

DECLARATION OF RESTRICTIVE COVENANTS FOR  
THE BACA GRANDE ANGEL FIRE - ANGEL FIRE COUNTRY CLUB UNIT ONE  
COLFAX COUNTY, NEW MEXICO

THIS DECLARATION, made this 16th day of February, 1973, by the BACA GRANDE ANGEL FIRE CORPORATION, a New Mexico Corporation, being the owner in fee and herein referred to as "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner of all the real property set forth and described as lots 1 through 1203, and 1205 through 1527, inclusive, entitled Angel Fire Country Club One, a subdivision of Colfax County, New Mexico, the plat of which is recorded in the Records of Colfax County, New Mexico; and

WHEREAS, Declarant is about to sell and convey said lots and before doing so desires to subject them to and impose upon them mutual and beneficial restrictions, covenants, conditions and charges, hereinafter collectively referred to as "Restrictions", under a general plan or scheme of improvement for the benefit and complement of all said lots in the subdivision;

NOW, THEREFORE, Declarant hereby declares that all of said lots are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said lots and are established and agreed upon for the purpose of enhancing and protecting their value, desirability and attractiveness.

All of the Restrictions shall run with the land and shall be binding upon Declarant and upon all parties having or acquiring any right, title or interest in and to the real property or any parts thereof subject to such Restrictions.

1. APPLICABILITY

A. These restrictions shall apply to the above described lots only and are specifically excluded from application to other lands included in the plat.

2. TERM

A. These restrictions shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until January 1, 2002, after which time the same shall be extended for successive periods of ten (10) years each, unless an instrument, signed by a majority of the then owners of lots subject thereto, has been recorded agreeing to change the covenants in whole or in part; provided, however, that at

any time before January 1, 1987, these Restrictions may be amended by the vote of the then record owners of the majority of such lots and thereafter by the record owners of two-thirds (2/3) of such lots.

B. Declarant reserves to itself, its successors and assigns the right to revoke at any time prior to the sale of any lot within the Subdivision all or any of these Restrictions and, further, to vacate any or all of the streets, parks, recreational facilities and any amenity shown on the recorded plats, provided, however, that Declarant will not prevent access to or installation of utilities to lots in any other part or section of the Subdivision.

3. MUTUALITY OF BENEFIT AND OBLIGATION

A. The Restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every lot in the Subdivision and are intended to create mutual, equitable servitudes upon each of said lots in favor of each and all of the other lots, therein; to create reciprocal rights between the respective owners of all of said lots; to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and shall, to the owner of each such lot, his heirs, successors, and assigns operate as covenants running with the land for the benefit of each and all other lots in the Subdivision and their respective owners.

4. ENVIRONMENTAL AND ARCHITECTURAL CONTROL COMMITTEE

A. All plans and specifications for any structure of improvement whatsoever to be erected on or moved upon or to any portion of the real property, and the proposed location thereof, the construction material, the roofs and exterior color schemes, any later changes or additions thereto shall be subject to and shall require the approval in writing before any such work is commenced of the Environmental and Architectural Control Committee (here-inafter called "Committee") as the same is from time to time composed.

B. The Committee shall be composed of three (3) members to be appointed by Declarant. The initial appointments are F. Michael Geddes, Lawrence W. Mobley, and Boyd T. Prior. Committee members shall be subject to removal by Declarant and any vacancies from time to time existing shall be filled by appointment by Declarant, its successors or assigns; provided, however, that at any time hereafter the Declarant may, at its sole option, relinquish to the Baca Grande Angel Fire Property Owners Association, when formed, the power of appointment and removal reserved herein to Declarant. Such transfer of power must be evidenced in writing.

C. There shall be submitted to the Committee, a building application on forms approved by Declarant together with three (3) sets of plans and specifications for any and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements or any kind shall be erected, altered, placed or maintained upon any parcel unless and until the final plans, elevations, and specifications therefore have received written approval as herein provided. Such plans shall be drawn to scale and shall include plot plans showing the location on the lot of the building, wall, fence, or other structure proposed to be constructed, altered, placed or maintained, together with

floor plans, schemes for roofs and exteriors thereof and proposed landscape plantings. A reasonable fee may be required to defray Committee expenses.

D. The Committee shall approve or disapprove plans, specifications and details within thirty (30) days from the receipt thereof. One (1) set of said plans and specifications and details with the approval or disapproval endorsed thereon shall be returned to the person submitting them; the second (2nd) set of plans shall be retained by the Committee for its permanent files; the third (3rd) set shall be sent to the General Manager of the Baca Grande Angel Fire and be retained by the General Manager for his permanent file. The Committee shall advise the applicant the reason for the disapproval and suggest changes.

E. The Committee shall have the right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with all of the provisions of these Restrictions; if the design or color scheme of the proposed building or structure is not in harmony with the general surroundings of the real property or with the adjacent buildings or structures; if the plans and specifications submitted are incomplete; or in the event the Committee deems the plans, specifications or details, or any part thereof, to be contrary to the interest, welfare, aesthetics or rights of all or any part of the real property subject hereto, or the owners thereof.

F. Neither the Committee nor any architect or agent thereof or of the Baca Grande Angel Fire shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

G. The Committee shall have the authority to set up regulations as to the height and size requirement for all types of buildings and structures, including fences and walls.

5. THE BACA GRANDE ANGEL FIRE PROPERTY OWNERS ASSOCIATION

A. Every person acquiring legal or equitable title to any lot in the Subdivision covered by these Restrictions will automatically become a member of the Baca Grande Angel Fire Property Owners Association, to be formed by Declarant, herein referred to as "Association", and with such ownership then every such person becomes subject to the requirements and limitations imposed in these Restrictions and to the regulations and assessments of the Association, with the exception, however, of such person or persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money, e.g., mortgages, deeds of trust, or real estate contract purchases. However if such a person should realize upon his security and become the real owner of a lot within the Subdivision, he will then be subject to all the requirements and limitations imposed in these Restrictions on owners of lots within the Development and on members of the Association, including those provisions with respect to alienation and the payment of an annual charge.

B. The general purpose of the Association is to further and promote the community welfare of the property owners in the Subdivision.

C. The Association shall be responsible for the maintenance, upkeep and repair, and the establishment and enforcement of rules and regulations concerning the operation and use, of all greenbelt and park areas and other areas collectively referred to herein as "common areas".

In the event that the Association at any time fails to properly maintain such common areas, Declarant, in its sole discretion, may enter upon and make any and all repairs, or maintain any of the properties under the responsibility of the Association and may charge the Association for all such repairs.

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 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, Declarant, the Association itself, or any entity that may be created to acquire title to, and operate, the water, sewer, power, telephone, gas or similar utility serving the Subdivision.

There will be no assessment by the Association until such time as the Association has obtained ownership of all or part of the common areas.

All monthly charges are payable annually by the member to the Association on or before the first day of May of each year, for the ensuing year. The Board of Directors of the Association shall fix the amount of the annual charge per lot.

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 eight (8) percent per annum. Until paid, such charges together with costs and reasonable attorney's fees required to secure payment thereof, shall constitute a perpetual lien on and against the property charged. The Association may publish the name 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 Declarant, 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.

E. The fund 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 common areas.

F. Declarant proposes to develop additional property adjacent to this Subdivision and reserves the right to expand this Association so as to include the future owners of any or all additional properties so developed. Declarant, by reference to these premises, can include these future owners for full participation in all benefits and responsibilities.

6. OWNERSHIP, USE AND ENJOYMENT OF PARKS AND RECREATIONAL AMENITIES

A. Any common areas so designated within the Subdivision are private and neither Declarant's recording of the plat, nor any other act of Declarant with respect to the plat, shall be construed as a dedication to the public.

B. The ownership of all recreational facilities as designated shall be in Declarant or its designee; however, Declarant may convey or otherwise transfer any or all of the facilities to the Baca Grande Angel Fire Property Owners Association, when formed, and such conveyance shall be accepted by it.

7. LAND USE AND IMPROVEMENTS

A. Uses Permitted:

- (1) One single-family dwelling per lot.
- (2) Use, building and structures customarily incidental to single-family dwellings.

B. Minimum Lot Size:

- (1) 20,000 square feet , or one half acre; no lot shall be divided into smaller lots or parcels.

C. Set-back Requirements:

- (1) Front Yard--No building or structure shall be located within twenty-five (25) feet of the front property line.
- (2) Rear Yard--No building or structure shall be located within twenty (20) feet of the rear property line. In no event shall any building or structure be located less than fifty (50) feet from the high-water line or the golf course boundary on any lot contiguous to a lake, stream or golf course.
- (3) Side yard--There shall be a side yard set-back of not less than seven and one half (7 1/2) feet from the side property lines to the nearest building or structure, and on corner lots, the set-back on the street side shall be not less than ten (10) feet, or ten (10) percent of the lot width at its widest point, whichever is greater. No cave or overhang of any roof shall be closer than three and one half (3 1/2) feet from any side lot line.

D. Minimum Living Area:

- (1) No dwelling shall be constructed on any lot in the Subdivision having less than the following minimum square footage of living space exclusive of porches, garages, carports, breezeways or other appurtenances:
  - a. One-story houses shall have a minimum of 1,200 square feet of living space.
  - b. Multiple-story houses shall have a minimum of 1,000 square feet of living space on the main or ground floor.

E. Lot Coverage:

- (1) No building or structure shall be constructed on any lot which covers more than fifty-five (55) percent of the total area of the lot.

F. Height:

- (1) All buildings and structures will be limited to a maximum height of thirty-five (35) feet.

8. GENERAL INSTRUCTIONS

A. Laundry drying yards shall be screened from view from the streets, neighbors and common areas.

B. Outdoor lighting shall be controlled to that it is not offensive. No direct view of the source of light by adjoining owners except for very low power night lights shall be permitted. Unusual lighting that may create a nuisance to another is prohibited.

C. Garbage cans and trash areas on lots shall be concealed from view from the streets, neighbors and common areas.

D. Signs. Except as otherwise provided, no sign in excess of one and one half (1 1/2) square feet in area shall be permitted on a purchased lot. Only one real estate sign for resale or otherwise may be displayed on a purchased lot. Nothing in this provision restricts Declarant from placing signs for sale, construction, safety, or otherwise, prior to the full sale of all lots in the Subdivision. Signs required by law are acknowledged. The Committee may waive this requirement where in its opinion the public health or safety is concerned.

E. No owner of a lot nor any other person shall be permitted to store wrecked vehicles (automobiles or trucks) on a lot or on any street. No recreational vehicle, trucks other than pick-up trucks, boats and aircraft shall be left or stored on any lot unless screened from public view.

F. Temporary construction toilets may be approved by Declarant. No permanent outside toilets are permitted. Permanent toilets and all other plumbing for waste are to be

connected by the individual lot owner to the sewage system as finally approved by the Environmental Improvement Agency of the State of New Mexico.

G. No temporary house, trailer, tent, garage, or other outbuilding shall be placed or erected on any lot, provided, however, that the Committee may grant permission for any such temporary structure for storage of materials during construction. No such temporary structures as may be approved shall be used at any time as a dwelling place.

H. Once construction of improvements is started on any lot, the improvements must be substantially completed in accordance with plans and specifications, as approved, within six (6) months from commencement.

I. No residence shall be occupied until the same has been substantially completed in accordance with its plans and specifications.

J. All structures constructed or placed on any lot shall be constructed with a substantial quantity of new material.

K. No animals or livestock of any description, except a reasonable number of usual household pets, shall be kept on any lot.

L. Every tank for the storage of fuel installed outside any building shall be either buried below the surface of the ground or screened to the satisfaction of the Committee by fencing or shrubbery. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible from any street or common area.

M. All lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly by unattractive growth on such lot or the accumulation of rubbish or debris thereon. Declarant, or its designee, shall have the right to enter upon such a lot for purposes or correction to remove unattractive growth or accumulated rubbish or debris thereon, and any costs so incurred shall be a charge against, and enforceable as if it is a Property Owners Association assessment.

N. No noxious, offensive or illegal activities shall be carried on on any lot nor shall anything be done on any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood. Declarant, or its designee, shall have the right to enter upon such lot for purposed of correction of the noxious, offensive or illegal activities, and any costs so incurred shall be a charge against and enforceable as if a Property Owners Association assessment.

O. No trash, ashes, garbage or other refuse shall be dumped or stored or accumulated on any lot or be thrown into or left on any of the common areas.

9. VARIANCES

The Committee may allow reasonable variances and adjustment of these Restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the

provisions contained herein; provided, however, that such is done in conformity with the intent and purposes hereof and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvement in the Subdivision.

10. REMEDIES

A. The Association, the Committee or any party to whose benefit these Restrictions inure, including Declarant, its successors and assigns, may proceed at law or in equity to prevent the occurrence, continuation or violation of any of these Restrictions; provided, however, that it is expressly understood that neither Declarant, the Committee, nor the Association shall be liable for damages of any kind to any party for failing to either abide by, enforce, or carry out any of these Restrictions.

B. No delay or failure on the part of an aggrieved party to invoke an available remedy set forth above with respect to a violation of any of the Restrictions shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

C. Provided, however, that any breach of these Restrictions shall not defeat or affect the lien of any mortgage or deed of trust made in good faith and for value, but all of the Restrictions shall be binding upon any owner whose title is acquired by foreclosure or otherwise.

11. GRANTEE'S ACCEPTANCE

The Grantee of any lot subject to the coverage of these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot, shall accept such deed or contract upon and subject to each and all of these Restrictions and the agreements herein contained, and also the jurisdiction, rights and powers of Declarant, the Committee and the Association and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns covenant, consent and agree to and with Declarant, the Committee, the Association and to and with the grantees and subsequent owners of each of the lots to keep, observe, comply with and perform said Restrictions and agreements.

12. SEVERABILITY

Every one of the Restrictions is hereby declared to be independent of, and severable from the rest of the Restrictions and of and from every other one of the Restrictions and of any from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, that holding shall be without effect upon the validity of enforceability, of any other one of the Restrictions.



IN WITNESS WHEREOF, the Baca Grande Angel Fire Corporation has executed this Declaration on the day and year first above written.

THE BACA GRANDE ANGEL FIRE CORPORATION

By Laurence W. Mobley  
President

Recorded February 21, 1973, in Book 74, Instrument 2-314

Colfax County, State of New Mexico