

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2011-9

AN ORDINANCE

DELETING A CONDITION OF APPROVAL FOR THE CIELO AZUL ANNEXATION, ADOPTED BY ORDINANCE 2006-29, AND AMENDING ITS ANNEXATION AGREEMENT, TO REDUCE THE PERCENTAGE OF AFFORDABLE UNITS FROM 40% TO 30%. THE TRACT OF LAND COMPRISES 40.749 ACRES MORE OR LESS AND IS LOCATED WITHIN SECTION 6, T 16 N, R 9 E, N.M.P.M., ON THE SOUTH SIDE OF AGUA FRIA BETWEEN CALLE LARRANAGA AND CALLE NUEVA VISTA AND INCLUDING 1.295 ACRES OF LAND ADJOINING THE AGUA FRIA STREET RIGHT-OF-WAY. ("CIELO AZUL ANNEXATION AMENDMENT" CASE NO. M 2011-14).

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Pursuant to Section 3-7-17 NMSA 1978, the governing body adopted Ordinance No. 2006-29 (attached hereto as Exhibit "A") for the purpose of annexing a tract of land lying contiguous with the Santa Fe corporate limits comprised of 40.749 acres more or less located within Section 6, T 16 N, R 9 E, N.M.P.M., on the south side of Agua Fria between Calle

1 Larranaga and Calle Nueva Vista and including 1.295 acres of land adjoining Agua Fria Street
2 right-of-way (hereinafter "Cielo Azul Annexation" or "Property").

3 **Section 2.** The owners of the Property desire to remove the following condition of
4 approval for the Cielo Azul Annexation, shown on Exhibit D to Ordinance 2006-29 (attached
5 hereto as Exhibit "B"):

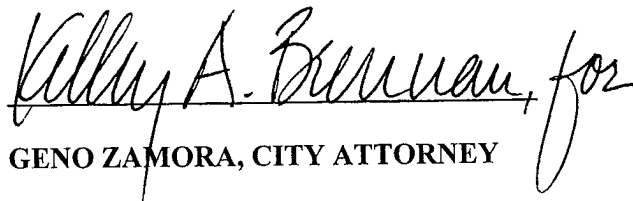
6 "3. In addition to the 30% of units required under Santa Fe Homes regulations,
7 10% of units will be provided in the 'market entry' category (120% of the
8 area median income with a bedroom mix which reflects what is done in the
9 market rate units)."

10 **Section 3.** The governing body finds that the removal of such condition of approval
11 meets the Land Development Code Standard Section 14-8.11(F) SFCC 1987 as amended and the
12 other terms stated in the Cielo Azul Annexation Agreement (attached hereto as Exhibit "C").

13 **Section 4.** The governing body approves Amendment #1 to the Annexation
14 Agreement (attached hereto as Exhibit "D").

15 **Section 5.** This ordinance shall be published one time by title and general summary and
16 shall become effective five days after publication.

17 **APPROVED AS TO FORM:**

18 
19
20 **GENO ZAMORA, CITY ATTORNEY**

21
22
23
24
25 *cao/jep&mdb/kelley/cielo azul/Cielo Azul Annex Amendment Bill*

CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2006-29

AN ORDINANCE

ANNEXING TRACT OF LAND LYING CONTIGUOUS WITH THE SANTA FE CORPORATE LIMITS COMPRISING 40.749 ACRES MORE OR LESS LOCATED WITHIN SECTION 6, T 16 N, R 9 E, N.M.P.M., ON THE SOUTH SIDE OF AGUA FRIA BETWEEN CALLE LARRANAGA AND CALLE NUEVA VISTA AND INCLUDING 1.295 ACRES OF ADJOINING AGUA FRIA STREET RIGHT-OF-WAY. ("CIELO AZUL ANNEXATION" CASE NO. M 2006-08).

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Pursuant to Section 3-7-17 NMSA 1978 , the following described land (the "Property") is annexed to the City of Santa Fe, thereby extending the corporate limits of the city:

A certain parcel of land lying within Section 6, T 16 N, R 9 E, N.M.P.M. and being more particularly described in the attached legal description (Exhibit A) and shown on the Annexation Plat (Exhibit B) and incorporated herein by reference.

1.295 acres of Agua Fria Street right-of-way adjoining the boundary of the property is also annexed pursuant to Section 3-7-18 NMSA 1978 as described on "Exhibit A" and shown on "Exhibit B".

Section 2. A petition (the "Petition") executed by all the owners of the Property has been presented to the governing body of the city of Santa Fe requesting annexation of the Property, an area of land contiguous to the city's corporate limits, which annexation is accomplished pursuant to the provisions of the annexation agreement between the City of Santa Fe and the owners of the

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Property sought to be annexed attached hereto and referenced herein as "Exhibit C."

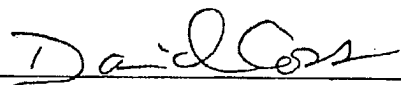
Section 3. The Petition was accompanied by an annexation plat showing the external boundaries of the Property proposed to be annexed and the relationship of the Property proposed to be annexed to the existing boundary of the city, as well as the Annexation Agreement.


Section 4. The annexation effected by this Ordinance shall be subject to the conditions of approval attached hereto and referenced herein as "Exhibit D."

Section 5. It is in the best interest of the City of Santa Fe and the owners and inhabitants of such contiguous Property that the Property be annexed.

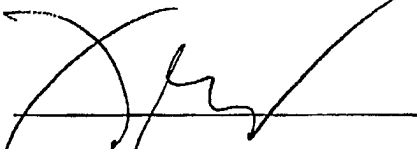
Section 6. This ordinance shall be published one time by title and general summary and shall become effective five days after publication.

PASSED, APPROVED AND ADOPTED this 26th day of June, 2006.


DAVID COSS, MAYOR


YOLANDA V. VIGIL, CITY CLERK



APPROVED AS TO FORM:

FRANK D. KATZ, CITY ATTORNEY

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
I Hereby Certify That This Instrument Was Filed for
Record On The 5TH Day Of December, A.D., 2007 at 09:15
And Was Duly Recorded as Instrument # 1508449
Of The Records Of Santa Fe County
Witness My Hand And Seal Of Office
Valerie Espinoza
County Clerk, Santa Fe, NM

EXHIBIT A

LEGAL DESCRIPTION

Commencing at the Point of Beginning along the right-of-way of Agua Fria Road from which a U.S.G.L.O. Brass Cap marked PC1227, T2, SEC, PC6025, T11, PC544, T1, NEC, T16N, R9E, S6, dated 1914 bears South 65 °12' 24" West, a distance of 59.95';

Thence from said point of beginning North 26 °36' 19" West, a distance of 55.89';

Thence North 63 °23' 41" East, a distance of 280.88';

Thence North 63 °28' 20" East, a distance of 204.16';

Thence North 61 °54' 25" East, a distance of 136.82';

Thence North 63 °06' 00" East, a distance of 439.32';

Thence South 16 °30' 21" East, a distance of 57.62';

Thence South 16 °32' 59" East, a distance of 1642.56';

Thence South 64 °32' 09" West, a distance of 1032.00';

Thence North 19 °10' 59" West, a distance of 1443.81';

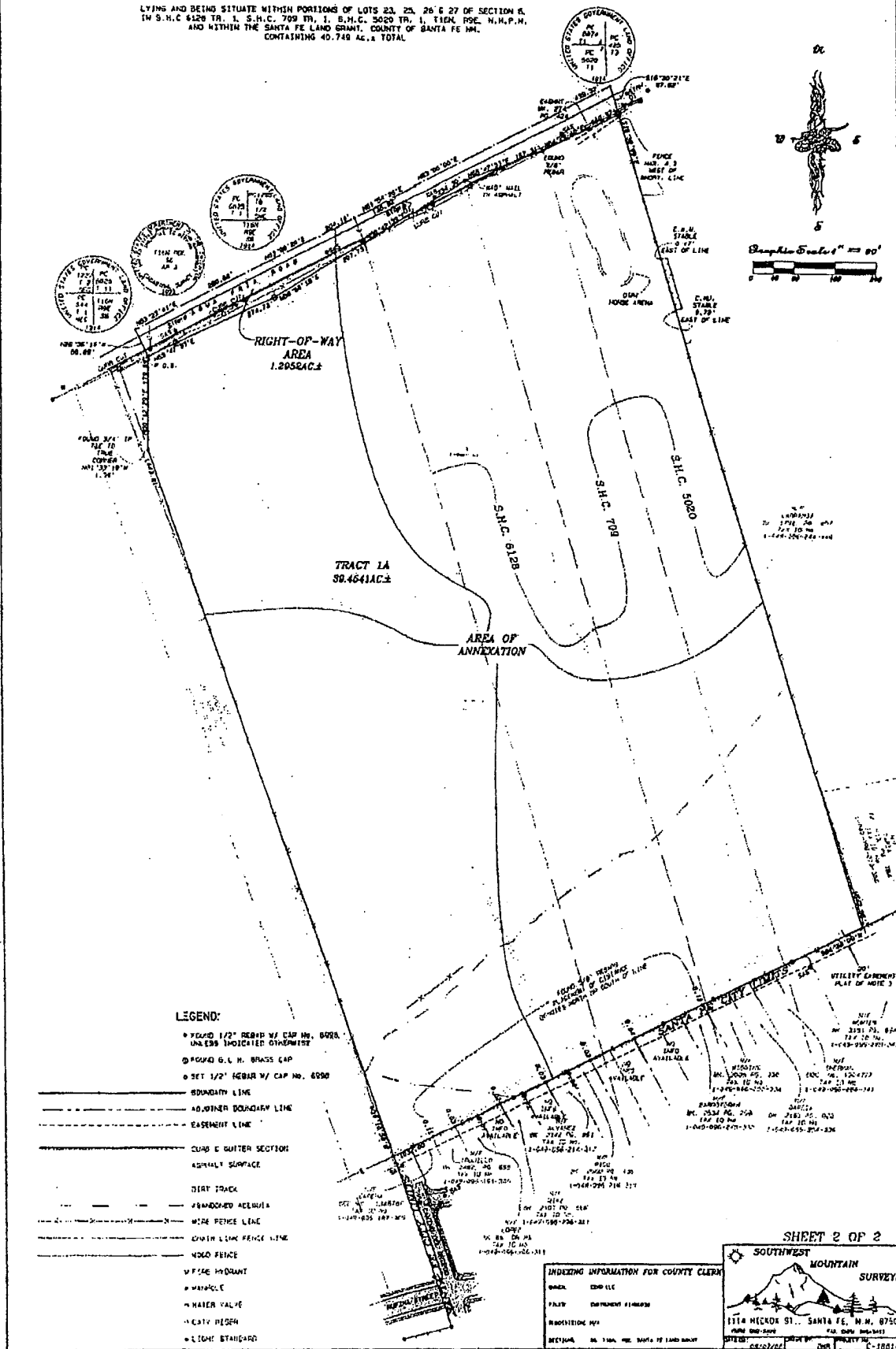
Thence North 00 °12' 29" East, a distance of 179.69' to the Point of Beginning.

Containing 40.749 AC. ±, more or less.

SFD CLKK RECORDED 12/05/2007

ANNEXATION PLAT OF TRACT 1A

LYING AND BEING SITUATE WITHIN PORTIONS OF LOTS 23, 25, 26 & 27 OF SECTION 6,
IN S.H.C. 6128 TR. 1, S.H.C. 709 TR. 1, S.H.C. 5020 TR. 1, EVID. PDE. N.H.P.N.
AND WITHIN THE SANTA FE LAND GRANT, COUNTY OF SANTA FE NM,
CONTAINING 40.748 AC. ± TOTAL



570 CLERK RECORDED 12/05/2007

**ANNEXATION AGREEMENT
CIELO AZUL ANNEXATION**

This Annexation Agreement ("Agreement") is made and entered into this 20th day of September, 2007 by and between the City of Santa Fe, New Mexico, a New Mexico Municipal Corporation (the "City") and EZMO, LLC, a New Mexico corporation (referred to herein as "Landowner") (collectively, the "Party" or "Parties").

RECITALS

A. Landowner owns that certain property situated in Santa Fe County, New Mexico consisting of approximately 39.454± acres being situate in Section 6, Township 16N, Range 9E New Mexico Primary Meridian as more fully described in the Annexation Plat (the "Plat") attached hereto as Exhibit 1 and incorporated herein by this reference, and hereinafter referred to as the "Property".

B. Landowner desires and the City agrees to annex the Property to the City subject to the terms and conditions hereinafter set forth.

C. Landowner desires to divide the property and the City agrees to the division of the Property subject to and upon the terms and conditions hereinafter set forth.

AGREEMENTS

NOW, THEREFORE, in consideration of the premises, the following agreements and undertakings of the Parties, the Parties agree as follows:

1. **THE ANNEXATION PLAT.** (Exhibit 1)

1.1 Landowner agrees to prepare an Annexation Plat in compliance with Section 14-9.6 SFCC (1987).

1.2 The Plat shall dedicate to the City improvements and easements as determined during the development review process.

2. **CONDITIONS OF ANNEXATION:** (Exhibit 2)

2.1 Landowner agrees to comply with the conditions of approval imposed by the Santa Fe City Council as set forth in Exhibit 2.

3. **DEVELOPMENT OF PROPERTY.**

3.1 This agreement anticipates development of the property in accordance with rezoning application No. ZA-2006-08 approved concurrently with this annexation by Ordinance No. 2006-30 and as described in Paragraph 4 below.

4. **REZONING OF THE PROPERTY.**

4.1 With annexation of the property is contemplated rezoning as described in Paragraph 4.2 below.

4.2 The property (39.454+/- acres) to be zoned R6-PUD.

5. **CITY SERVICES.**

5.1 **Fire and Police Protection.** Fire and Police protection of the Development on the Property will be provided by current existing City Police and Fire Department facilities and personnel.

5.2 **Refuse.** Refuse disposal services shall be provided in accordance with

applicable City ordinances.

5.3 Water Service. Prior to the development of the Property, the Landowners to connect the proposed development to the City water delivery system using dedicated easements and shall extend a water main through the Property as required by the City. The Landowners shall reserve easements through the Property as shown on the Final Development Plan to insure the water lines can be built accordingly through the Property. Pursuant to the City Council approval of October 11, 2006, (see Exhibit 3 attached hereto) Landowner shall comply with the City's adopted ordinances, rules and regulations, and other requirements related to water service, and shall be allowed to apply for and obtain water service under such ordinances, rules and regulations, and other requirements in effect on the date of the application for water service.

5.4 Storm Water, Wastewater, Collection and Sewer Service. Concurrently with the development of the Property, the Landowner shall construct storm water and domestic wastewater improvements to serve Property in accordance with the Santa Fe City Code using existing and proposed easements shown on the Final Development Plan and/or subdivision plat for the Property. The storm water and wastewater systems referenced above shall be designed and constructed in accordance with City regulations, guidelines, and ordinances. All plans, reports, and construction documents relating to the design and construction of the storm water collection systems shall be reviewed and approved by the City prior to any construction.

5.5 Streets and Other Rights of Way. All streets and roads will be designed and constructed in accordance to City standards and with the Santa Fe City Code, and

dedicated to the City as shown on the subdivision plat and development plan.

5.6 Letter of Credit or Bond.

5.1.1 All required improvements for water, storm and wastewater collection, street, roads and rights of way shall be constructed in accordance to the time constraints set by the City and when completed to the satisfaction of the City, said improvements shall be dedicated to the City for its use in perpetuity.

5.1.2 The Landowner shall provide a letter of credit, in a form acceptable to the City, for the required improvements to the Property prior to filing of the Annexation Plat. The amount of the surety shall be based on a certified engineer's estimate acceptable to the City.

6. **ARCHAEOLOGICAL REVIEW ORDINANCE.** Prior to annexation of the Property the Landowner shall be in compliance with Section 14-75 SFCC (1987).

7. **UTILITIES.** The Property shall be served only with underground utilities.

8. **TRAFFIC IMPACT REPORT.** Prior to the development of the Property a final traffic impact report, illustrating the traffic generated and the impact of the circulation on system within the Property and surrounding area shall be provided to the City.

9. **PARKS.** The Landowner shall dedicate open space as required by the Santa Fe City Code (1987).

10. WELLS AND WATER RIGHTS.

10.1 The Landowner agrees that no well shall be drilled on the Property and no water rights shall be transferred to permit a diversion of water from the Property after the date of this Agreement.

10.2 Restrictive covenants shall be adopted and filed for record in the office of the Santa Fe County Clerk in accordance with this requirement restricting the drilling of wells and transfer of water rights.

10.3 The parties agree that the City's Water Budget Ordinance (14-8.13 SFCC 2001) as amended shall be complied with in the development of the Property.

11. **AFFORDABLE HOUSING.** Landowner agrees that in addition to complying with the Santa Fe Home Program, the development will contain and possess and additional ten percent (10%) of the housing sold at prices "affordable" (as defined in the Santa Fe Homes Program) to a family who earns one hundred twenty percent (120%) of the Area Median Income. With respect to said additional ten percent (10%) all of the obligations, rights and benefits of the Santa Fe Homes Program shall be complied with and will be available to Landowner, including without limitation, income qualifications, square footages, and benefits related to the water service and all other waivers of fees and costs allowed by City Ordinance for affordable housing.

12. **IMPACT FEES.** The Landowner agrees to pay impact fees as required by Santa Fe City Code (1987).

13. **ASSIGNMENT.** The Landowner assumes all liability related to this Agreement and shall be responsible for all obligations resulting from this Agreement. The Landowner in their sole discretion may hereafter assign this Agreement or specific obligation under this Agreement to another Landowner, another developer, or to an association of property owners, provided such assignee agrees to execute and deliver to the City Clerk a duly acknowledged certificate by which such assignee assumes liability and agrees to perform

all obligations of Landowner with respect to the portion of the property owned by such assignee. Any assignees shall be bound to the terms and conditions of this Agreement to the same extent that the Landowner is bound.

14. **CAPTIONS.** The captions and paragraph headings of this Agreement are not necessarily descriptive, or intended or represented to be descriptive, of all the provisions thereunder, and in no manner shall such captions and paragraph headings be deemed or interpreted to limit the provisions of this Agreement.

15. **EXECUTION OF DOCUMENTS.** The Parties agree to execute all documents contemplated expressly or impliedly by this Agreement.

16. **SEVERABILITY.** If any provision of this Agreement, or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

17. **NO WAIVER.** No waiver of a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other term.

18. **NUMBERS AND GENDERS.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

19. **GOVERNING LAW.** This Agreement and the rights of the Parties hereunder shall be governed by and interpreted in accordance with the laws of the State of New Mexico.

20. **BINDING EFFECT.** This Agreement shall be binding upon, and inure to the benefit

of, the Parties and their respective heirs, successors and permitted assigns.

21. **AGREEMENT.** This Agreement states the entire agreement of the Parties. The provisions of this agreement shall be severable and may be modified only in writing. This Agreement shall not relieve the Landowners from complying with present or future City ordinances, duly adopted resolutions or regulations applicable to the development.

22. **AMENDMENTS.** Any amendments to this Agreement or the Subdivision plan and development plan shall be reviewed by the Planning Commission and sent to the City Council for approval.

IN WITNESS WHEREOF, this Agreement is entered into the day and year written above.

CITY OF SANTA FE


THE HONORABLE DAVID COSS, MAYOR



APPROVED AS TO FORM:


CITY ATTORNEY

SFC CLERK RECORDED 12/05/2007

LANDOWNER:

EZMO, LLC, a New Mexico
Limited corporation,

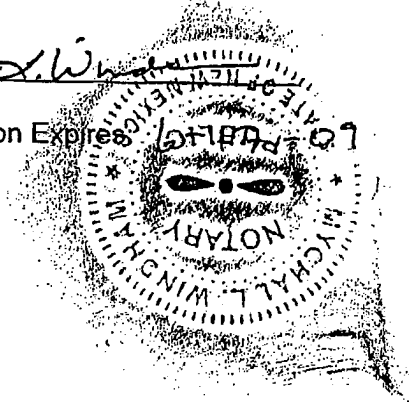
By: Greg Gonzales
Greg Gonzales, its Manager

ACKNOWLEDGMENT

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

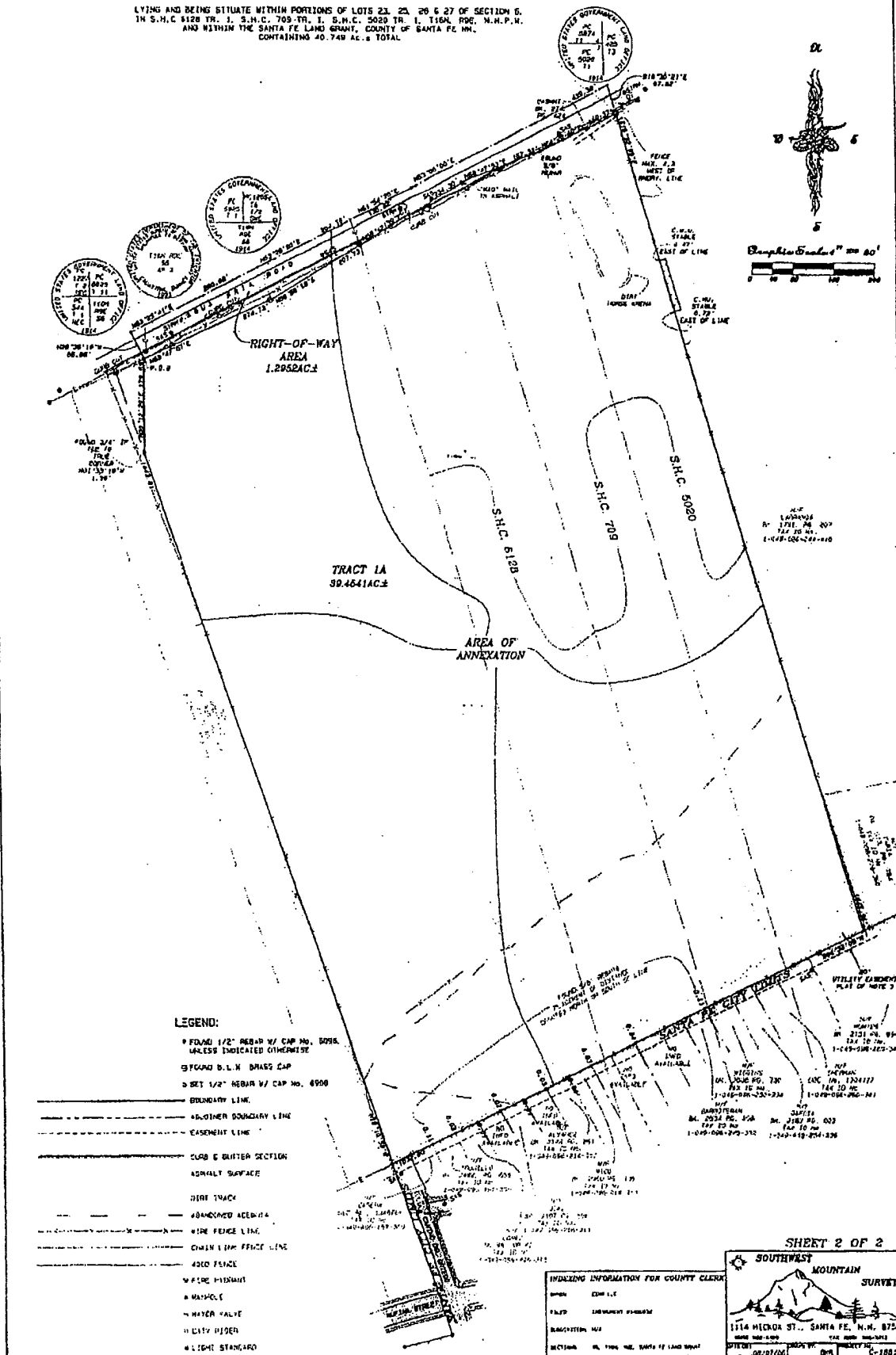
The foregoing instrument was acknowledged before me this 20th day of September
2007, by Greg Gonzales.

Michael L. Winch
Notary Public
My Commission Expires 10/18/09



LYING AND BEING SITUATE WITHIN PORTIONS OF LOTS 23, 25, 26 & 27 OF SECTION 6,
IN S.H.C. 812B TR. 1, S.H.C. 709 TR. 1, S.H.C. 5020 TR. 1, T16N, R9E, N.H.P.M.
AND WITHIN THE SANTA FE LAND GRANT, COUNTY OF SANTA FE NM,
CONTAINING 40.749 AC.± TOTAL


LYING AND BEING SITUATE WITHIN PORTIONS OF LOTS 23, 25, 26 & 27 OF SECTION 6,
IN S.H.C. 5128 TR. 1, S.H.C. 709-TR. 1, S.H.C. 3020 TR. 1, T16N, R06E, N.M.P.M.
AND WITHIN THE SANTA FE LAND GRANT, COUNTY OF SANTA FE NM,
CONTAINING 40.74W AC.± TOTAL



SFD CLERK RECORDED 12/05/2007

SHEET 2 OF 2

SOUTHWEST MOUNTAIN SURVEYS



1114 MICHA ST., SANTA FE, N.M. 87501
PHONE 464-5400 FAX 464-5401

SURVEYING	GEODESIC	CONSTRUCTION	LAND SURVEYING
ENGINEERING	DESIGN	CONSTRUCTION	LAND SURVEYING

EXHIBIT 2
CIELO AZUL ANNEXATION AGREEMENT
conditions of Approval

1. The applicant shall provide a 15' wide non-motorized trail easement along the south boundary of the tract to allow for future extension of the City's trail network.
2. The applicant shall bring water rights to the table before building permits are issued because this is the current law, which specifies which law will be followed because the timing of when this may or may not come in is uncertain.
3. In addition to the 30% of units required under Santa Fe Homes' regulations, 10% of units will be provided in the "market entry" category (20% of the area median income with a bedroom mix which reflects what is done in the market rate units).

**Cielo Azul Annexation Agreement
Exhibit 3**

**[EXCERPT FROM]
MINUTES OF THE
REGULAR MEETING OF THE
GOVERNING BODY
Santa Fe, New Mexico
October 11, 2006**

11. **Request for Approval of Cielo Azul Annexation Agreement – Case #M 2006-08. Amendment of Water Rights Transfer Provisions of the Annexation Agreement for 39.4± Acres Located on the South Side of Agua Fria between Calle Larranaga and Calle Nueva Vista. (Jeanne Price and Kyle Harwood)**

Memorandum dated October 5, 2006, with attached Annexation Agreement, to Mayor David Coss and City Council, from Kyle S. Harwood, Assistant City Attorney, is incorporated herewith to these minutes as Exhibit "5."

Mr. Harwood this is a conceptual amendment to the Cielo Azul Annexation which has been acted on by the Council, but has not been finalized in its drafting, nor fully executed. This would add the escrow provisions from the Water Right Transfer Ordinance to the Annexation Agreement. When this came before the Council for approval of the annexation, a condition was added that this project would not use such escrow provisions. After completing the escrow changes to the general Water Right Transfer Ordinance, there was a request that this item be placed on the Council agenda for consideration. It was unanimously approved by the Planning Commission.

Councilor Ortiz moved, seconded by Councilor Trujillo, to approve the Cielo Azul Annexation Agreement.

Discussion: Councilor Heldmeyer said these two cases represent deals which were made, agreed to at the time, and people got the consideration they were looking for at the time. She is not comfortable in undoing these, and she will be voting against the motion.

Councilor Calvert recalled that Councilor Ortiz was fairly adamant at the time that he didn't want "them" to have this revision. He asked what has changed his thinking.

Councilor Ortiz said when the Council was considering these annexation agreements, we were going through the process of drafting the Water Right Transfer Ordinance. He said the Public Utilities Committee was adamant that there would be no exceptions to that ordinance. These two annexation agreements were consistent with the sentiment of that particular Council. He said the new Council was configured, amendments were proposed by a new Public Utilities Committee to allow for the ability to put money in escrow. When that passed, he put an amendment in the ordinance which would resolve these two items. He was told by the City Attorney that the general

ordinance he amended could not supercede or supplant the more specific Annexation Agreement Ordinance passed prior to the adoption of the amendments. He then introduced ordinance amendments which would have changed the ordinances, which would have applied to these Annexation Agreements. He was advised by staff that we don't have to change the Ordinance, we can change the Annexation Agreements. He deferred those ordinances so could bring this item and the next agenda item through the process which has been done.

Councilor Ortiz said his change in position has really been a change on this Governing Body. Once the new Council was configured there was a change and a change in the Public Utilities Committee. He said his intent with the amendment is that everyone should play by the same rules. There should not be a project lingering 10-15 years from now, which has a rule or requirement which differs from the requirement we have as a matter of law.

Councilor Calvert said he thought Councilor Ortiz was saying that night that even though he was sponsoring that, he didn't want it to apply to this particular project.

Councilor Ortiz said when he introduced the amendment, he wanted it to apply to everyone.

Councilor Wurzbarger asked if there are other agreements like this one.

Mr. Harwood said, with these changes, there will be no projects which cannot use the escrow provision.

Councilor Wurzbarger said this project really had the best deal with respect to water, and had the least requirements, and weren't required to bring water rights.

Mr. Harwood said Cielo Azul came through after the adoption of the general ordinance and before the adoption of the escrow amendment. It has come through in a class of projects where every other project coming to Planning & Land Use was getting the requirements of the Water Right Transfer Ordinance, without the ability to do escrowing. Their deal is just the general Water Right Transfer Ordinance applicability. There was then a request to make this consistent with the rest of the programs where all other developments may access the escrow provision.

The motion was passed on the following Roll Call vote:

For: Councilor Bushee, Councilor Calvert, Councilor Dominguez, Councilor Ortiz and Councilor Trujillo.

Against: Councilor Heldmeyer and Councilor Wurzbarger.

EXHIBIT "D"
ORDINANCE No. 2006-29
Conditions of Approval

- 1) The applicant shall provide a 15' wide non-motorized trail easement along the south boundary of the tract to allow for future extension of the City's trail network.
- 2) The applicant shall bring water rights to the table before building permits are issued because this is the current law, which specifies which law will be followed because the timing of when this may or may not come in is uncertain.
- 3) In addition to the 30% of units required under Santa Fe Homes regulations, 10% of units will be provided in the "market entry" category (20% of the area median income with a bedroom mix which reflects what is done in the market rate units).

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**Exhibit B - Cielo Azul
Annexation Amendment**

SFO CLERK RECORDED 12/05/2007

EXHIBIT "D"
ORDINANCE No. 2006-29
Conditions of Approval

- 1) The applicant shall provide a 15' wide non-motorized trail easement along the south boundary of the tract to allow for future extension of the City's trail network.
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RECITALS

A. Landowner owns that certain property situated in Santa Fe County, New Mexico consisting of approximately 39.454± acres being situate in Section 6, Township 16N, Range 9E New Mexico Primary Meridian as more fully described in the Annexation Plat (the "Plat") attached hereto as Exhibit 1 and incorporated herein by this reference, and hereinafter referred to as the "Property".

B. Landowner desires and the City agrees to annex the Property to the City subject to the terms and conditions hereinafter set forth.

C. Landowner desires to divide the property and the City agrees to the division of the Property subject to and upon the terms and conditions hereinafter set forth.

AGREEMENTS

NOW, THEREFORE, in consideration of the premises, the following agreements and undertakings of the Parties, the Parties agree as follows:

1. **THE ANNEXATION PLAT.** (Exhibit 1)

1.1 Landowner agrees to prepare an Annexation Plat in compliance with Section 14-9.6 SFCC (1987).

1.2 The Plat shall dedicate to the City improvements and easements as determined during the development review process.

2. **CONDITIONS OF ANNEXATION:** (Exhibit 2)

2.1 Landowner agrees to comply with the conditions of approval imposed by the Santa Fe City Council as set forth in Exhibit 2.

3. **DEVELOPMENT OF PROPERTY.**

3.1 This agreement anticipates development of the property in accordance with rezoning application No. ZA-2006-08 approved concurrently with this annexation by Ordinance No. 2006-30 and as described in Paragraph 4 below.

4. **REZONING OF THE PROPERTY.**

4.1 With annexation of the property is contemplated rezoning as described in Paragraph 4.2 below.

4.2 The property (39.454+/- acres) to be zoned R6-PUD.

5. **CITY SERVICES.**

5.1 **Fire and Police Protection.** Fire and Police protection of the Development on the Property will be provided by current existing City Police and Fire Department facilities and personnel.

5.2 **Refuse.** Refuse disposal services shall be provided in accordance with

applicable City ordinances.

5.3 Water Service. Prior to the development of the Property, the Landowners to connect the proposed development to the City water delivery system using dedicated easements and shall extend a water main through the Property as required by the City. The Landowners shall reserve easements through the Property as shown on the Final Development Plan to insure the water lines can be built accordingly through the Property. Pursuant to the City Council approval of October 11, 2006, (see Exhibit 3 attached hereto) Landowner shall comply with the City's adopted ordinances, rules and regulations, and other requirements related to water service, and shall be allowed to apply for and obtain water service under such ordinances, rules and regulations, and other requirements in effect on the date of the application for water service.

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5.5 Streets and Other Rights of Way. All streets and roads will be designed and constructed in accordance to City standards and with the Santa Fe City Code, and

dedicated to the City as shown on the subdivision plat and development plan.

5.6 Letter of Credit or Bond.

5.1.1 All required improvements for water, storm and wastewater collection, street, roads and rights of way shall be constructed in accordance to the time constraints set by the City and when completed to the satisfaction of the City, said improvements shall be dedicated to the City for its use in perpetuity.

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6. **ARCHAEOLOGICAL REVIEW ORDINANCE.** Prior to annexation of the Property the Landowner shall be in compliance with Section 14-75 SFCC (1987).

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9. **PARKS.** The Landowner shall dedicate open space as required by the Santa Fe City Code (1987).

10. WELLS AND WATER RIGHTS.

10.1 The Landowner agrees that no well shall be drilled on the Property and no water rights shall be transferred to permit a diversion of water from the Property after the date of this Agreement.

10.2 Restrictive covenants shall be adopted and filed for record in the office of the Santa Fe County Clerk in accordance with this requirement restricting the drilling of wells and transfer of water rights.

10.3 The parties agree that the City's Water Budget Ordinance (14-8.13 SFCC 2001) as amended shall be complied with in the development of the Property.

11. **AFFORDABLE HOUSING.** Landowner agrees that in addition to complying with the Santa Fe Home Program, the development will contain and possess and additional ten percent (10%) of the housing sold at prices "affordable" (as defined in the Santa Fe Homes Program) to a family who earns one hundred twenty percent (120%) of the Area Median Income. With respect to said additional ten percent (10%) all of the obligations, rights and benefits of the Santa Fe Homes Program shall be complied with and will be available to Landowner, including without limitation, income qualifications, square footages, and benefits related to the water service and all other waivers of fees and costs allowed by City Ordinance for affordable housing.

12. **IMPACT FEES.** The Landowner agrees to pay impact fees as required by Santa Fe City Code (1987).

13. **ASSIGNMENT.** The Landowner assumes all liability related to this Agreement and shall be responsible for all obligations resulting from this Agreement. The Landowner in their sole discretion may hereafter assign this Agreement or specific obligation under this Agreement to another Landowner, another developer, or to an association of property owners, provided such assignee agrees to execute and deliver to the City Clerk a duly acknowledged certificate by which such assignee assumes liability and agrees to perform

all obligations of Landowner with respect to the portion of the property owned by such assignee. Any assignees shall be bound to the terms and conditions of this Agreement to the same extent that the Landowner is bound.

14. **CAPTIONS.** The captions and paragraph headings of this Agreement are not necessarily descriptive, or intended or represented to be descriptive, of all the provisions thereunder, and in no manner shall such captions and paragraph headings be deemed or interpreted to limit the provisions of this Agreement.

15. **EXECUTION OF DOCUMENTS.** The Parties agree to execute all documents contemplated expressly or impliedly by this Agreement.

16. **SEVERABILITY.** If any provision of this Agreement, or the application of such provisions to any person or circumstances, shall be held invalid, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

17. **NO WAIVER.** No waiver of a breach of any of the terms contained in this Agreement shall be construed to be a waiver of any succeeding breach of the same or any other term.

18. **NUMBERS AND GENDERS.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

19. **GOVERNING LAW.** This Agreement and the rights of the Parties hereunder shall be governed by and interpreted in accordance with the laws of the State of New Mexico.

20. **BINDING EFFECT.** This Agreement shall be binding upon, and inure to the benefit

of, the Parties and their respective heirs, successors and permitted assigns.

21. **AGREEMENT.** This Agreement states the entire agreement of the Parties. The provisions of this agreement shall be severable and may be modified only in writing. This Agreement shall not relieve the Landowners from complying with present or future City ordinances, duly adopted resolutions or regulations applicable to the development.

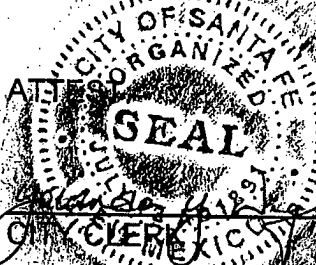
22. **AMENDMENTS.** Any amendments to this Agreement or the Subdivision plan and development plan shall be reviewed by the Planning Commission and sent to the City Council for approval.

IN WITNESS WHEREOF, this Agreement is entered into the day and year written above.

CITY OF SANTA FE



THE HONORABLE DAVID COSS, MAYOR



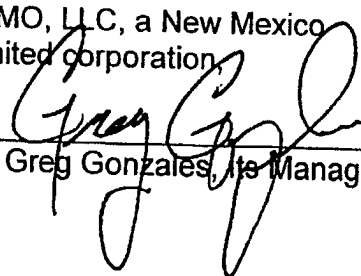
APPROVED AS TO FORM:



CITY ATTORNEY

LANDOWNER:

EZMO, LLC, a New Mexico
Limited corporation,

By: 
Greg Gonzales, its Manager

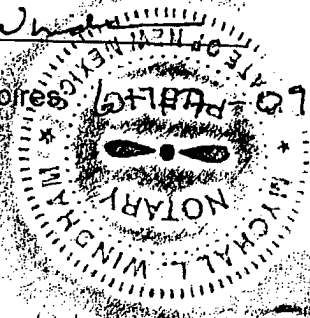
ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this 20th day of September
2007, by Greg Gonzales.

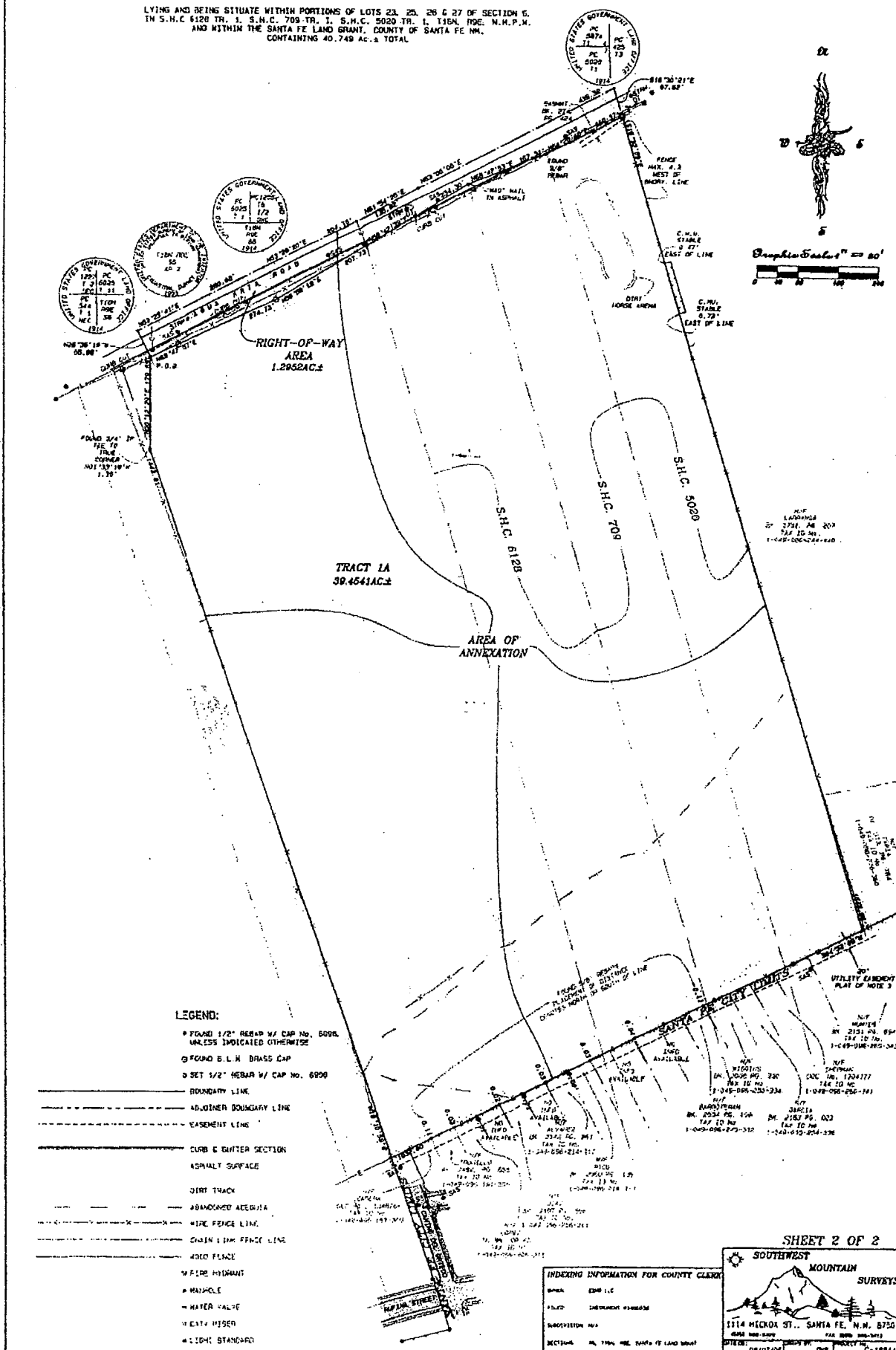

Notary Public

My Commission Expires: 10/18/09



ANNEXATION PLAT OF TRACT 1A

LYING AND BEING SITUATE WITHIN PORTIONS OF LOTS 23, 25, 26 & 27 OF SECTION 6,
IN S.H.C. 6128 TR. 1, S.H.C. 709 TR. 1, S.H.C. 5020 TR. 1, T16N, R9E, N.M.P.M.
AND WITHIN THE SANTA FE LAND GRANT, COUNTY OF SANTA FE NM,
CONTAINING 40.749 AC. ± TOTAL



SFC CLERK RECORDED 12/05/2007

Exhibit D - Cielo Azul Annexation Amendment
--

Amendment No. 1

**ANNEXATION AGREEMENT
CIELO AZUL ANNEXATION**

REFERENCE is hereby made to that certain Annexation Agreement by and between the City of Santa Fe, New Mexico, a New Mexico Municipal Corporation (the "City") and EZMO, LLC, a New Mexico corporation (referred to herein as "Landowner") (collectively, the "Party" or "Parties") dated the 20th day of September, 2007 (the Agreement).

WHEREAS, as a condition of approval to the Cielo Azul Annexation Ordinance and Annexation Agreement, the Landowner agreed that the development would contain and possess an additional ten percent (10%) of the housing sold at prices "affordable" (as defined in the Santa Fe Homes Program) to a family who earns one hundred twenty percent (120%) of the Area Median Income; and

WHEREAS, the Landowner is unable to provide the additional ten percent (10%) of affordable housing due to economic conditions.

NOW THEREFORE, the parties hereto agree as follows:

1. To amend Section 11, entitled "Affordable Housing," by removing the section in its entirety and substituting in its place, thereof, the following:

Landowner agrees to comply with the Santa Fe Home Program.

2. This Amendment No. 1 to the Agreement shall be and become effective as of _____, 2011.
3. All other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

CITY OF SANTA FE

David Coss, Mayor

Date: _____

ATTEST:

Yolanda Y. Vigil
City Clerk

APPROVED AS TO FORM:

Geno Zamora, City Attorney

LANDOWNER:

EZMO, LLC, a New Mexico
Limited Corporation

By: _____

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this this ____ day of _____,
2011, by _____.

Notary Public

My Commission Expires: _____