light, not used for protective purposes from his property. No owner shall cause or allow other nuisances of any kind whatsoever to exist on his parcel.

**VI. ANIMALS:** Domestic animals shall be allowed in Hidden Lake for personal use of parcel owners only and shall be identified as domestic pursuant to the New Mexico state statutes defining same.

**VII. MOTOR VEHICLES:** No motorized vehicle which is either non-operational or non-licensed shall be kept or stored on any parcel, unless said vehicle is kept or stored in a fully enclosed building. This restriction applies only to full-time residents and not to visiting vehicles and does not include HLPOA vehicles which are owned by the Association for maintenance and repair.

**VIII. TEMPORARY RESIDENCES:** No structure of temporary character, recreational vehicle, camper unit, trailer, basement, tent or accessory building shall be used on any tract as a residence. Recreational vehicles, camper units and tents may be used for vacation camping for periods not to exceed one hundred twenty (120) days in any calendar year. In the event an owner wishes to reside on-site to supervise the construction of their home, the Board may consider extending the 120 day provision. Any property owner may petition the Board to consider extension of the 120 day period for purposes of home construction. Only owner occupied RV and camp trailers may remain on-site so long as visible progress is being made on the construction. If construction ceases, the RV/ camp trailer must be removed. This provision is in no way intended to circumvent the 120 day requirements and introduce full-time RV occupancy at Hidden Lake.

**IX. LAND USE:** Commercial wood harvesting, mining (including the removal of soil, gravel or rock) is prohibited. No more than two acres of any parcel may be fenced as a private yard so that the remainder of the area shall remain unfenced allowing wildlife to move freely. All fencing shall be constructed in a "wildlife friendly" manner to encourage free passage of wildlife. A wildlife friendly fence is one that can be seen (and therefore not run into) and one that can either be leapt over or scurried under

## **IX. Land Use continued,**

without injury. Other than as required on the external fence surrounding the Hidden Lake subdivision, no barbed wire or chain link fences will be allowed to fence the perimeter of the 2 acres allowed by owners at Hidden Lake. Dog kennels and other enclosures within the 2 acres are not subject to this restriction.

No lot shall be divided or split into two or more parcels; this applies to all tracts, including those tracts which are bisected by roads and so have (A) and (B) components: the (A) component of a tract cannot be divided or conveyed separately from the (B) component of that tract and all components thereof must remain intact.

**X. ARCHITECTURAL CONTROL COMMITTEE:** Improvements and the design, style, and color of any improvements upon a parcel shall be approved prior to construction by the Architectural Control Committee (ACC). The ACC shall exercise its best judgment to see that all improvements, construction, and alterations within the Hidden Lake conforms to and harmonizes with the existing surrounding and structures per Covenant I. The committee performs this duty by reviewing plans for improvement to homes in the area, and is guided by the Covenants and by the existing conditions of properties in Hidden Lake.

### **Composition:**

The Architectural Control Committee shall be comprised of 5 members: 3 of whom must be property owners who have already built their homes and one of whom shall be a Board member, who may not be the chairperson of the ACC but shall be a voting member. The Board shall make all appointments to the ACC. Members on the ACC shall serve 2 years. Only one family member can serve on the ACC at a time.

### **Improvements:**

Improvements shall be consistent, harmonious and not clash with the natural environment and surroundings. Homeowners are required to submit plans for any improvements erected, placed or altered on a property. Requests shall include a detailed description/ drawing of the improvement, together with a lot map indicating the location on the plat of the improvement. Sheds and other outbuildings shall match the residence in design, color and style. Color changes to a property (such as change in trim color, roof, or siding color) must have prior written approval of the committee. Color samples must be submitted with the package. If an improvement which has not been cleared by the committee is later disputed, its' acceptability may be ruled retroactively, and homeowners may then be required to alter or remove it. Approval shall not be unreasonably withheld.

### **Time for Approval:**

Dwelling plans/ designs must be approved by the Hidden Lake Architectural Control Committee before construction commences. Any proposed improvements shall be submitted prior to applying for any construction permits.

## **X. Architectural Control Committee continued,**

The improvements package shall be submitted to all members of the ACC via certified U.S. Mail. The ACC shall have 30 days from the date of service to approve or disapprove the package and shall give their decision in writing to the homeowner. If the ACC does not approve or disapprove plans within 30 days, no approval shall be required provided that the structure being approved does not violate any covenant.

### **Criteria:**

In addition to ensuring the improvement conforms with the intent of the covenants, the ACC shall use the following criteria in making its decision:

1. All construction shall conform to the International Residential Codes/ Universal Building Codes/ Residential Building Codes.
2. All structure constructed or placed on any lot shall be constructed with a substantial quantity of new materials unless the proponent can provide sufficient reason to the ACC for deviation from same, i.e., using recycled materials which conform to building codes.
3. Exterior colors should harmonize with the site and surrounding buildings, as determined by the Committee.
4. All homes shall be anchored to and rest on a permanent foundation.
5. Outdoor lighting shall not be offensive, nor shall it interfere with other property owners' rights to enjoy their properties.
6. Roofs should be constructed of fire retardant material, i.e. metal, tile, etc. and meet the local snow load bearing requirements regarding slope.

### **Clarification:**

If the ACC thinks the covenants are not clear as to their applications, the entire Board shall be provided notice of the proposed improvement and the opportunity to discuss and vote on such improvement. Notice shall be given to the Board via certified mail, postage prepaid, if deposited in the U.S. Mail ten (10) days prior to the meeting on same. The notice shall state the date and time for Membership discussion, and, if necessary, vote. The ten (10) day period shall commence with the date of posting thereof. **If the ACC fails to respond within the "reasonable time frame" noted under Time for Approval, then they implicitly approve the proposed improvement by default.**

### **Documentation:**

The property owner must submit the building plans, the site plans, the parcel map, and a copy of the proposed color (s) to the ACC. The date of receipt by the ACC shall control the time within which a decision shall be made by the ACC. The committee, upon reviewing the proposed improvement, shall submit a document to the Board, stating their ruling on the proposal to the property owner and Board of Directors.

## **X. Architectural Control Committee continued,**

### **Acceptable Pre-Built components:**

No completely built homes are allowed to be transported to the Hidden Lake area; however, Whisper Creek, Lindal, and Classic Log Cabins are examples of the types of pre-built homes which are acceptable to the membership.

**XI. ENFORCEMENT:** Enforcement shall be by proceedings at law or in equity against any persons or persons violating or attempting to violate any covenant; any person violating or attempting to violate any covenant shall be liable for the costs and expenses, including reasonable attorneys fees incurred in an enforcement action by the party seeking enforcement. Unless otherwise specified herein, all documents submitted for approval or conformance shall be kept with the secretary of the HLPOA.

Prior to initiating litigation, in the event of a dispute about major decisions concerning the covenant, the parties shall attempt resolution of their differences in the following manner:

1. The parties shall first attempt to discuss the issue(s), and if it is not possible for them to reach an agreement, then they should exchange written proposals within ten (10) days.
2. Following exchange of their written proposals, the parties shall confer with one another and attempt to resolve their differences and, if they are able to do so, their resolution shall be put in writing, dated and signed by each party, and that written resolution shall be deemed to be as binding and effective. This meeting shall occur no less the ten (10) days following receipt of the written proposals. The proposal will be maintained by the secretary of the HLPOA.
3. If such written proposals and conference fail to resolve the dispute, then the parties agree to submit the matter to a mediator agreed upon by the parties.
4. Initially, the parties shall share the cost of mediation equally, but if judicial resolution of the dispute becomes necessary, the court may reallocate the costs of the mediation between the parties.
5. If either party fails or refuses to comply with the provisions of this paragraph in good faith, and judicial resolution of the dispute becomes necessary, then in addition to any other judicial relief, the Court may award attorney fees against the party failing to act in good faith.

**XII. TERMS OF COVENANTS:** The restrictions, easements, covenants, conditions, rights, and duties of the Covenants shall run with and bind the land within the Property, as defined herein, and shall inure to the benefit of Owners and any Lot therein, their respective legal representatives, heirs, successors and assigns for a term of ten (10) years from the date this Declaration is recorded in the real records of Colfax County, New Mexico, after which time restrictions, easements, covenants, conditions, rights and duties shall automatically be extended for successive period of ten (10) years, unless amended,

**XII. Terms of Covenants continued,**

modified or repealed as hereinafter provided.

**XIII. SEVERABILITY:** Invalidation of any portion of these covenants or any part thereof by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

**XIV. COUNTY REGULATIONS:** To the extent that the applicable county or other governmental regulations, rules, codes, ordinances or laws are more restrictive in their allowable land utilization than these covenants, they shall supersede these covenants and govern at all times.

**XV. THE HIDDEN LAKE PROPERTY OWNERS ASSOCIATION:**

- A. Every person acquiring legal or equitable title to any tract in the Hidden Lake Subdivision covered by the Regulations will automatically become a member of the Hidden Lake Property Owners Association, to be formed by property owners, herein referred to as “Association”, and with such ownership then every person becomes subject to the requirements and limitations imposed in these Restrictions and to the regulations and assessments of the Association.
- B. The general purpose of the Associations is to further and promote the community welfare of the property owners in the Subdivision. The Association will be responsible for the maintenance, upkeep and repair, and the establishment and enforcement of rules and regulations concerning the operation and use of all roads and the lake area in the Hidden Lake Subdivision.
- C. If a property owner feels that the Association is failing to properly maintain the roads and lake area, then the following process shall be used.
  - 1. The property owner must notify the Association in writing about what specifically they feel is not being properly maintained and said notification must include documentation from a NM State road engineer as to cause and action required.
  - 2. If the issue is an emergency, then the property owner must so indicate and provide support for that claim, and the Board must respond as soon as possible, but in no more than one day.
  - 3. If the issue is not an emergency, the Board has thirty (30) days to respond by either making the necessary repairs or with a plan of specific dates of when the repairs will be made.
  - 4. If the matter is not addressed satisfactorily between the Board and the property owner, the parties shall refer the matter to mediation, with the costs born equally between the parties, unless it is determined by the mediator that one party should bear the entire expense, due to unreasonableness by that party.

**XV. The Hidden Lake Property Owners Association continued,**

- D. The Association shall have all the powers that are to be set out in its Articles of Incorporation and By-Laws and all other powers that belong to it by operation of law, including (but not limited to) the power to assess and collect from every member of the Association a uniform monthly charge per single family residential lot within the Subdivision. The amount of such charge shall not exceed 10% of the annual dues in a single year and is to be determined by the Board of Directors of the Association for the purposes for which the Association is formed, payable annually, and provided further that no such charge shall ever be made against, or be payable by, property owners or the Association itself. An increase in annual dues greater than 10% in a single year is possible only if it is requested by the Board of Directors of the Association and is approved by a two-thirds (simple majority) vote of the Association members.

All charges are payable annually by the member to the Association on or before the first day of March (or a month as selected by the Board and approved at the annual property owner's meeting) of each year, for the ensuing year. "Voted at the 2008 Annual Meeting to be due the month of January." The Board of Directors of the Association shall fix the amount of the annual charge per lot, currently \$1,100.

Every person who shall become the legal or equitable owner of any lot in the Subdivision by any means, is, by the act of acquiring such title, or by the act of contracting to acquire such title, held to have agreed to pay the Association all charges that the Association shall make in accordance with these restrictions. If such payment is not made when due, it shall bear interest from the due date at the rate of fifteen (15) percent per annum. Until paid, such charges together with costs and reasonable attorney's fees required to enforce payment thereof, shall constitute a perpetual lien on and against the property challenged. The Association may publish the names of a delinquent member and may file notice that it is the owner of a lien to secure payment of the unpaid charge plus costs and reasonable attorney's fees and may foreclose the lien in accordance with the laws of the State of New Mexico.

The Association shall, upon demand by a property owner, at any time, furnish a list of members who have paid such assessment or of such members who are then delinquent in the payment of such assessments.

**XV. The Hidden Lake Property Owners Association continued,**

E. The funds accumulated as a result of the charges levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association and in particular, the maintenance of the roads and lake area.

In witness whereof, this Declaration of Protective Covenants for Hidden Lake has been signed and approved by the President of the Association.

Hidden Lake Property Owners Association

BY \_\_\_\_\_

William M. Frazelle, President HLPOA

Date: \_\_\_\_\_

STATE OF ARIZONA     )

)SS.

COUNTY OF \_\_\_\_\_ )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of May, 2009, by William M. Frazelle.

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NOTARY PUBLIC

My Commission Expires:

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