

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Agreement**”) is made and entered into as of August 31, 2022 by and between Cielo Vista Ranch I, LLC and Cielo Vista Ranch II, LLC (“**CVR**”) and the Board of County Commissioners for Costilla County, Colorado (“**BOCC**”) (together, the “**Parties**”).

### DEFINITIONS

The “**BOCC**” includes the Planning and Zoning Department.

The “**Code**” means the Costilla County Land Use Code.

The “**Fence**” means any fence constructed prior to the effective date of this Agreement.

The “**June 17, 2022 Letter**” means the letter sent by CVR to the BOCC asserting claims against the BOCC.

The “**Road**” means the road that CVR improved on its property that was the subject of Zoning Violation No. 314.

The “**Watershed District**” means the Costilla County Conservancy District.

The “**Water Tower Property**” means that property owned by the BOCC as identified by the deeds recorded at Reception No. 133942, on January 16, 1980 with the Costilla County Clerk and Recorder.

The “**Zoning Dispute**” means the dispute between CVR and the BOCC regarding Zoning Violation Nos. 314, 315, 317 and 318.

The “**Zoning Violations**” means Zoning Violation Nos. 314, 315, 317 and 318.

## RECITALS

**WHEREAS**, the BOCC has alleged that CVR has violated the Code by virtue of the Zoning Violations and CVR denies that any violation of the Code has occurred; and

**WHEREAS**, CVR has asserted claims against the BOCC; and

**WHEREAS**, the Parties wish to resolve the Zoning Dispute and CVR's claims on the terms set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants, obligations, and promises in this Agreement, the Parties agree as follows:

## AGREEMENT

1. **Incorporation of Recitals.** The Recitals are incorporated into this Agreement.
2. **Effective Date.** The Parties agree that the Effective Date of this Agreement is August 31, 2022. The Parties further agree that any work undertaken by CVR specifically addressed herein and after the Effective Date will be subject to this Agreement.
3. **CVR Settlement Payment.** As consideration for the representations and releases contained in this Agreement, CVR agrees to make the following payments to the BOCC by check within seven days of the BOCC's approval of this Agreement (the "Settlement Payment").
  - a. Road Access Fee: \$900.00
  - b. Mining Application Fee: \$3,000.00
  - c. Grading Fee: \$200.00
4. **CVR Representations.** As consideration for the representations made by the BOCC, and the release from the BOCC, CVR represents as follows:
  - a. CVR agrees to let all areas around the Morada return to their natural state.

- b. CVR agrees not to install any plastic currents due to the potential for pollution and harm to wildlife.
- c. CVR will remove the gate to the Water Tower property and will install a fence along the current road on the surveyed boundary line.
- d. CVR agrees that all areas around the Fence are not roads, shall not be used as roads, and will be permitted to return to their natural vegetative state.
- e. CVR agrees to install three additional wildlife jumps on County Road E 5. CVR does not agree that wildlife jumps are required by the Code or any other authority, however, CVR will install these jumps as requested by the BOCC for this area. CVR agrees that the jumps will be open during hunting season.
- f. From the Effective Date forward, for any work done in the Watershed District, including grading, CVR will obtain all necessary permits including, but not limited, to the requirements identified in section 5.30(L) of the Code.
- g. CVR agrees to apply for a special use permit for the alleged mining that took place during the grading of the Road.
- h. From the Effective Date forward, CVR will apply for a grading permit for all grading work performed outside of the Watershed District where such grading is associated with excavating, filling or combination thereof for road construction as stated in the Code, §1.40(F)(2)(9).

5. **BOCC Representations.** As consideration for the payment by CVR, the representations made by CVR, and the release from CVR, the BOCC represents as follows:

- a. The BOCC agrees that all work around the Morada did not violate the Code.

- b. The BOCC represents that it has the authority to require removal of the fence to the Water Tower property and that it owns the Water Tower Property.
- c. The BOCC agrees that CVR does not need any grading permit associated with fence construction where the area is not being used as a road and will be permitted to return to its natural vegetative state.
- d. The BOCC agrees that CVR does not need any grading permit for routine road maintenance on any existing roads.
- e. The BOCC believes that the Code requires wildlife corridors to permit the natural migration of animals, which may be achieved through jumps and/or other forms of openings that allow wildlife ingress and egress from fenced properties, and nothing in this agreement shall prevent, or be interpreted to prevent, the BOCC from asserting its authority to require the same in the future.

6. **Mutual Releases.** In consideration of the Settlement Payment, and the representations made by the Parties in this Agreement, the Parties release each other as follows:

a. CVR, on behalf of itself, its affiliated entities, their shareholders, directors, officers, employees, agents, assigns, contractors, and subcontractors, hereby releases, acquits and fully discharges the BOCC, and its departments, commissioners, employees, agents, from all claims, demands, damages, actions or causes of action, attorney fees and costs, related to its June 17, 2022 Letter.

b. The BOCC, on behalf of itself, its departments, commissioners, employees, agents, assigns, contractors, and subcontractors, hereby releases, acquits and fully discharges CVR from all claims, demands, damages, actions or causes of action, attorney fees and costs, related to the Zoning Violations and the Zoning Dispute.

7. **No admission of liability and No Presumptive Effect.** CVR is settling rather than litigating the Zoning Dispute in exchange for the release and representations made by the BOCC. CVR does not admit that any of the Zoning Violations are valid or legally defensible. CVR makes no representations, either express or implied, about the application of the Code other than the express representations made in this Agreement. The BOCC does not admit that it is liable for any claim asserted by CVR in the June 17, 2022 Letter. The BOCC settled this matter through careful analysis and compromise and this settlement shall not receive any presumptive effect in any current or future interpretations of the Code. Finally, nothing in this Agreement shall be construed to prevent the BOCC from enforcing any future violations of its 1041 regulations or the Code.

8. **Miscellaneous**

a. Colorado Open Records Act. This Agreement will be open to public inspection pursuant to CORA.

b. Applicable Law. This Agreement shall be governed by the laws of the State of Colorado and shall inure to the benefit of and be binding upon each of the Parties, their respective heirs, successors and assigns.

c. Venue. Any litigation arising out of or related to this Agreement shall take place in the Costilla County District Court, State of Colorado.

d. Authority to Bind. The individuals signing below hereby warrant that they have authority to enter into this Agreement and bind their respective Parties.

e. Construction. This Agreement shall not be construed against the Party preparing it, but shall be construed as if all Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one Party.

f. Attorney Fees. The Parties agree that they are responsible for their own attorney fees and costs associated with the Zoning Dispute.

g. Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

h. Modification. This Agreement shall not be modified by any Party by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.

i. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument, and a portable document format (.pdf) or other electronic transmission shall be deemed to be an original signature for all purposes under this Agreement.

j. Severability. The Parties agree that if any provision of this Agreement should become inconsistent with present or future law having jurisdiction over and otherwise properly governing the subject matter of the provision, such provision shall be deemed to be rescinded or modified in accordance with any such law. In all other respects, the Parties agree that the other provisions of this Agreement shall continue and remain in full force and effect.

k. Entire Agreement. This Agreement contains the entire, final understanding and agreement between the Parties hereto with respect to the matters referred to herein. This Agreement may not be contradicted by evidence of any prior oral agreement or of a

contemporaneous oral agreement. The Parties acknowledge that each Party has not executed this Agreement in reliance on any other representation, covenant or warranty.

1. Representation by Counsel. Each Party affirmatively states that they had the opportunity to consult with an attorney before signing this Settlement Agreement and Release.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Release as of the day and year first above written.

Cielo Vista Ranch I, LLC  
Cielo Vista Ranch II, LLC

The Costilla County Board of County  
Commissioners

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title: