



Agenda

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PLANNING COMMISSION
Thursday, January 5, 2017 - 6:00pm
City Council Chambers
City Hall 1st Floor - 200 Lincoln Avenue

- A. ROLL CALL**
- B. PLEDGE OF ALLEGIANCE**
- C. APPROVAL OF AGENDA**
- D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS**

MINUTES: December 8, 2016

FINDINGS/CONCLUSIONS:

Case #2016-107. Airport Mini Storage Units Expansion Development Plan.

Case #2016-125. 145 Brownell Howland Final Subdivision Plat.

Case #2016-126. Kachina Ridge Phase III Final Development Plan.

Case #2016-127. Kachina Ridge Phase III Final Subdivision Plat.

Case #2016-123. Rodeo Village Multi-Family Community Development Plan

- E. OLD BUSINESS**
- F. NEW BUSINESS**

- 1. Case #2016-106. Haciendas del Mirasol, 700 Hyde Park Road, Final Subdivision Plat.** Cody North, agent for 700 HRP, LLC, requests final subdivision plat approval for 8 lots on 28 acres to be accessed by a private driveway via a connector road off of Hyde Park Road. The property is zoned PRC (Estancia Primera Planned Residential Community). (Donna Wynant, Case Manager)
- 2. Case #2016-151. 1326 Rufina Circle Waiver.** Crown Castle applicant, requests a waiver pursuant to 14-6.2(E)(8) "Waivers" and to 14-6.2(E)(k) "Tower Setbacks and Separation Distances Between Towers", to allow a setback less than the maximum height of a tower from any adjoining lot line. The property is zoned I-1(Light Industrial). (Dan Esquibel Case Manager)

G. STAFF COMMUNICATIONS**H. MATTERS FROM THE COMMISSION****I. ADJOURNMENT****NOTES:**

- 1) Procedures in front of the Planning Commission are governed by the City of Santa Fe Rules & Procedures for City Committees, adopted by resolution of the Governing Body of the City of Santa Fe, as the same may be amended from time to time (Committee Rules), and by Roberts Rules of Order (Roberts Rules). In the event of a conflict between the Committee Rules and Roberts Rules, the Committee Rules control.
- 2) New Mexico law requires the following administrative procedures to be followed by zoning boards conducting "quasi-judicial" hearings. By law, any contact of Planning Commission members by applicants, interested parties or the general public concerning any development review application pending before the Commission, except by public testimony at Planning Commission meetings, is generally prohibited. In "quasi-judicial" hearings before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to reasonable cross examination. Witnesses have the right to have an attorney present at the hearing.
- 3) The agenda is subject to change at the discretion of the Planning Commission.
***Persons with disabilities in need of special accommodations or the hearing impaired needing an interpreter please contact the City Clerk's Office (955-6520) 5 days prior to the hearing date.**

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PLANNING COMMISSION
January 5, 2017

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PLANNING COMMISSION
Thursday, January 5, 2017 - 6:00pm
City Council Chambers
City Hall 1st Floor - 200 Lincoln Avenue

CALL TO ORDER

A regular meeting of the City of Santa Fé Planning Commission was called to order by Chair Vince Kadlubek on the above date at approximately 6:00 p.m. in the Council Chambers at City Hall, 200 Lincoln Avenue, Santa Fe, New Mexico.

A. ROLL CALL

Roll Call indicated the presence of a quorum for the meeting.

Members Present

Commissioner Vince Kadlubek, Chair
Commissioner Brian Patrick Gutierrez, Vice-Chair
Commissioner John B. Hiatt, Secretary
Commissioner Roman Abeyta
Commissioner Stephen Hochberg
Commissioner Piper Kapin

Members Absent

Commissioner Justin Greene [excused]
Commissioner Mark Hogan [excused]
Commissioner Sarah Cottrell Propst [excused]

Others Present:

Ms. Lisa Martinez, Land Use Department Director
Mr. Zach Shandler, Assistant City Attorney
Mr. Dan Esquibel, Planner Senior
Ms. Donna Wynant, Planner Senior
Mr. Carl Boaz, Stenographer

NOTE: All items in the Committee packet for all agenda items are incorporated herewith by reference. The original Committee packet is on file in the Planning and Land Use Department.

B. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

C. APPROVAL OF AGENDA

Chair Kadlubek requested an amendment to the agenda by switch the order for the new business cases.

MOTION: Commissioner Hiatt moved to approve the agenda as amended with New Business Case #2 heard before Case #1. Commissioner Kapin seconded the motion and it passed by unanimous voice vote.

D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS

1. MINUTES: December 8, 2016

Commissioner Hiatt requested two changes to the minutes: On page 11, third paragraph, to insert "Impact" between "Traffic" and "Analysis. And on Page 15, seventh paragraph, to change "sized" to "sizes.

MOTION: Commissioner Hiatt moved to approve the minutes of December 8, 2016 as amended with minor grammatical corrections that were submitted to the Stenographer. Commissioner Hochberg seconded the motion and it passed by unanimous voice vote.

2. FINDINGS/CONCLUSIONS:

- **Case #2016-107. Airport Mini Storage Units Expansion Development Plan**

The Findings of Fact and Conclusions of Law for Case #2016-107 are available in the packet at the Land Use website.

MOTION: Commissioner Kapin moved to approve the Findings of Fact and Conclusions of Law for Case #2016-107. Airport Mini Storage Units Expansion Development Plan as presented. Commissioner Hiatt seconded the motion and it passed by unanimous voice vote.

- **Case #2016-125 145 Brownell Howland Final Subdivision Plat**

The Findings of Fact and Conclusions of Law for Case #2016-125 are available in the packet at the Land Use website.

MOTION: Commissioner Hochberg moved to approve the Findings of Fact and Conclusions of Law for Case #2016-145. Brownell Howland Final Subdivision Plat as presented. Commissioner Hiatt seconded the motion and it passed by unanimous voice vote.

- **Case #2016-126 Kachina Ridge Phase III Final Development Plan**

- **Case #2016-127 Kachina Ridge Phase III Final Subdivision Plat**

The Findings of Fact and Conclusions of Law for Case #2016-126 and #2016-127 are available at the Land Use website.

MOTION: Commissioner Hiatt moved to approve the Findings of Fact and Conclusions of Law for Case #2016-126. Kachina Ridge Phase III Final Development Plan and Case #2016-127. Kachina Ridge Phase III Final Subdivision Plat as presented. Commissioner Abeyta seconded the motion and it passed by unanimous voice vote.

- **Case #2016-123 Rodeo Village Multi-Family Community Development Plan**

The Findings of Fact and Conclusions of Law for Case #2016-123 are available at the Land Use website.

MOTION: Commissioner Hiatt moved to approve the Findings of Fact and Conclusions of Law for Case #2016-123 Rodeo Village Multi-Family Community Development Plan as presented. Commissioner Kapin seconded the motion and it passed by unanimous voice vote.

E. OLD BUSINESS

There was no old business to consider.

F. NEW BUSINESS

Mr. Fred Rowe stated he was present as Counsel for the Greater Callecita Neighborhood Association and President of the Santa Fe Council for Effective Representation. He handed the Stenographer a Point of Order (appeal to not consider the Mirasol case). His point of order is attached as Exhibit 1.

Chair Kadlubek explained to Mr. Rowe that the Commission is now ready to consider the case for 1326 Rufina Circle Waiver.

Mr. Rowe went ahead and explained his purpose for speaking.

Chair Kadlubek told Mr. Rowe that the Commission could hear his concern at the time that case is considered.

Mr. Rowe said he couldn't hear but wanted to follow the directives and continued to make his case and then sat down.

2. **Case #2016-151 1326 Rufina Circle Waiver.** Crown Castle applicant, requests a waiver pursuant to 14-6.2(E)(8) "Waivers" and to 14-6.2(E)(k) "Tower Setbacks and Separation Distances Between

Towers", to allow a setback less than the maximum height of a tower from any adjoining lot line. The property is zoned I-1(Light Industrial). (Dan Esquibel Case Manager)

Mr. Esquibel presented the Staff Report for Case #2016-151, 1326 Rufina Circle Waiver. The Staff Report for this case is available at the Land Use website.

He explained the waiver is for increasing the height of an existing tower behind Taco Bell on Rufina Street without increasing the setback to the required length as described on page 3 of the report. The balance is handled through a building permit. Staff believed they complied with requirements for the waiver.

Mr. Esquibel recommended approval of the waiver, subject to Staff conditions as listed in Section 2.

Questions to Staff

There were no questions to Staff concerning this case.

Applicant's Presentation

Mr. David McKinley, 8748 West Williams Road, Peoria AZ, was sworn. He stated that he is representing Chrome Castle, who own and operate cell towers around the nation. In this case, he is representing T-Mobile to expand their capacity in this area. The current towers have many users and they need this to expand the tower to off-load the usage of the other tower users. It is proposed at the request of their customers to increase speeds for internet, WiFi, text, etc.

Questions to the Applicant

Chair Kadlubek asked Mr. McKinley if he agreed with Staff conditions of approval.

Mr. McKinley said he did.

Public Hearing

Chair Kadlubek opened the public hearing for this case. There were no speakers from the public regarding this case and the public hearing was closed.

Commission Discussion

Commissioner Kapin was pleased to hear of the expansion in Santa Fe. She said, when reading the packet, it seemed the required setback would be to prevent damage to properties around the tower if the tower comes down. It appears that is needed in at least two directions.

Mr. McKinley clarified that the tower is designed to collapse upon itself and he could provide an affidavit from an engineer on how it will handle the load.

Commissioner Kapin asked if he spoke with neighbors about this.

Mr. McKinley said an ENN meeting was announced publicly and held as required. No one attended the meeting and no comments received by email, phone, or mail.

Commissioner Hochberg asked how much higher the existing tower would be raised.

Mr. McKinley said the request is for 25' more.

Commissioner Hochberg asked if it is in a light industrial area.

Mr. McKinley agreed.

Commissioner Hiatt saw a discussion about camouflage and asked if that is done on a regular basis.

Mr. McKinley agreed but pointed out that this is a monopole and one condition listed on page 1 of 6 requires the addition to match the color of the existing tower. That color is steel; it is not camouflaged. So it will be steel.

Mr. Esquibel added that within the Industrial districts, towers can go up to 100' and this one is within the limits. And since it is an existing tower, the City could not require the stealth provision. They fall under the FCC regulations.

Action of the Commission

MOTION: Commissioner Abeyta moved to approve Case #2016-151 - 1326 Rufina Circle Waiver, on the basis contained in the Staff Report. Commissioner Hiatt seconded the motion and it passed by unanimous voice vote.

Chair Kadlubek asked for an opinion from Mr. Shandler on the point of order that was handed to the Commissioners claiming the Planning Commission had no jurisdiction over this matter.

Mr. Shandler advised the Commission that they could proceed with Case #2016-106 for two reasons: This is a separate application technically, under the Code, and secondly, because the appeal to the Governing Body was denied by a vote of 8-1 to affirm the decision of the Planning Commission. The Findings they will adopt will be a ministerial task that they will adopt at their next meeting.

Commissioner Hiatt was granted permission and shared that information with Mr. Rowe because he had trouble hearing.

Commissioner Hiatt recused himself from consideration of this case and left the room.

Mr. Rowe wanted to speak but Chair Kadlubek asked Ms. Wynant to present the Staff report.

Mr. Rowe said, "It is the Commission's prerogative to cut me off."

1. **Case #2016-106. Haciendas del Mirasol, 700 Hyde Park Road Final Subdivision Plat.** Cody North, agent for 700 HRP, LLC, requests final subdivision plat approval for 8 lots on 28 acres to be accessed by a private driveway via a connector road off of Hyde Park Road. The property is zoned PRC (Estancia Primera Planned Residential Community). (Donna Wynant, Case Manager)

Ms. Wynant presented the Staff Report for Case #2016-106. The Staff Report for this case is available in the packet at the Land Use website.

Ms. Wynant handed out additional information attached as Exhibit 2, which are the declarations and covenants for Haciendas del Mirasol and the definition of the HOA as "Haciendas del Mirasol Owners' Association."

Ms. Wynant spoke with Commissioner Kapin who suggested having one chart showing the conditions from the preliminary subdivision plat and the new conditions. She handed out the chart, attached as Exhibit 3 (labeled DRT Comment Form from July, 2016).

She also received a late email communication from Commissioner Greene regarding Lot 22 A, attached as Exhibit 4.

Commissioner Hochberg asked if the communication from Commissioner Greene was as a Commissioner or as a private citizen.

Ms. Wynant said the communication is from Justin Greene in his private capacity and it was received late this afternoon.

Ms. Wynant said Mr. Stan Holland asked for a note to be placed on the plat that the HOA would be responsible for the maintenance, repair, placement and operation of the private sewer system. That has already been done. She briefly listed the other conditions of approval, as shown in the packet. The Executive Summary gives a little background. The proposal is for 8 lots and the Planning Commission approved the request on August 4. The Findings of Fact and Conclusions of Law were adopted and everything was attached in the packet. The Governing Body heard the appeal of the decision on December 14, 2016 and the appeal was denied 8-1 on a roll call vote and the Applicant now requests Final Subdivision Plat approval.

She included the Council minutes in the packet. She said Mr. Greene included the lot split from some years ago and followed with some work he did himself and provided illustrations on how things could be clustered tighter on the site.

Questions to Staff

There were no questions to Staff.

Applicant's Presentation

Mr. Jim Siebert, 915 Mercer, was sworn. His associate handed out the timeline of the development review for the project. A copy of the handout is attached to these minutes as Exhibit 5. He said he was hearing that the neighborhood association had only ten days to review 350 pages of documents for this project. His intent was to share what the real time line was. He went through the time line, beginning with the ENN meeting on April 11 2016 and the application submission on May 4, 2016. In June and July, this was tabled before the Planning Commission heard the preliminary plat. So, there has been a substantial period of time for the neighborhood association (Greater Callecita) to review the various documents.

The Council heard the appeal in December 14 and was rejected by an 8-1 vote. One thing that was missing in the packet was a condition by Council to prohibit short-term rentals so he handed out the page (34) from the covenants to verify the applicant satisfied that particular condition. There are no changes to what the Commission approved unanimously on the preliminary plat and they answered all the questions in the Department Review process. The Commission heard from the City Attorney and the City Engineer that there are no variances. "We agree with all conditions mentioned by Staff."

Questions to the Applicant

There were no questions to the Applicant.

Public Hearing

Chair Kadlubek opened the public hearing portion for this case.

Mr. Fred Rowe was sworn. He said, "As we previously indicated, we firmly believe, as a matter of fact, that the Commission has no jurisdiction to go further tonight with proceeding on the final plat approval until the Commission has reviewed and abided by the Council's proposed Findings of Fact and Conclusions of Law, which Mr. Shandler has indicated is purely ministerial. Notwithstanding, he asserted purely ministerial character of the Findings and Conclusions which obviously, we have not seen; which presumably Mr. Shandler is drafting [unintelligible] that the Council's action, which raised quite a few concerns among several Councilors, including Councilor Parliamentarian Peter N. Ives, Esq. raises several concerns which cannot be finessed as really ministerial. For example, the limits of the Council's action should clearly reflect the grave legal concerns with the validity and with the conditions put on the preliminary subdivision approval in at least the following way. As it was stated by several Councilors, including parliamentarian Peter Ives, these include the ENN process, following this case which one of the Councilors treated as an

the absence of a Master Plan for this large project, which, by the way, was presented as over 50 units - not 8 units - as over fifty units, all of last year to several notable [unintelligible] and then was delicately cut back to eight, which avoids the technical requirements of affordable housing contributions as well as other requirement aspects which were thereby eliminated, and from which, therefore, the developer was relieved. The Council's concern [unintelligible] not only flooding [unintelligible] considerations, but, in addition, was really over seventy, repeat - over seventy code violations, which some were finessed by being called 'technical violations' or subsequent conditions which might be met later."

"Let me emphasize, at the preliminary subdivision stage, the Council did not address or sanctify or tolerate over 70 code violations which must all be cured or must be addressed before this Commission can give final approval to Haciendas del Mirasol Subdivision - now technically for eight units but realistically for over 50 units to be developed over the coming few years. Also, let me emphasize that the requirement of a Master Plan submittal was required by this Commission... by this Commission in 2014... in 2012 under the developer's request for a lot split. So, the Master Plan issue; the Master Plan being required, not only by Ordinance 1981-3, but by this Planning Commission, itself twelve years ago and, in our view, cannot be finessed or manipulated out of the picture by treating it as quote - ministerial."

"Besides those political concerns, I would stress that this Commission wisely can avoid the otherwise and argued postponement by referring this case for mediation. In our view, mediation can relieve or cure a number of serious legal concerns by moving it aside and come up with a recommendation that will avert litigation for several years, which was the fate of the Los Vecinos Subdivision Plan, which, in our view, is being replicated by Mr. Romero's and Mr. North's Mirasol application. We seriously urge the Commission possibly or even hopefully with Mr. Shandler's compliance and the developer's agreement, to refer this case for mediation, which, in the end, will benefit this community and all parties concerned. Thank you very much for your consideration."

Mr. Richard Folks, Valley Drive, was sworn, and handed out his testimony on behalf of the greater Callecita Neighborhood Association which he said the boiled down to seven concerns. He read the written testimony which is attached to these minutes as Exhibit 6. They asked for conditions that prevent short-term rentals ever being allowed; no pole lighting, locations of water infrastructure, road and gate locations, no guest houses permitted, a 40-foot access if Phase Two is built, protection for adjacent owners from drainage failure and locations of erosion control structures, and no retaining walls higher than six feet.

Ms. Sandra Greene, 611 Gonzales Road, was sworn and said this case should be heard on February 2 instead of tonight for the complete file (from the Council) to be presented to the Commission. She said they have multiple concerns about the project and there is no rush here tonight.

She said, "Countless neighbors have spoken out about traffic, drainage, trails and she couldn't believe that the Staff and the Planning Commission have ignored them. Mediation can allow both sides to be heard and provide the process for a workable plan for this property. The Planning Commission should invest more time and energy in the process to help all parties to come to a workable solution. Up to now, we have shown preference in the record, reports, designs, developer guarantees and public processes."

She asked if there was ever a Master Plan approved for the northern portion. She said she has shown

that she and her husband own property there under 1981-3 that requires master plan of the property. "We have been excluded from planning by staff and the applicant. We have shown that the street work is substandard and unsafe. Traffic is heavy along Hyde Park Road ..." "The Planning Commission should require the investment as part of the development plans - Chapter 14-9.2 - Design Standards." The neighborhood concerns are not being addressed through a complete and error-free ENN process.

She said they are providing "real" information on this project as shown in the attachments. She spoke to over 100 neighbors as stakeholders. The drainage plans are incomplete and should be required. Even now, with the final drawings, the storm runoff will run across her neighbor's property, potentially causing damage. Drainage easements are needed and upgraded storm drains. The Master Plan is required by ordinance and desired by Staff and neighbors. The previous Commission approved Tract B of Estancia Primera on July 9. Also, the scenic byway is going to be harmed and staff did not ask to mitigate the impact. Staff should be asked to protect the escarpment.

Ms. Greene said they developed a better plan and were disregarded. It addressed the developer's concerns and used a design submitted by the developer. "We ask the Planning Commission to wait for the complete file - the Council packed, the minutes and findings to be certified and presented to the Commission. We believe the Planning Commission has an obligation to work for a better solution with the neighbors and the community."

Mr. Peter Thomas White, 501 Hillside Avenue, was sworn. He said he has been a member of the Hillside Neighborhood Association since 1979 and was involved in drafting Ordinance 1981-3 with two other members of the Association. He was also involved in reviewing and commenting on the Estancia Primera development. He is a water rights attorney but not here as an attorney.

He explained he was here, based on his experience in a lawsuit in Rio Rancho between two property owners, filed in 2008 and lasting six years with regard to a retaining wall 15' high and behind it a drainage channel. His client was an elderly retired Native American who lived downstream, and sued because the upstream owner failed to maintain the drainage channel by allowing a tenant to construct a garden in the drainage channel. The retaining wall and channel were built by Amrep. The upstream defendant claimed the wall was improperly engineered. His client pursued the litigation which took six years and was finally resolved by agreement between the owners at a cost of about \$30,000 each to rebuild the wall and the upstream owner paid \$15,000 to rebuild the drainage channel. It took money and time and stress to the owners involved. In it is a clear definition of where the responsibility lies for drainage facilities.

He said the responsibility should not be shifted to private property owners when dealing with public facilities intended to protect property owners. That retaining wall affected 15 property owners up and down the hill. The City of Rio Rancho failed to ensure the channel was kept in good shape. The drainage channel must always be in good shape and not blocked. The City's obligation is that it is operational.

So he proposed conditions of approval, based on the 2008 drainage case and terrain management reports prepared there. He said he took no position in this case either as an engineer or hydrologist to make a judgment. But he asked the Commission to consider the 4 points in his report to help define the responsibility clearly. He handed out his report and a copy is attached to these minutes as Exhibit 7.

Mr. Frank Pierce, 175 Valley Drive, was sworn. He thanked the Commission for hearing all the information provided tonight but wished the Mayor was present also. He said the experience at the last meeting was not very lovable. It was late in the day and people were getting tired and the last portion was on this project. It was such that the time limit for presenters was only a very few minutes and was insulting to the people. There was an architect with lots of studies and had to speak so fast, it was hard to understand. Presenters were pushed to hurry. The information provided by Valley Drive residents was not [??] "Everyone I spoke to found that experience was very insulting and it appeared we were not wanted to make presentations. Thank you for the time to allow me to present tonight."

There were no other speakers from the public regarding this case and the public hearing was closed.

Commission Discussion

Chair Kadlubek wanted clarity on Councilor Lindell's recommendation to add prohibition of short-term rentals condition and why it was not here.

Ms. Wynant clarified that it is in the packet on page 3 of the report, Section 5 and the restriction on short-term rentals in the subdivision. It is in the CC+R's on page 34 and added as Paragraph 7.4. Covenant 7.15 was also read about renting of units or guest houses. She said it complies with this regulation.

Commissioner Kapin asked if this definition of short-term is consistent with the City's definition.

Ms. Martinez agreed.

Chair Kadlubek asked if this design does or does not meet the dark sky requirement.

Mr. John Romero said the design does meet the requirement. The ordinance requires a flat lens, not fish bowl lens.

Chair Kadlubek noted the claim that 16 homes would require a 40' road width. The Commission went over that last time but he wanted clarification on that.

Mr. Romero said 8 units is the threshold and guest houses are accessory so that would not add to that load.

Ms. Martinez said she was comfortable with that clarification. The Fire Marshal is not present but guest house is accessory to the main house so the Fire Department should be able to access them as well.

Commissioner Kapin asked Mr. Romero about question #5. The entrance to this road is stubbed out for other property. She asked if that entrance needs to be widened as part of this development.

Mr. Romero said the intent is that it could be used for future development but that is not entitled now. The intent is for consolidated access to Hyde Park Road. Widening the throat of the road itself is not

required.

Commissioner Kapin asked at what point in numbers of houses for the development would there need to be a change in width.

Mr. Romero explained that the throat can provide for a car entering and a car exiting. He could not envision any need for two cars entering and two cars exiting. So he would not anticipate that happening until hundreds of homes were proposed and it would impossible to have that much density on that property.

Commissioner Kapin asked when a left-hand turn lane would need to happen.

Mr. Romero said that would be done at development and would depend on future plans.

Commissioner Gutierrez referred to the Callecita handout proposed restriction that no retaining wall be higher than six feet and asked if the ordinance allows for retaining walls greater than six feet or are not allowed.

Ms. R B Zaxus stated that the applicant is not proposing any walls higher than six feet.

Chair Kadlubek said if they are not proposing walls higher than six feet, it doesn't make sense to add that as a condition.

Commissioner Gutierrez asked if they do want a retaining wall higher than six feet, how the Commission should address it.

Ms. Zaxus said it would be considered at the time it was proposed.

Commissioner Gutierrez said it appears the applicant has addressed all the concerns. He asked if the CC+R has been recorded from the declaration of covenants.

Mr. Siebert explained that the way it works is as a cross reference between the plat and the covenants and when they record the plat, they record the covenants, as well, at the same time. It then becomes a public record.

Ms. Martinez said she just received confirmation from the Fire Marshal that addition of guest houses would not require a wider road.

Action of the Commission

MOTION: Commissioner Abeyta moved for approval of Case #2016-106, Haciendas del Mirasol, 700 Hyde Park Road Final Subdivision Plat with Staff conditions. Commissioner Gutierrez seconded the motion.

Discussion on the Motion:

Commissioner Kapin asked Staff if there is a blanket construction schedule that developers are held to by City rules.

Ms. Martínez agreed there are some requirements for certain times to be followed for construction. It is from 7 a.m. to 5 p.m., five days per week and exceptions can be made for special circumstances.

Commissioner Gutierrez requested that before the Commission votes to ask Staff to work with Mr. White. He did a lot of homework to make sure all water is to Code.

Ms. Wynant said she would.

Chair Kadlubek noted in reading some of the Council minutes, that Mr. Rowe had accused Planning Commissioners of ex parte communication with Staff on this case. He stated on the record that he did not talk with Staff about this case at all. It was raised in one of the appeals that the applicant was intimidating Commissioners into voting their way. "I just want to be on the record that I, as a Planning Commissioner, was never intimidated by the applicant. I don't know where this goes from here. Having a lawyer state this - I would state that this is not going to be held up because of such [alleged] ex parte communications. I just felt it necessary to say I, personally, never had ex parte communications and was never intimidated by the applicant. Thank you."

The motion passed by unanimous roll call vote with Commissioner Kapin, Commissioner Gutierrez, Commissioner Abeyta and Commissioner Hochberg voting in the affirmative and none voting against.

Commissioner Hiatt did not return to the meeting after the vote was taken.

G. STAFF COMMUNICATIONS

Ms. Martínez wished everyone a Happy New Year and welcome to the new year of planning. She said the Land Use Department is involved in the implementation of the new financial accounting system for the City which includes a component for Land Use to be able to streamline all the operations. They are also doing data cleanup and defining all business practices across the board. The final implementation will be completed by July. Staff members are excited about the resources now provided for Land Use and the new initiative to find information and track records more easily.

H. MATTERS FROM THE COMMISSION

Chair Kadlubek said he probably would not be at the next meeting.

Ms. Martínez said at this point, applications are slowly coming in and there are not enough for a second meeting this month or at most a brief meeting.

Commissioner Abeyta said he would be willing to serve on the Summary Committee this year.

Chair Kadlubek asked for Commissioner Abeyta to replace him on the Summary Committee.

Ms. Martinez said she is working on it and should have information at the next meeting.

Chair Kadlubek said he would be comfortable remaining on the Long-Range Committee. Regarding appointments for Chair, he asked to be reappointed. He asked if all commissioners whose terms are expiring should request reappointment by the Mayor.

Ms. Martínez agreed. Commissioner Kapin, Commissioner Gutierrez, and Commissioner Hochberg's terms are expiring - Commissioner Hochberg's because he was filling an unexpired term.

I. ADJOURNMENT

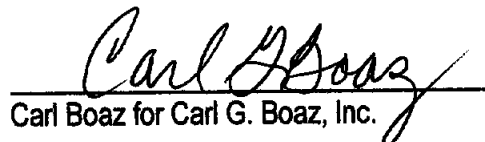
The meeting was adjourned at 7:24 p.m.

Approved by:



Vince Kadlubek, Chair

Submitted by:


Carl Boaz for Carl G. Boaz, Inc.

Planning Commission
January 5, 2017

EXHIBIT 1

Fred Rowe, Counsel for Greater Callecita Neighborhood Association, Jan.5,2017

POINT OF ORDER

The Planning Commission has NO JURISDICTION to consider the El Mirasol FINAL Subdivision application on tonight's agenda.

This is a QUASI-JUDICIAL PROCEEDING, where the Commission cannot consider the proposed FINAL application UNTIL AFTER following and abiding by the Council's findings and conclusions for denying our appeal from the Commission's PRELIMINARY approval, which directives the Council will issue presumably next week.

The minutes of the Council's actions on December 4 reflect grave legal concerns over the validity of this Commission's PRELIMINARY El Mirasol approval as stated by several Councilors, including Council Parliamentarian Peter Ives, Esq. These include the defective ENN process in this case, the over 70 Code violations wrongly treated as "conditions" or as "technical corrections", this project's flooding and safety risks, and the lack of a Master Plan required for "serial" subdivisions and by Ordinance 1981-3, which was also contemplated by this Commission's lot split approved in 2012.

Before those legal concerns are resolved, the current request for FINAL El Mirasol approval is not ripe and must be deferred.

Instead of postponement of the final El Mirasol application, the Commission may wish to consider referring this case for mediation. Mediation may resolve many legal problems in the best interests of all concerned, and may avert years of court litigation like the notorious Los Vecinos case.

Planning Commission
January 5, 2017

EXHIBIT 2

City of Santa Fe, New Mexico

memo

DATE: January 5, 2017

TO: Planning Commission

FROM: Current Planning Division

RE: Additional Information

The attached information is not in your January 5, 2017 Planning Commission packet.
The information is in the following order:

Case #2016-106. Haciendas del Mirasol, 700 Hyde Park Road, Final Subdivision Plat.

- Declaration of Covenants, Conditions, Restrictions and Easements.

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS
FOR
HACIENDAS DEL MIRASOL SUBDIVISION**

This Declaration of Covenants, Conditions, Restrictions and Easements for Haciendas del Mirasol Subdivision (the "Declaration") is made this ____ day of _____, 20____, by 700 HPR, LLC, a New Mexico limited liability company (the "Declarant").

RECITALS

A. Declarant is the owner of certain real property in the City of Santa Fe, Santa Fe County, New Mexico, constituting the subdivision known as Haciendas del Mirasol Subdivision (the "Subdivision"), which real property is more particularly described and shown on that certain plat of survey titled *Plat of Lot Line Adjustment, and Easements for 700 HPR, LLC . . . & HPR Properties, LLC . . . & Final Subdivision Plat for Haciendas del Mirasol*, by Philip B. Wiegel, P.S. #9758, filed for record on _____, 20____, as Instrument Number _____, and recorded in Plat Book _____, at pages _____ to _____ in the real property records of Santa Fe County, New Mexico; and

B. Declarant intends to develop the Subdivision as a first-class residential neighborhood comprised of eight (8) lots, each of such lots suitable for the construction of a residential unit and appurtenances;

C. Declarant desires to provide for the preservation and maintenance of the character, quality, appearance and value of the Subdivision and the residential units constructed therein, and to this end desires to subject the real property comprising the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of Declarant and the future owners of real property in the Subdivision;

NOW, THEREFORE, Declarant hereby declares that the real property comprising the Subdivision is and shall be purchased, owned, transferred, sold, conveyed, encumbered, used, occupied and improved subject to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, and all other terms and conditions of this Declaration. All of the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, and all other terms and conditions of this Declaration, are equitable servitudes, which shall run with the real property comprising the Subdivision, and any portion thereof, and shall be binding upon and inure to the benefit of all parties having or acquiring any right, title, or interest in or to the Subdivision or any portion thereof, whether or not mentioned or embodied in any future instruments of conveyance.

ARTICLE 1

DEFINITIONS

- 1.1 **Architectural Control Committee and Committee** shall mean the Architectural Control Committee established pursuant to Article 6, hereof.
- 1.2 **Articles** shall mean the Articles of Incorporation of the Association filed with the New Mexico Secretary of State, as amended and restated from time to time as therein provided.
- 1.3 **Association** shall mean the Haciendas del Mirasol Owners' Association, Inc. a New Mexico nonprofit corporation, and its successors and assigns.
- 1.4 **Board of Directors and Board** shall mean the Board of Directors of the Association.
- 1.5 **Bylaws** shall mean the Bylaws of the Association, as amended and restated from time to time as therein provided.
- 1.6 **"Centralized Stormwater Facilities"** shall mean all centralized stormwater facilities located in the Subdivision, including but not necessarily limited to ponds and ponding areas, gabion ponds, gabion check dams, wire check dams, stone check dams, existing check dams (to be rehabilitated), bank protections, water gardens (including landscaping located within the water gardens), and other centralized storm water detention facilities shown on the Drainage Plan and those centralized stormwater detention structures, whether or not shown on the Drainage Plan, which serve to control and stabilize (i) erosion on channels and other drainage areas in the Subdivision out letting to a storm water detention area/pond and (ii) water released from any centralized storm water detention area, pond or structure, that are hereinafter constructed and installed, by Declarant or the Association within the Subdivision or the right-of-way for Hyde Park Road, which areas, ponds or structures are intended for the centralized detention, retention, control, or stabilization of increased storm waters resulting from development within any part or all of the Subdivision. Such term shall also include drainage related structures (e.g. curbs and gutters, bar ditches, drop inlets, culverts and flared end sections, rock rip rap splash pad, etc.) directly appurtenant to the Roads. Such term shall not include: (i) cisterns or other storm water detention areas, ponds or structures which are not centralized, but are instead constructed, installed or intended for the detention of excess storm waters resulting only from the development of a single Lot located within the Subdivision, which non-centralized cisterns or other storm water detention areas, ponds or structures shall be maintained, repaired and replaced by the Owner(s) of such single structure or Lot served thereby; and, (ii) drainage related structures (e.g. curbs and gutters, bar ditches, drop inlets, culverts and flared end sections, rock rip rap splash pad, etc.) directly appurtenant to a private driveway serving a single Lot, which drainage related structures shall be maintained, repaired and replaced as necessary by the Owner or

Owners of such Lot using the private driveway and responsible for the maintenance of such private driveway.

- 1.7** **“Centralized Sanitary Sewer Lines”** shall mean all low pressure, private sewer lines (to the point of connection to a public sanitary sewer manhole with gravity flow sewer line outlet), including but not necessarily limited to those lines which are specifically shown on the Development Plans, which provide sanitary sewer service to more than one Lot and that are hereinafter constructed and installed, by Declarant or the Association within the Subdivision. Such term shall not include: (i) any low pressure, private sewer line serving only a single Lot located within the Subdivision, which non-centralized private sewer line shall be maintained, repaired and replaced by the Owner(s) of such single Lot served thereby; (ii) any gravity flow public sanitary sewer manhole and public gravity flow sewer line; and, (iii) any and all sanitary sewer grinder pump(s) located on a Lot, which grinder pump(s) shall be maintained, repaired and replaced by the Owner or Owners of such Lot using and served by such grinder pump(s).
- 1.8** **Common Areas** shall mean the “H.O.A. Open Space” (as so designated on the Plat) located along Hyde Park Road, the Roads, the easement areas for the Trail, the easement areas for the Centralized Sanitary Sewer Lines, and the easement areas for the Centralized Stormwater Facilities and ingress and egress to the same for maintenance and repair purposes.
- 1.9** **Common Expenses** shall mean any cost, expense or expenditure made or to be made, or financial liability incurred or to be incurred, by the Association for or in connection with the exercise of the Association’s powers and duties established herein or in the Governing Documents, as the same are further described in Section 1.20.1 of this Declaration.
- 1.10** **Common Property** shall mean the Centralized Stormwater Facilities (including the improvements comprising the same and easements granted for the same), Common Areas and improvements located within the Common Areas (including but not limited to asphalt or other surfaces, curb and gutter, rockwork, landscaping, trail surface, retaining walls, benches, trash receptacles, entrance features, entrance and directional signs, lighting devices, utility boxes, pipes, wires, conduits, and other improvements, fixtures and property now or hereafter constructed upon, within, or adjacent to the Common Areas), Centralized Sanitary Sewer Lines (including the easements granted for the same and for access to the same), and other improvements and property constructed or installed by Declarant or the Association for the common benefit of the Subdivision and the Owners.
- 1.11** **Declarant** shall mean 700 HPR, LLC, a New Mexico limited liability company and its successors and assigns. Declarant may specifically assign its rights, and delegate its duties, under this Declaration to one or more Persons, by an assignment and delegation executed and acknowledged by Declarant and recorded in the real property records for Santa Fe County, New Mexico.

- 1.12 Declarant Control** shall mean that period of time during which members of the Board may be appointed by the Declarant, pursuant to Section 4.7 hereof and the Bylaws of the Association.
- 1.13 Declaration** shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Haciendas del Mirasol Subdivision.
- 1.14 Design Guidelines** shall mean the design guidelines, if any, adopted from time to time by the Architectural Control Committee regulating the architectural and environmental aspects of the development of Lots and the construction of Improvements on Lots. The Design Guidelines may be revised from time to time by the Committee and need not be recorded in the real property records of Santa Fe County, New Mexico in order to be effective. Any Owner desiring to construct or modify an Improvement on a Lot should obtain a copy of the then current Design Guidelines, if any, from the Association.
- 1.15 Development Plans** shall mean the development submittals, submitted by Declarant to and approved by the City of Santa Fe, in connection with the approval of the Final Subdivision Plat for the Subdivision.
- 1.16 Drainage Plan** shall mean those portions and plan sheets of the Development Plans that are designated as Overall Grading and Drainage Plan, Detailed Grading and Drainage Plans, Existing Drainage Rehabilitation Plans, Gabion Pond Details, Gabion Dams, Permanent Erosion Control Plan and Stormwater Control Details, or otherwise pertain to drainage of storm waters within the Subdivision.
- 1.17 Governing Documents** shall mean the Articles and Bylaws, collectively.
- 1.18 Improvement** shall mean any building, wall, gate, or other structure; driveway, turnaround, or parking area; sign; underground utility; exterior light fixture; antenna or other communication device; solar collector; any excavation of any kind; any landscaping, other than the replacement of existing, dead or dying landscaping with landscaping of the same or similar type; and, any other exterior improvements, structures, and installations on a Lot.
- 1.19 Lot** shall mean each and all of the eight (8) numbered lots of land originally designated upon the Plat, as the same may hereafter be amended from time to time, as permitted herein.
- 1.20 Lot Assessments** shall collectively mean the following assessments and charges against Lots and their Owners:
- 1.20.1 General Assessments** shall mean the regular assessments and charges against all Lots and their Owners to meet the Common Expenses incurred by the Association in conducting its operations and activities, including, but not limited to the following:

(i) The costs of management and administration of the Association, including but not limited to, compensation paid by the Association to employees, managers, accountants, and attorneys.

(ii) The costs and expenses of maintaining, repairing and replacing, as necessary, the Common Property, including but not necessarily limited to the Roads, Trail, Centralized Stormwater Facilities, and Centralized Sanitary Sewer Lines.

(iii) The cost of insurance, if any, maintained by the Association.

(iv) Reasonable reserves for contingencies and other proper purposes, if deemed appropriate by the Board, to meet unanticipated costs, shortfalls in Assessments, etc.

(v) Costs that the Board may elect to incur to bond the members of the Board, officers of the Association, any professional managing agent or other Person handling the funds of the Association.

(vi) Taxes, if any, paid by the Association.

(vii) The costs and expenses incurred by the Architectural Control Committee or any other committees established by the Board, to the extent not paid or reimbursed by applicants who apply for approvals from the Architectural Control Committee.

(viii) Other expenses or costs of any other item or items designated to be provided or performed by the Association pursuant to this Declaration or the Governing Documents, or actually provided or performed by the Association, or in the discharge of any duties or powers of the Association, including the enforcement of this Declaration by litigation or otherwise.

1.20.2 Individual Assessment shall mean an assessment and charge made by the Association against one or more particular Lots and its or their Owners for the purpose of defraying, in whole or in part, the cost of any special services to that Lot, the cost of curing any default by the Owner of such Lot, or any other charges designated in this Declaration or the Bylaws as an Individual Assessment;

1.20.3 Special Assessment shall mean a special assessment and charge made by the Association against all Owners and Lots for capital improvements, shortfalls in General Assessments, unanticipated expenditures by the Association, etc., in accordance with the provisions of this Declaration and the Governing Documents.

- 1.21 Maintenance Guidelines** shall mean the Centralized Stormwater Facilities Maintenance Guidelines attached hereto and incorporated herein by this reference as Exhibit A, as the same may be amended by the Board, from time to time and at any time, either with the consent, or at the direction, of the Planning and Land Use Department of the City of Santa Fe, regarding the maintenance of the Centralized Stormwater Facilities.
- 1.22 Mortgagee** shall mean any institutional lender or private lender that holds a bona fide first mortgage encumbering a Lot as security for the performance of an obligation. (The term "institutional lender" specifically includes a bank, savings and loan association, a mortgage lending company, an insurance company, and the Federal National Mortgage Association or similar agency.)
- 1.23 Occupant** shall mean any Person, other than an Owner, who occupies or is in possession of a Lot, or any Improvements thereon, whether as a lessee or tenant under a lease or otherwise.
- 1.24 Owner** shall mean the record owner, whether one or more Persons, of the fee title, or an undivided interest therein, to any Lot, including real estate contract purchasers if they are not in default under the contract, but excluding those having an interest in a Lot merely as security for the performance of an obligation. Declarant shall be an Owner with respect to those Lots owned by Declarant.
- 1.25 Person** shall mean a natural person, corporation, partnership, limited liability company, trustee, governmental entity, or other legal entity.
- 1.26 Plat** shall mean that plat of survey titled *Plat of Lot Line Adjustment, and Easements for 700 HPR, LLC . . . & HPR Properties, LLC . . . & Final Subdivision Plat for Haciendas del Mirasol*, by Philip B. Wiegel, P.S. #9758, filed for record on _____, 20____, as Instrument Number _____, and recorded in Plat Book _____, at pages _____ to _____ in the real property records of Santa Fe County, New Mexico.
- 1.27 Roads** shall mean Camino Mirasol, and the 38' wide Private Driveway and hammerhead turnaround, from Camino Mirasol to the point of its terminus at the boundary line of Lot 4, all as also shown on the Plat.
- 1.28 Rules and Regulations and Rules** shall mean the rules and regulations applicable to the Lots and Common Areas adopted by the Board pursuant to the authority granted by this Declaration and from time to time in effect, which need not be recorded in the real property records of Santa Fe County, New Mexico in order to be effective.
- 1.29 Subdivision** shall mean all of the real property constituting the Haciendas del Mirasol Subdivision as the same is described and shown on the Plat.

1.30 **Trail** shall mean the trail within the ten foot (10') wide trail and utilities easement granted on the Plat, running to and from Hadisway Ave, over Lot 4 and the Common Area.

1.31 **Working Capital Fund** shall mean the fund established pursuant to Section 4.6 hereof.

ARTICLE 2

SUBJECT PROPERTY

2.1 **Property Subject to This Declaration.** The real property which is and shall be subject to this Declaration is all that real property constituting the Subdivision, as the same is described and shown on the Plat.

ARTICLE 3

COMMON AREA, COMMON PROPERTY, AND CENTRALIZED STORMWATER FACILITIES

3.1 **Title to Common Areas and Common Property.** Declarant hereby grants, transfers, and conveys the Common Areas and the Common Property to the Association, "as is" and "where is", without any representation or warranty of any kind, express or implied, including, but not limited to, any warranty of condition, habitability, merchantability, or fitness for a particular purpose. Except as otherwise noted on the Plat or in this Declaration, the Common Areas and the Common Property are for the common use and benefit of the Owners and shall not be deemed to have been dedicated to the general public or local or state government in the absence of an express, written dedication or grant of easement to the public. The Common Areas and Common Property are subject to all matters of record, including those set forth in this Declaration or upon the Plat.

3.2 **Roads.** As indicated on the Plat, the Roads are currently private, for use only by the Owners and Occupants of the Subdivision and their respective guests and invitees; provided, however, that the use of Camino Mirasol is non-exclusive and shall be shared with the owners and occupants, and their guests and invitees, of the adjacent "Tract 2" as reflected on the Plat. Notwithstanding the foregoing, the Association, acting through the Board of Directors and with the consent of the owners of the adjacent "Tract 2", may seek to dedicate Camino Mirasol to the City of Santa Fe. The Roads, including Camino Mirasol, are to be maintained (including snow removal), repaired and replaced, as necessary, by the Association, with the costs and expenses of maintenance, repair and replacement of Camino Mirasol to be shared with the owner(s) of Tract 2, and provided further that, if the City of Santa Fe (by and through the Governing Body of the City of Santa Fe) shall expressly agree to accept a dedication of Camino Mirasol, and thereby undertake responsibility for the maintenance, repair and replacement of Camino Mirasol, then and upon such event the Association shall no longer have responsibility for the maintenance,

repair or replacement of Camino Mirasol. The costs and expenses incurred by the Association in maintaining, repairing and replacing, and providing snow removal for, the Roads shall be Common Expenses, assessed against Lots and their Owners as General Assessments.

3.3 Centralized Stormwater Facilities.

3.3.1 Inspection, Maintenance, Repair, and Replacement By Association.

The improvements comprising the Centralized Stormwater Facilities shall be owned, operated, inspected, maintained, repaired and replaced by the Association, as provided in this Declaration and the Governing Documents, and, at the option, but not the obligation, of the City of Santa Fe, by the City of Santa Fe. The Association shall maintain and keep the Centralized Stormwater Facilities in a good working order and condition, and in compliance with all then applicable governmental requirements, including current and future written directions and requirements from time to time issued by the City of Santa Fe. The Centralized Stormwater Facilities specifically shall be maintained pursuant to the Maintenance Guidelines. The responsibility of the Association for the inspection, maintenance, repair and replacement of a particular Centralized Stormwater Facilities shall commence once the construction and installation or rehabilitation of the same has been finally completed by the Declarant and approved by the City of Santa Fe.

3.3.2 Report to City of Santa Fe. On an annual basis, on or before March 15 of each calendar year, the Association shall retain, at the Association's expense, a civil engineer, duly licensed in the State of New Mexico, and cause such engineer to prepare, and submit to the City of Santa Fe Planning and Land Use Division and the Streets, Drainage, & Fleet Maintenance Division, a written report, certified to the City of Santa Fe, detailing the inspection, maintenance, and repair activities, if any, over the prior calendar year by the Association with respect to the Centralized Stormwater Facilities, and certifying to the City of Santa Fe that the Centralized Stormwater Facilities have been maintained pursuant to the Maintenance Guidelines and are in a good working order and condition.

3.3.3 Rights of The City of Santa Fe. If the Association shall fail to so inspect, maintain, replace, or repair the Centralized Stormwater Facilities under Section 3.3.1, or submit the required report certified by a civil engineer duly licensed in the State of New Mexico under Section 3.3.2, and such failure shall continue for a period of thirty (30) days after receipt of written notice thereof from the City of Santa Fe, then the City of Santa Fe shall have the right and power, in addition to any other rights and remedies of the City of Santa Fe, to so inspect, maintain, construct, replace, and/or repair the Centralized Stormwater Facilities, and shall be entitled, and is hereby granted the right and power, to exercise all of the rights and powers of the Association, including the assessment and lien rights of the Association, set forth in this Declaration and the Bylaws with respect to the construction, inspection, maintenance, repair and replacement of the Centralized Stormwater Facilities. Notwithstanding the above to the contrary, the City shall not have the right to take the foregoing actions in the case of a failure by the Association which cannot, with due diligence, be cured within thirty (30) days, unless the Association shall fail to proceed promptly (except for unavoidable delays) after the giving of such notice from the City of Santa Fe and with all due diligence to cure such failure and

thereafter to prosecute the curing thereof with all due diligence (it being intended that as to a failure not susceptible of being cured with due diligence within thirty (30) days, the time within which such failure may be cured shall be extended for such period as may be reasonably necessary to permit the same to be cured with all due diligence). Further notwithstanding the above to the contrary, the City of Santa Fe shall have the immediate right to enter and maintain, re-construct, construct, or otherwise take appropriate action to remediate emergency conditions with respect to the Centralized Stormwater Facilities, when such emergency conditions are declared in writing by the City Manager, and the associated costs of such action shall be paid by the Association within sixty (60) calendar days after issuance of an applicable invoice for such remediation measures, including administrative costs.

3.3.4 Non-Liability of The City of Santa Fe. If the Association shall fail to fulfill its duties and responsibilities under the Declaration, and the City of Santa Fe shall exercise any of the rights and powers of the Association, then the City of Santa Fe shall not be liable to Declarant, Association, or to any Owner, for any damage, loss, or prejudice suffered or claimed on account of the City of Santa Fe's exercise of such rights and powers. Each Owner, by acceptance of a deed to a Lot, does hereby expressly release the City of Santa Fe of and from any and all claims, demands, causes of action, for damages or otherwise, in any manner resulting from the City of Santa Fe's exercise of such rights and powers of the Association.

3.3.5 Indemnification. The Association shall indemnify, defend and hold harmless the City of Santa Fe, its elected officials, and employees from and against any and all loss, cost, expense or claims, including but not limited to reasonable attorneys' fees and expenses and costs of court, that arise out of any injury or death to person or damage to or loss of property, caused either by the negligent actions or inactions of the Association, its employees, contractors, etc., with respect to the Centralized Stormwater Facilities, or as a result of any failure or default by Association to fulfill its obligations under this Declaration with respect to the Centralized Stormwater Facilities.

3.3.6 Transfer to the City of Santa Fe. If the City of Santa Fe, or its assigns shall expressly agree to accept a dedication, by and through the Governing Body of the City of Santa Fe, or its assigns, of the Centralized Stormwater Facilities, and undertake responsibility for the maintenance, repair and replacement of the Centralized Stormwater Facilities, then the Association shall duly execute and acknowledge an appropriate instrument dedicating the Centralized Stormwater Facilities (and associated easements if not previously dedicated to the City of Santa Fe), and the responsibilities for inspection, maintenance, repair, construction, and/or replacement of the same, and shall cause such instrument to be recorded in the records of Santa Fe County, New Mexico. Upon the recording of such notice, the provisions of this Declaration (including this Section 3.3) pertaining to the Association's responsibility and assessments for the inspection, maintenance, repair and replacement of the Centralized Stormwater Facilities shall be no longer applicable.

ARTICLE 4
ASSOCIATION

4.1 Organization of Association. The Association is a corporation duly organized and existing under the Nonprofit Corporation Act of the State of New Mexico, and is charged with the duties and is vested with the powers set forth in its Governing Documents and this Declaration.

4.2 Jurisdiction. The Association shall be the Owners' association for the Subdivision. The Association shall have jurisdiction over the Subdivision and each Owner.

4.3 Powers. The Association, acting by and through such directors, officers, agents, contractors, or employees as it may designate or as may be designated in its Governing Documents, shall have all of the powers of a nonprofit corporation organized under the laws of the State of New Mexico, including but not limited to the power to do any and all acts which are authorized, required, or permitted under its Governing Documents or this Declaration and any and all acts which may be reasonable and necessary for, or incidental to, the exercise of any of its powers or duties, including but not limited to the following powers:

(i) Hire, supervise and discharge such agents, employees, and independent contractors as the Board may from time to time determine to be in the best interest of the Association;

(ii) Make such contracts and incur such liabilities as the Board may from time to time determine to be in the best interest of the Association;

(iii) Grant such easements, leases, licenses, and concessions through or over the Common Areas as the Board may from time to time determine to be in the best interest of the Association;

(iv) Impose such charges for late payment of assessments and, after notice and an opportunity to be heard, levy such reasonable fines for violations of this Declaration, the Governing Documents, or Rules and Regulations of the Association, as the Board may from time to time determine to be in the best interest of the Association;

(v) Impose such reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments as the Board may from time to time determine to be in the best interest of the Association;

(vi) Contract for and maintain such policy or policies of insurance as the Board may from time to time determine to be in the best interest of the Association, including liability and property damage insurance for the Common Areas and Common Property, including the Roads, Trail, Centralized Stormwater Facilities, Centralized Sanitary Sewer Lines, and such

insurance as may be necessary to protect Owners and adjacent property owners from the failure of the Centralized Stormwater Facilities and Centralized Sanitary Sewer Lines;

(vii) Commence, intervene in, and maintain such legal or administrative actions or proceedings as the Board may from time to time determine to be in the best interest of the Association, and do so in the name of the Association and on its own behalf or on behalf of any Owner who consents thereto;

(viii) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

(ix) Notwithstanding the foregoing, the Association shall not be entitled to do any of the following unless the same is consented to by a vote of seventy-five percent (75%) of the Owners:

(a) by act or omission, dissolve or terminate the Association;

(b) change the pro-rata interest or obligations of any Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

(c) partition or subdivide any Lot;

(d) by act or omission, abandon, partition, subdivide, encumber, sell, or transfer the Common Areas or Common Property, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas, and dedication of the Centralized Stormwater Facilities, shall not be deemed an encumbrance or transfer within the meaning of this clause; or

(e) use hazard insurance proceeds for losses to the Common Property for other than the repair, replacement, or reconstruction of the Common Property.

4.4 Duties. The Association, acting by and through such directors, officers, agents, contractors, or employees as it may designate or as may be designated in its Governing Documents, shall:

(i) Adopt and amend annual budgets of revenues and expenditures, including reserves and establish and collect the General Assessments of each Owner for Common Expenses and; establish and collect any Individual Assessments and Special Assessments, as necessary; and, establish and maintain the Working Capital Fund;

(ii) Defend actions or administrative proceedings brought against the Association;

(iii) Regulate the use, maintenance, repair, replacement, and modification of the Common Areas, Centralized Stormwater Facilities, Centralized Sanitary Sewer Lines, and Common Property, and in connection therewith, adopt, publish and amend the Rules and Regulations, as required and allowed under this Declaration;

(iv) Inspect, maintain and repair the Common Areas and Common Property, including but not necessarily limited to the Roads, Trail, Centralized Sanitary Sewer Line, and Centralized Stormwater Facilities (the latter two according to the provisions of Article 3 of this Declaration);

(v) Pay taxes, including real estate taxes, on the Common Areas and Common Property, if separately assessed for taxation;

(vi) Notify any Mortgagee of any violation of the Declaration, the Governing Documents, rules, or regulations of the Association by an Owner of the Lot subject to a mortgage in favor of such Mortgagee, if such violation remains un-remedied for a period exceeding thirty (30) days, provided the Mortgagee has provided actual notice to the Association, in writing, that it is the holder of the mortgage affecting the Lot;

(vii) Enforce the covenants, restrictions, easements, charges, and liens, and all other terms and conditions of, this Declaration and the Rules and Regulations;

(viii) Cause to be kept a complete record of all its acts and corporate affairs;

(ix) Issue, or cause an appropriate officer to issue, upon demand by any Person, a certificate setting forth whether or not any Lot Assessments have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states a Lot Assessment has been paid, such certificate shall be conclusive evidence of such payment;

(x) Suspend the voting rights and right to use of the Common Area (other than the Roads) of a member during any period in which such member shall be in default in the payment of any Lot Assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period to be set by the Board for infraction of published Rules and Regulations; and,

(xi) Declare the office of a member of the Board of Directors to be vacant if such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

4.5 Membership. Each Owner automatically shall be a member of the Association (referred to as a "Member" or the "Members" in the Governing Documents), and the membership of the Association shall consist exclusively of Owners.

4.6 Voting. With respect to each matter submitted to the membership, there shall be one vote allocated to each Lot. The Owner of each Lot shall be entitled to exercise the vote allocated to such Lot. In the event of multiple Owners of a Lot, the vote of such Lot shall be cast by the Person designated in a certificate executed by all the Owners of such Lot and filed with the Secretary. If no such certificate has been filed or the Person designated is absent from the meeting, and only one of the multiple Owners of such Lot is present, he or she shall be entitled to cast the vote allocated to that Lot. If no such certificate has been filed or the Person designated is absent from the meeting, and more than one of the multiple Owners are present, the votes allocated to that Lot may be cast only in accordance with an agreement of a majority of such multiple Owners then present. In the absence of such a majority, the votes allocated to that Lot shall not be cast.

4.7 Board of Directors. The Board shall consist initially of three (3) members. Until the Declarant's right to appoint directors under this Section has expired, the number of directors may be increased or decreased from time to time by Declarant. Thereafter, the number of directors may be increased and decreased from time to time by the vote of Members holding seventy-five percent (75%) or more of the votes in the Association. In no event, however, shall the number of directors be less than three (3). Any vacancy created by an increase in the number of directors shall be filled by the Declarant, until Declarant's right to appoint directors under this Section has expired, and thereafter by the Board of Directors. Except as otherwise is provided in this Section 4.7, the Directors of the Association shall be appointed by the Declarant until such time as the Declarant no longer owns a Lot in the Subdivision. At such time as 75% of the Lots are conveyed to Owners other than the Declarant, two (2) directors shall be appointed by the Declarant from amongst Owners other than the Declarant (which appointed Owners may include Owners affiliated with Declarant). Members appointed by the Declarant may be removed from the Board at any time by the Declarant, with or without cause. Except as provided below, members of the Board appointed by the Declarant shall hold office until either removed by the Declarant, the next annual meeting of the Association, or until their successors have been elected or appointed. Notwithstanding the foregoing provisions of this Section 4.7 to the contrary, no later than the earlier of:

(i) one hundred twenty (120) days after conveyance of all Lots to Owners other than the Declarant,

(ii) two (2) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business, or

(iii) five (5) years after conveyance of the first Lot, the term of all Directors appointed by the Declarant shall expire, and each such Director shall be replaced by a Director elected by Owners. At the first annual meeting of the Association following the end of the above-described period of Declarant Control, the number of Board members shall be divided into two (2) classes, the first class comprised of two (2) Board members and the second class comprised of the remaining board members. The members of the first class shall have an initial term of one (1) year or until their successors have been elected. The members of the second class shall have an initial term of two (2) years or until their successors have been elected.

Thereafter, members of each class shall have terms of two (2) years or until their successors have been elected. As indicated above, any Director appointed by the Declarant may be removed from the Board, with or without cause, by the Declarant. Any elected Director may be removed from the Board, with or without cause, by a majority vote of members of the Association. In the event of death, resignation, or removal of a Director appointed by Declarant, Declarant shall appoint a successor to serve for the unexpired term. In the event of death, resignation, or removal of a Director elected by Owners, the remaining Directors shall elect a successor to serve for the unexpired term.

ARTICLE 5

ASSESSMENTS

5.1 Mutual Covenants to Pay Assessments. Each Owner, by acceptance of a deed, or other instrument of transfer, to a Lot, or real estate contract for the purchase thereof, covenants and agrees with each other Owner and with the Association, to pay all Lot Assessments levied by the Association, as provided under this Declaration and the Governing Documents, whether or not such covenant is contained in such deed or contract or other instrument of conveyance.

5.2 Lien for Non-payment of Assessments. All Lot Assessments by the Association, including, without limitation, General Assessments, Special Assessments, and Individual Assessments, together with interest thereon, as hereinafter provided, reasonable costs and any attorney's fees incurred in connection with the collection thereof, whether or not suit is filed, chargeable to any Lot or its Owner, shall constitute a continuing lien on such Lot, from the date of assessment until paid. Notwithstanding the foregoing to the contrary, the lien of the Lot Assessments shall be inferior to the first mortgage lien of any Mortgagee. Sale or transfer of any Lot pursuant to foreclosure of such a mortgage (or, if approved by the Association, acceptance of a deed in lieu of foreclosure) shall extinguish the lien as to payments that became due prior to the foreclosure sale or transfer in lieu thereof. The transferee of such Lot, however, shall be liable for any Lot Assessments coming due after the sale or transfer.

5.3 Interest on Unpaid Assessments. If any Lots Assessment shall remain unpaid for thirty (30) days after the due date thereof, the unpaid assessment shall bear interest at a rate equal to twelve percent (12%) per annum, or such other rate as may be established by the Association from time to time, commencing on the date such assessment was due, and continuing until the date paid.

5.4 Costs of Collection on Unpaid Assessments. In any suit by the Association for collection of an unpaid Lots Assessment and/or to foreclose the lien of the Association for an unpaid Lots Assessment, the Owner shall be required to pay the costs and expenses of the Association in such proceeding, including reasonable attorney's fees. The Owner shall also be required to pay to the Association any Lots Assessment due for the Lot during the period of foreclosure. The Association shall have the power to bid on the Lot at foreclosure sale, and to acquire, and thereafter hold, lease, mortgage and convey the same if acquired by the Association

at the foreclosure sale.

5.5 Notice of Delinquent Assessment. The Association shall give written notice to an Owner, and any Mortgagee who provides a written request for the same to the Association, of any unpaid Lots Assessment remaining unpaid for longer than thirty (30) days after the same are due.

5.6 Personal Debt of Owner. Any Lots Assessment or charge against a Lot shall be the personal and individual debt of the Owner thereof at the time the particular Lots Assessment is made. Suit to recover a money judgment for unpaid Lot Assessments and related charges shall be maintainable without foreclosing or waiving the lien securing same. Notwithstanding anything to the contrary contained herein, the Association shall seek any sums due for unpaid Lots Assessment from a Person in possession of a Lot pursuant to a real estate contract for a period of forty-five (45) days following notice to such Person of the unpaid assessment, before seeking such sums from the holder of record title to such Lot.

5.7 Other Remedies. The Association shall have the right to assess fines and suspend the voting rights of an Owner for any period during which any Lots Assessment against his Lot remains unpaid

5.8 Joint Liability for Assessments Upon Transfer of Lot. The grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid Lot Assessments against the Lot at the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore; provided, however, that upon payment of a reasonable fee established by the Board, and upon written request, any such prospective grantee shall be entitled to a statement from the Association setting forth the existence and amount of any unpaid Lots Assessment, if any, with respect to the subject Lot, the amount of the current yearly General Assessment and Special Assessment, if any, the date that such General Assessment and, if applicable, Special Assessment, becomes due, and credits for advanced payments or for prepaid items, which statement shall be conclusive upon the Association. If such statement is not tendered by the Association within ten (10) business days of actual receipt by the Association of such request, then such requesting grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid Lots Assessment against the subject Lot unless such lien has been recorded with the Santa Fe County Clerk prior to the date the request is received by the Association.

5.9 No Waiver of Assessments. No Owner may waive or otherwise escape liability for the Lot Assessments by abandonment of the Owner's Lot or by any other means whatsoever.

5.10 Allocation of General and Special Assessments. The amount of General Assessments shall be based upon an annual budget, determined as provided in the Bylaws of the Association. As also provided in the Bylaws, General Assessments and Special Assessments shall be allocated amongst Lots on a per Lot basis, based upon the total number of Lots.

5.11 Individual Assessment Upon Initial Transfer of Lots. Upon the closing of each and every transfer by the Declarant of record fee simple title to each and every Lot, the purchaser of such Lot shall pay an Individual Assessment to the Association in the amount of \$500.00, which Individual Assessment shall be added to and held in the Working Capital Fund of the Association, and shall not be considered an advance payment of any General Assessments or Special Assessments. Such Working Capital Fund shall provide working capital for the Association, including funds for improvements to the Common Area and Common Property.

5.12 Bookkeeping; Use of Funds. The Association shall maintain a general fund and shall keep books and records of the expenses incurred by the Association in performing its duties under this Declaration and the Articles and Bylaws. All assessments, fines and other moneys collected under this Declaration shall be used only for operation of the Association, reserves, and other uses authorized by this Declaration and the Bylaws, including legal, accounting and other professional fees.

ARTICLE 6

ARCHITECTURAL CONTROL COMMITTEE, DESIGN STANDARDS, PERMITTED STRUCTURES AND CONSTRUCTION REQUIREMENTS

6.1 Architectural Control Committee.

6.1.1 Creation and Composition. An Architectural Control Committee, consisting of a minimum of three (3) members is hereby established for the Subdivision. The initial members of the Committee are:

Position 1:	Cody North
Position 2:	Bradley C. Karp
Position 3:	Belinda Karp

Until the expiration of the period of Declarant Control, or until the Declarant relinquishes, in a writing recorded in the Santa Fe County real property records, the Declarant's right to appoint members of the Committee, whichever is earlier, the members of the Committee shall serve at the pleasure of Declarant, who shall have the right to appoint, reappoint and discharge members of the Committee, from time to time, at any time, at will. Appointed members of the Committee need not be Owners and may be affiliated with Declarant, or Declarant's agent(s), and may include outside professionals. Upon the expiration of such period of time, the Board shall elect the three (3) members of the Committee, who shall then serve for the following terms:

Position 1:	Three (3) years
Position 2:	Two (2) years
Position 3:	One (1) year

Upon the expiration of the term of each of the Committee members initially elected by the Board, the Board shall elect a successor to such position, who shall serve for a period of three (3) years, such that the terms of the Committee members are staggered. A Committee member shall

serve until his or her term expires, the member resigns or is unable to serve, or the member is removed by a vote of the Board. Nothing herein contained shall prevent the appointment or election of a Committee member whose term has expired to a new term as a Committee member. After the expiration or relinquishment of the Declarant's right to appoint members of the Committee, the Board shall fill any vacancy occurring in the membership of the Committee. At least one (1) of the members of the Committee elected by the Board shall be an Owner. The Architectural Control Committee shall meet on a periodic basis, as needed. The Architectural Control Committee shall meet upon the call of the Chairperson or two (2) of its members, provided that, unless waived in writing by all members, written notice stating the date, time, place, and purpose of the meeting shall be given to members not calling the meeting at least five (5) days prior thereto. The affirmative vote of a majority of the members of the Committee shall be required for approval of any matter; provided, however that a majority of the members of the Committee may designate one member, or an agent, to act on behalf of the Committee.

6.1.2 Submittal Requirements. Before anyone, other than Declarant, shall commence the erection, installation, construction, reconstruction, remodeling, or alteration of, or addition to, any Improvement on a Lot, including any site preparation, clearing or relocation of trees, excavation, installation of utilities or other similar, pre-construction activities, they shall submit for approval to the Architectural Control Committee two (2) complete sets of final plans and specifications clearly showing the nature of the work proposed and the location thereof, as shall enable the Architectural Control Committee to evaluate whether the proposed construction, alteration, installation, etc., will comply with terms and provisions of this Declaration. Any request for approval will not be considered by the Architectural Control Committee unless the Owner submitting the request for approval or for whom the request for approval was submitted, is current on the payment of all Lot Assessments. Unless otherwise set forth in the Design Guidelines, or waived in writing by the Architectural Control Committee, such final plans and specifications shall consist of the following:

(i) plot plan drawn to scale (minimum scale 1/8 inch per foot), showing the intended location of all Improvements, including walls, utility lines, driveways, and walkways;

(ii) grading and drainage plan(s), drawn to scale (minimum scale 1/8 inch per foot), showing intended location of on-site stormwater management structures and demonstrating compliance with grading and drainage requirements in the Development Plans (including the Sample On-Lot Grading and Drainage Plan sheet and the Grading Notes and City of Santa Fe Drainage Notes reflected on the Overall Grading and Drainage Plan sheet, both sheets comprising part of the Development Plans) and terrain and stormwater management requirements of the City of Santa Fe and this Declaration;

(iii) landscaping, water harvesting and irrigation plan(s), drawn to scale (minimum scale 1/8 inch per foot), showing the intended location of all landscaping, water harvesting and landscape irrigation.

(iv) floor plan drawn to scale, with heated square footage, of each building shown thereon;

(v) north, east, south and west elevations of each building, drawn to scale, showing all windows and doorways, portals, trim, etc., with all elevations showing heights above undisturbed natural ground level immediately adjacent to the structure's applicable stem wall;

(vi) descriptions of exterior color schemes, roof treatments, and other exterior materials, colors, textures, etc.;

(vii) exterior lighting plan indicating the location, type and height of both building and ground mounted luminaires, a description of the luminaires, including lamps, poles or other supports, and shielding devices, and photometric data, such as that furnished by the manufacturer, showing the angle of light emission;

(viii) construction schedule and detailed construction plan indicating the areas in which all construction activity will be confined, the size and location of areas for construction material storage, limits of excavation, drive areas, parking areas, portable toilet(s), temporary structures, if any, dumpsters, debris storage area, wash-out area, utility trenching, construction sign, and identification and description of methods and measures to be taken for the protection of the natural landscaping on the Lot, such as temporary construction fencing, flagging, rope, and barricades;

(ix) Storm Water Pollution Prevention Plan;

(x) any and all other plans as may be required to be submitted to the City of Santa Fe in connection with obtaining a building permit from the City of Santa Fe for the construction or installation of the intended Improvements; and,

(xi) a soils report prepared by a geotechnical or other qualified engineer duly registered and licensed by the State of New Mexico. (Every Owner is hereby advised by Declarant that there may be expansive soils and rock formations underlying the Subdivision. Neither the Declarant nor the Committee is liable to any Owner for soil conditions or failure of soils to support any structure on any Lot. The Committee assumes no liability for the review or approval of such soils report, but the submittal of such soils report shall be a prerequisite to commencing construction. Each Owner assumes the risk of construction on the Lot.)

6.1.3 Approval Requirements. No erection, installation, construction, reconstruction, remodeling, or alteration of, or addition to, any Improvement, including any site preparation, clearing or relocation of trees, excavation, installation of utilities or other similar, pre-construction activities, other than by Declarant, shall be commenced unless and until the final plans and specifications submitted to the Architectural Control Committee shall have received the approval of the Architectural Control Committee. Violation of this covenant is likely to result in irreparable harm to the other Owners in the Subdivision, and any other Owner(s) or the Association, on behalf of such Owners, shall be entitled to injunctive relief, temporary and permanent, in order to prohibit any violation of this covenant, in addition to any other remedies available hereunder or at law or in equity. Any erection, installation,

construction, reconstruction, remodeling, or alteration of, or addition to any Improvement by Declarant, and regular maintenance, by any Owner, of structures and improvements previously approved by the Committee, which maintenance does not materially alter the color or appearance of such previously approved improvements, shall not require Architectural Control Committee approval. The Architectural Control Committee shall approve or disapprove, in writing, the plans and specifications submitted to it within thirty (30) days after receipt. Approval of such plans and specifications shall be evidenced by the written endorsement of the Architectural Control Committee made on one copy of said plans and specifications with such copy delivered to the Owner or the Owner's agent or representative submitting the same. The other set of plans and specifications shall be retained by the Architectural Control Committee. If the Architectural Control Committee shall fail to approve or disapprove the plans and specifications within thirty (30) days after receipt of complete plans and specifications, then approval shall be deemed given, provided that any work proposed to be done shall be done in a manner which does not violate any of the terms and provisions of this Declaration. Any and all changes of a substantial nature involving the exterior elements of the approved construction or work shall be submitted to the Architectural Control Committee at least ten (10) days prior to construction of any such change.

6.1.4 Approval Standards. The Committee shall have the right to disapprove any plans and specifications submitted to it for any one or more of the following reasons:

(i) If, in the opinion of the Committee, the plans and specifications are not in sufficient detail, or are incomplete.

(ii) If, in the opinion of the Committee, the architectural design of the proposed Improvements as shown by the plans and specifications, including exterior color scheme, or the size, number, cluster or other location of any structure, is not in harmony with the general surroundings, or with the Improvements, or proposed Improvements, near or adjacent to the location at which said Improvements are intended to be erected.

(iii) If, in the opinion of the Committee, the work and/or structures sought to be approved are not consistent with the concept of a first class residential development.

(iv) If, in the opinion of the Committee, the plans and specifications are not substantially in compliance with the requirements and provisions of this Declaration or do not comply with the ordinances and requirements of the City of Santa Fe as the same then exist. The Architectural Review Committee may require an Owner to retain qualified design services after the rejection by the Committee of two (2) consecutive submittals of plans and specifications, as a condition to the Committee reviewing any additional submittals.

6.1.5 Review Fee. In connection with any submission for plan approval, the Committee may require the Owner to pay a review fee sufficient to pay the anticipated professional fees and other costs and expenses to be incurred by the Committee in reviewing the plans and specifications, including, without limitation, architect fees, engineering fees, landscape architect fees, attorney's fees, etc. The initial amount of the review fee is One Thousand Dollars (\$1,000.00), which amount may be increased or decreased from time to time by the Board in a Rule. The specific applicability of such fee may also be established by the Board in a Rule,

which may be amended from time to time. Professional consultants retained by the Committee shall be paid such compensation as shall be approved by the Committee. Any unused portion of the review fee shall be either refunded to the applicable Owner or applied to the construction deposit, as determined by the Committee. If the review fee is insufficient to pay the professional fees and other costs and expenses actually incurred by the Committee in reviewing the plans and specifications, then the additional or excess fees, costs and expenses shall be reimbursed and paid by the applicable Owner to the Association within ten (10) days following written notice to such Owner from the Committee or Association of such deficiency, with supporting documentation. If not timely paid, such deficiency may be assessed by the Association against the applicable Owner as an Individual Assessment.

6.1.6 Construction Deposit; Remedy for Violation. Following approval by the Committee of plans and specifications, but prior to the start of any of the work described therein, the applicable Owner, or the Owner's construction contractor, shall provide a cash construction deposit to the Association. The initial amount of the construction deposit shall be Ten Thousand Dollars (\$10,000.00), which amount may be increased or decreased from time to time by the Board in a Rule. The construction deposit shall be held by the Association in a segregated account. If the Committee determines at any time during the course of construction, that any Improvement is being built in non-compliance with the approved plans and specifications, this Declaration, or any Rule, or that the construction has caused damage to the Common Property or the Lot or property of any other Owner, the Committee shall provide the offending Owner with written notice of the violations and a date by which they must be remedied, providing a reasonable period of time for the same, as determined by the Committee, but in no event less than five (5) days after the date of the giving of such notice. If the violations are not cured by that date fixed by the Committee, the Association, in addition to any other rights and remedies, shall be entitled to draw upon the construction deposit to remedy the violations. If the cost to remedy the violations is more than the amount of the construction deposit, then such deficiency may be assessed by the Association against the applicable Owner as an Individual Assessment. Any balance of the deposit held by the Association shall be released to the Owner when the final inspection has been conducted, and approval given, by the Committee or their designated representative.

6.1.7 Inspection Rights. During construction or performance of any work on a Lot requiring Architectural Control Committee approval, the Architectural Control Committee and its agents shall have the right to periodically review and inspect the progress of such work on the Lot to ensure its compliance with the plans and specifications for such work approved by the Architectural Control Committee. The Architectural Control Committee also shall have the right to periodically review and inspect any other erection, installation, construction, reconstruction, remodeling, alteration, or addition work on the Lot, to determine if such work required the submittal to and approval of the Architectural Control Committee of plans and specifications for the same.

6.1.8 Final Inspection. Upon substantial completion of the erection, installation, construction, reconstruction, remodeling, alteration, or addition work on the Lot, the Owner shall notify the Architectural Control Committee in writing that the work is complete. The Architectural Control Committee will, within ten (10) days after receipt of the notice of

completion, inspect the completed work and either: (i) send the Owner a written notice of approval of the work, if the work is in conformity and compliance with the approved plans and specifications, or (ii) send the Owner a notice of disapproval of the work, if the work is not in conformity and compliance with the approved plans and specifications, stating the particular grounds for such disapproval, and the Owner shall be obligated to take such action as may be necessary to effect such compliance and conformity without delay. At the completion of any necessary corrections, the Architectural Control Committee will then re-inspect the work within ten (10) days after written notice of the completion of such correction work, to again approve or disapprove of the correction work.

6.1.9 Liability. The Committee and the Board shall not be liable to the Association, any Owner, or any other Person, for any damage, loss, or prejudice suffered or claimed on account of:

(i) The approval, conditional approval or disapproval by the Committee of any plans, drawings, and specifications, whether or not defective;

(ii) The construction or performance of any work on any Lot, whether or not pursuant to plans, drawings, and specifications;

(iii) The development or manner of development of any Lot, including whether or not any work on any Lot, whether approved or not by the Committee, complies with then applicable requirements of the City of Santa Fe or any other governmental authority having jurisdiction, each Owner, and Owner's architects, engineers, and builders being solely responsible for ensuring compliance with the requirements of the City of Santa Fe or any other governmental authority having jurisdiction.

By the acquisition of title to any Lot, and in consideration thereof, each Owner thereby waives any right, and agrees not, to file suit against the Committee, the Board, or any member thereof, to recover damages in connection with any of the foregoing events.

6.1.10 Variances. When naturally or artificially occurring circumstances or the necessities of reasonable use and enjoyment of a Lot require, the owner of the Lot may apply to the Architectural Control Committee for variance approval, and the Architectural Control Committee, upon showing of good cause and necessity therefore, and with a showing of the lack of significant detriment to other Lots and Owners, by the affirmative vote of a majority of its members, may allow reasonable variances with respect to any matter within the Committee's jurisdiction under this Declaration, on such terms and conditions as the Committee shall specify by written report. No such variance approval shall become effective, however, until thirty (30) days after the Committee shall have mailed a copy of its written report to each Owner. If the Owner or Owners of either one (1) Lot adjacent to the Lot of the Owner seeking the variance, or any four (4) Lots in total, give written notice of objection to such variance within said thirty (30) day period, the variance shall not thereafter become effective until it is approved by the vote of at least a majority of the votes cast at the next regular or special meeting of the Association at which a quorum is present. The applicant for a variance may request in writing that a special meeting of the Association be held to vote on the variance request, in which event the Board of

Directors shall convene such a special meeting at the earliest practicable time, but at the expense of the applicant.

6.1.11 Compliance of Other Projects. No Owner or Owner's construction contractor shall be permitted to commence construction of any Improvement requiring approval of the Committee, if any other Improvement currently under construction or previously constructed, by or for that Owner or Owner's construction contractor on any Lot, does not comply with the requirements of this Declaration, a Rule, or the plans and specifications approved by the Committee for that other structure, or work, and if the Owner or Owner's construction contractor has failed to correct the same after request by the Committee or Board. In connection with its approval or disapproval of the plans and specifications for the new structure, the Committee shall provide the Owner or Owner's construction contractor with written notice of the specific items of the prior structure or work by the Owner or Owner's construction contractor that is in non-compliance.

6.1.12 Appeal of Committee Action. An Owner may appeal a Committee action to the Board by requesting, in a writing delivered to the President of the Association, a hearing before the Board. Upon such a request, the Board shall schedule a special meeting, pursuant to the Bylaws of the Association, no later than twenty (20) days after the date of the Board's receipt of such a request. At such special meeting, the Owner's evidence will be heard, and the Board will decide whether or not to uphold the Committee's decision. The decision of the Board shall be final.

6.2 Architectural Requirements

6.2.1 Design Guidelines; General Requirements. The Committee may, but shall be under no obligation to, adopt, re-adopt, or modify, from time to time, the Design Guidelines, which may include architectural and other standards for approval of plans submitted to it pursuant to this Article. These Design Guidelines, as they may exist from time to time, shall have the same force and effect and shall be binding upon the Owners as if they were set out in this Declaration. A copy of the Design Guidelines, as they exist from time to time, shall be kept with the Association's records, and shall be available to the Owners, upon request by the Owners. Any Owner intended to construct any Improvement on a Lot should promptly obtain a copy of the most recent Design Guidelines. Notwithstanding any provision of this Declaration to the contrary, all Improvements on a Lot must comply with the ordinances and requirements of the City of Santa Fe. In the event of any conflict between the ordinances and requirements of the City of Santa Fe and the requirements of this Declaration, the more restrictive requirement shall be applicable, subject to the provisions for the issuance of a variance under Section 6.1.10 of this Declaration.

6.2.2 Architectural Styles. All construction and architecture shall conform to what is known as the "Territorial," "Santa Fe Pueblo Style," or "Recent Santa Fe Style" of architecture. Moderate modifications of those styles, in reasonable, innovative and creative ways, are permitted. The use of construction materials having the appearance of local, indigenous and traditional building material is encouraged. Other materials may be used where their use will be in accordance with sound architectural practice and will be unusually

inoffensive in the sole discretion of the Architectural Control Committee. The determination of whether modification of architectural style is moderate and reasonable shall likewise be in the sole discretion of the Architectural Control Committee. The only requirement for Architectural Control Committee shall be that it acts in good faith for the benefit of the majority of Owners.

6.2.3 Exterior Color. The exterior color of all improvements shall be approved by the Architectural Control Committee, which has complete discretion to approve or disapprove colors. The predominant external surface colors on Improvements shall reduce the visual impact of the Improvement on the landscape and blend with the earth and vegetation surrounding the Improvement. Limited areas of accent colors may be used on elements such as front doors, window frames, and the undersides of porches and portals, so long as, in the absolute discretion of the Architectural Control Committee, the accents do not create a visual distraction.

6.2.4 Exterior Surface Materials. The predominant exterior surface material of walls of structures shall be stucco. Stone or architecturally colored concrete may be used as a secondary or accent material; no grey concrete shall be allowed on any structure. Large areas of exposed wood are prohibited. All exterior wall materials must be continued down to finish grade.

6.2.4 Roofs. All structures constructed in the Subdivision shall have roofs approved by the Architectural Control Committee. No roofs shall have slopes greater than 21" per linear foot; provided that portals may utilize "shed" roofing details when approved by the Architectural Control Committee.

6.2.5 Location of Structures. The location of all Improvements shall adhere to the requirements of this Declaration and applicable sections of the Santa Fe City Code, including but not limited to the Escarpment Ordinances of the City of Santa Fe. The building pads and buildable areas on each Lot that are reflected on the Plat and Development Plans are approximate. The location and siting of the principal residence on a Lot shall be within the absolute discretion of the Architectural Review Committee, who may deny a proposed location and siting based upon, among other things, the impact of such proposed location and siting on the view sheds of other Lots. Any unattached garage, guest house, studio, workshop, etc. shall be located near such principal residence. At least one-half of any building footprint on a Lot shall have a natural slope of less than twenty percent (20%); the remainder of the area or building footprint may have a natural slope of twenty percent (20%) or greater, but less than thirty percent (30%). No portion of any building can extend more than forty (40) horizontal feet or to a point more than ten (10) vertical feet, whichever is more restrictive, beyond a point whose average natural slope is twenty percent (20%).

6.2.6 Grading Limits. Grading on a Lot shall be confined within an area which is determined as being fifteen (15) horizontal feet beyond the building foundation wall as determined in 6.2.5 above, or thirty (30) horizontal feet beyond a point whose average natural slope is twenty percent (20%). At the limits of grading, natural grade shall be met with a graded slope not to exceed one (1) vertical foot in three (3) horizontal feet, except that of a structural retaining wall, not to exceed five (5) vertical feet, is permitted for patios. All cut and fill slopes

will be rehabilitated according to an approved Erosion Control Plan as required by the Terrain Management Regulations of the City of Santa Fe.

6.2.7 Maximum Height of Buildings. All buildings and other structures must comply with and conform to the requirements and restrictions of the Escarpment Ordinances of the City of Santa Fe. In addition thereto, the following restrictions shall apply:

(i) The finished floor elevation at any point shall not exceed five (5) vertical feet above the natural grade below that point.

(ii) The building roof line shall not exceed fifteen (15) vertical feet above the highest point of natural ground surface on the building site. Chimneys are excepted from this height limitation.

(iii) The building roof line for each dwelling unit shall not exceed twenty (20) vertical feet above the natural ground surface at any point at the building foundation. Chimneys are excepted from this height limitation.

6.2.8 Minimum Residence Size. No residence shall be constructed on a Lot with less than two thousand (2,000) square feet of heated area.

6.2.9 Preservation of Terrain; Natural, Low-Water Vegetation.

(i) Structures shall be designed to reduce and minimize the visual impact of construction on a Lot and to preserve, to the extent feasible, the existing, natural vegetation on a Lot.

(ii) Owners shall use vegetation cover consistent with existing natural vegetation, including piñon and juniper, chamisa and native grasses. Other drought tolerant trees and shrubs, and other plant species may be utilized, provided they are plant materials approved by the City of Santa Fe for planting within the City of Santa Fe Escarpment District.

(iii) Landscape design shall apply the principles of xeriscaping. Alternative sources of irrigation water shall be developed, including harvested water from roof and site runoff. Potable water should be used only as a back-up or temporary irrigation water source to the greatest extent possible. The landscaping plan shall include passive water harvesting for landscape irrigation purposes as a minimum. Active water harvesting is required.

6.2.10 Site Drainage and Required Cisterns. Site drainage and grading shall be completed with the minimum disruption to the natural condition of the Lot, and shall not direct drainage to adjoining Lots or other properties except as established by natural, existing drainage patterns. The Improvements on all Lots shall be designed and constructed so as to detain and retain all storm water drainage on the Lot. Specifically, each individual Owner is required to construct and install a cistern on such Owner's Lot to detain and retain all storm water drainage on the Lot. Cisterns shall be designed to store one gallon per square foot of

roofed area of Improvements on the Lot. Cisterns shall be installed and operated in compliance with applicable provisions of this Declaration and requirements and regulations of the City of Santa Fe, including Section 14-8.4 of the Santa Fe City Code (Landscape and Site Design) and Chapter 7 of the Santa Fe City Code (Building and Housing).

6.2.11 Building Setbacks. The building setbacks for each Lot shall be as provided by applicable sections of the Santa Fe City Code.

6.2.12 Driveways. Driveways serving a single Lot shall be a minimum width of twelve feet (12') and a maximum width of sixteen feet (16'), except where necessary for turnouts, turnarounds and parking, and unless otherwise approved by the Architectural Control Committee. Any concrete driveways and walkways shall utilize colored or stained concrete; no grey colored concrete surfaces shall be allowed.

6.2.13 On Site Sanitary Sewer Grinder Pump. The Improvements on each lot shall be serviced, for sanitary sewer purposes, by a sanitary sewer grinder pump located on such Lot, such grinder pump being an E-One grinder pump or equal approved by the Architectural Review Committee. Such on-site grinder pump and low pressure sanitary sewer line to the point of connection to the Centralized Sanitary Sewer Line shall be maintained, repaired and replaced by the Owner of the Lot serviced thereby.

6.2.14 Exterior Lighting. All outdoor luminaires shall be designed, installed, located and maintained such that nuisance glare onto adjacent Lots or the Road shall be minimized to the greatest extent practicable. Disabling glare onto adjacent Lots or the Road is not allowed. Accent lighting shall be directed onto a building or object and not toward the sky or onto an adjacent Lot or the Road. Direct light emissions must not be visible above the roof line of a building or beyond the building's edge. In all events, all outdoor lighting and accent lighting must comply with Section 14-8.9 of the Santa Fe City Code.

6.2.15 Residential Green Building Code. The construction of all residential structures in the subdivision shall comply with the requirements of the Residential Green Building Code, as adopted from time to time by the City of Santa Fe. Construction in excess of the minimum requirements of the Residential Green Building Code is encouraged.

6.3 Structures on a Lot.

6.3.1 Permitted and Prohibited Structures. The following structures shall be permitted on a Lot, provided the same are allowed by applicable governmental requirements of the City of Santa Fe: One (1) principal residence, one (1) guest house, one (1) studio, one (1) workshop, and one (1) garage, each with appurtenant porches, portals, patios, breezeways, and other Improvements customarily used in connection with a single family residence, provided that the same is not expressly prohibited by other provisions of this Declaration and are approved by the Architectural Control Committee. If any guest house, studio, workshop, or garage is detached (i.e. not part of the same structure or not attached by a breezeway) from the principal residence, then the design and siting of the same shall be architecturally integrated into the

principal residence and other Improvements on such Lot. No more than three (3) detached buildings (including the principal residence) may be located on a Lot. No mobile homes, double wide trailers, tents, shacks, barns, sheds or other outbuildings not specifically allowed above, shall be permitted to be constructed or placed on a Lot.

6.3.2 Garage and Parking Area. Each Lot shall have constructed on such Lot a garage for the parking of at least two (2) automobiles. No portion of any garage intended for the parking of an automobile shall be used or converted for use for any other purpose without the construction of a replacement garage, such that there shall be available, at all times, space for the enclosed parking of at least two (2) automobiles. For Lots with building envelopes located along the Roads, unless approved by the Architectural Control Committee, the garage shall be designed and located on a Lot in such a way that the garage doors (excluding man doors) do not face the Roads. Each Lot shall have adequate areas for the parking of automobiles of guests; i.e. a minimum of two (2) additional parking spaces. On-street parking is prohibited except for short-term social gatherings. In all events, no more than three (3) vehicles, licensed and with current registration, may be regularly parked on any Lot outside of the garage on such Lot.

6.3.3 Solar Collection Panels. Solar collection panels or similar devices shall be strongly encouraged. The plans submitted for approval by the Architectural Control Committee shall designate, in detail, the location, size, number, orientation, color, and glazing of surfaces/reflectivity, of solar collector panels or similar devices. The Architectural Control Committee may limit or fix the location, size, number and orientation of such panels or devices if the Architectural Control Committee determines that the same would be visually obtrusive from any other Lot, the Roads, or any other public location.

6.3.4 Recreational Facilities. Tennis courts and sport courts are not permitted on a Lot. Swimming pools, lap pools, hot tubs, outdoor saunas and children swing-sets and playgrounds are allowed to be constructed and located on a Lot, provided the same are allowed by applicable governmental requirements of the City of Santa Fe, are screened from view by any other Lots or the Roads by walls or vegetation, and are approved by the Architectural Control Committee. Basketball backboards and hoops may be located on a Lot provided that they are screened from view by any other Lots or the Roads by walls or vegetation, and are approved by the Architectural Control Committee.

6.3.5 Storage Tanks and Solid Waste Containers. All water tanks, solid waste containers, recycling containers, and similar storage facilities and devices shall be either installed and located underground, or completely screened from view from any other Lots and the Roads by walls and vegetation. No solid waste or recycling containers shall be visible from any other Lot or the Roads, except on the day of collection of solid waste or recycling materials, as applicable.

6.3.6 Antennas and Dishes. Television antennas and satellite dishes may be installed upon a Lot with prior approval of the Architectural Control Committee. All such devices shall be screened from view from any other Lots and the Roads. No ham radio or other transmission antenna or tower shall be located on a Lot.

6.3.7 Flagpoles, Windmills and Wind Socks. No flagpoles, windmills, or windsocks shall be located on a Lot.

6.3.8 Clotheslines. Clotheslines may be located on a Lot provided that they are screened from view by any other Lots or the Roads by walls or vegetation, and are approved by the Architectural Control Committee.

6.3.9 Service Yards and Other Areas. Walls shall be required as screening for any outdoor storage and service yard, any outdoor storage of solid waste or recycling containers, dog runs, and similar areas.

6.3.10 Air Conditioning Units. Air conditioning units and other equipment, including generators, may be located on a Lot (including on top of a structure) provided that they are screened from view by any other Lots or the Roads by walls (including parapet walls) or vegetation, and are approved by the Architectural Control Committee.

6.3.11 Individual Mailboxes and Newspaper Tubes. Declarant intends to provide cluster mail boxes within the Roads, at the entrance to the Subdivision, for mail service to the Lots. Individual mail boxes and newspaper tubes may not be installed or located on a Lot.

6.3.12 Shading Devices and Window Coverings. No brightly colored or reflective window shading devices shall be permitted on a Lot. Retractable, wall or porch mounted, and recessed soffit mounted, shading devices may be installed with the prior written approval of the size, color and location of such devices by the Architectural Control Committee. Such shading devices shall be retracted when not in use. No window opening visible from any other Lot, the Roads, or any public street shall have affixed to it or be otherwise lined with any nontransparent foil, paper, or similar material, or have any curtain or other shielding material or apparatus which is other than a neutral color.

6.3.13 Fences and Walls. No fences or walls shall be constructed or allowed to remain on any Lot, except as may be approved by the Architectural Control Committee and only upon compliance with the following requirements:

(i) Owners shall not fence or wall any portion of the perimeter or boundary of their Lot without the express written consent of the Architectural Control Committee, such as when necessary to prohibit trespassing on or across a Lot, it being the intent that perimeters and boundaries of Lots will not be walled or fenced, and will be left open, except in the areas proximate to the Improvements and developed outdoor living areas on a Lot. Any walls along the perimeter or boundaries of Lots shall be integrated with the enclosure of courtyards and living areas immediately proximate to the main residence and related Improvements on a Lot;

(ii) Notwithstanding paragraph 6.3.12(a), patio and courtyard walls are recognized as important to privacy and architectural massing, and are permitted and encouraged

where appropriate, provided the Owner of the Lot obtains the prior written approval of the Architectural Control Committee. In all cases, walls shall be limited in height to not more than five (5) feet and are to be constructed of materials similar to that of the residence and shall be plastered and finished to match the color coat and texture of that residence.

(iii) "Coyote" type wood fences are discouraged, but may be constructed with the express written approval of the Architectural Control Committee. Chain link, slat, barbed wire, and bark board fencing is prohibited.

(iv) Retaining walls that are not part of a house, guest house, studio or similar structure shall not exceed five (5) feet in height. The material, texture and color of such retaining walls shall match the structures on the Lot. All retaining walls shall be designed by a licensed engineer. Detached retaining walls which exceed thirty feet (30') in length are prohibited unless the Architectural Control Committee determines that unusual natural site conditions or special design considerations warrant a longer length.

6.4 Construction Requirements.

6.4.1 Purposes of Construction Regulations. In order to assure that the high desert landscape of each Lot is not unnecessarily damaged during any construction activities, and to insure that disturbance of adjoining Lots and properties adjacent to the Subdivision are not unreasonably disturbed during the course of the construction and installation of Improvements on a Lot, the following construction regulations shall be enforced from the time any construction work begins on the Lot until such time as construction is completed as evidenced by the final inspection by the Architectural Control Committee. These regulations shall be made a part of the specifications of any construction contract or similar document for each residence or other Improvements to be installed and constructed on a Lot and all Owners and their contractors and subcontractors shall be bound by these regulations. These construction regulations may be supplemented, and additional construction regulations may be imposed, by the Board in the Rules and Regulations.

6.4.2 Location of Utilities. Before commencement of any construction, the Owner shall arrange for the location of all underground cable TV, electrical, water, gas and other utility lines to be clearly marked on or to the Lot.

6.4.3 Inspections. Inspections of building sites during construction may be conducted by members of the Architectural Control Committee and their agents, each of whom may enter the construction site at any reasonable time for each purpose. Violations of construction regulations shall be reported to the Board who shall notify the Owner and Owner's construction contractor of the nature of the violation.

6.4.4 Construction Trailers; Portable Field Offices; Dumpsters; Etc. A single temporary construction trailer or shed and a single trash bin may be located on the Lot during the periods of active construction. Any Owner or Owner's construction contractor who desires to bring a construction trailer, field office, dumpster or the like to the Subdivision shall

first apply for and obtain written approval from the Architectural Control Committee for the same, preferably at the time of the submission of plans and specifications for the work to be performed, as part of the construction plan. Such temporary structures shall be located only in a location reflected on the submitted construction plan and approved by the Committee and shall be removed upon completion of the construction, or at any such time that construction is suspended or discontinued.

6.4.5 Wind Blown Materials; Maintenance of Site; Debris and Trash Removal. Material and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the Lot, and shall not be left on any other Lots or the Roads. Lightweight construction material shall be covered and weighted down to prevent wind from blowing such materials off of the construction site. Construction packaging and other construction trash shall be immediately placed in a covered dumpster. The Owner and Owner's construction contractor shall be responsible for minimizing dust migrating from the construction site. The entrance from the Road to the construction site shall be rocked so as to prevent dirt and mud from traffic from the construction site accumulating on the Road. Dirt, mud or debris resulting from the construction site shall be promptly removed from the Road and other Common Property. During the construction period, each construction site shall be kept neat and shall be properly policed, on a daily basis, to prevent it from being an eyesore, or affecting adjoining Lots. Owners and Owner's construction contractors shall clean up all trash and debris on the construction site on a daily basis. Owners and Owner's construction contractors are prohibited from dumping, burying, or burning trash anywhere on the Lot or Subdivision. On each construction site, the Owner or Owner's construction contractor must designate, as part of the construction plan, a wash out area for contractors and suppliers to clean their equipment. The cleaning of equipment must occur only in that specified area and cleaning effluent must remain, within that specified area.

6.4.6 Sanitary Facilities. Each Owner and Owner's construction contractor shall be responsible for providing adequate sanitary facilities for their construction workers. Portable toilets or similar temporary toilet facilities shall be located only in areas designated in the construction plan approved by the Architectural Control Committee and adequate waddles shall be placed on the downhill side of such temporary toilet facilities.

6.4.7 Vehicles and Parking Areas. Owner's construction contractors and construction crews will not park on, or otherwise use, other Lots for parking. Private and construction vehicles and machinery shall be parked only in areas designated on the construction plan approved by the Architectural Control Committee. If parking is allowed by the Architectural Control Committee on any of the Roads, then such parking shall occur only on a single side of the Roads, adjacent to the Lot. All vehicles will be parked so as not to inhibit traffic, and within the designated and approved areas so as not to damage the natural landscape. Any oil, transmission fluid, or other leaks from construction vehicles on the Road shall be promptly cleaned-up and removed and leaking vehicles may be prohibited by the Architectural Control Committee from parking on or otherwise utilizing the Road.

6.4.8 Removal of Excess Excavation Material. Excess excavation material, if

any, must be retained on a Lot and promptly hauled away from the Lot.

6.4.9 Impact Digging. No impact digging may be undertaken without the Owner or Owner's construction contractor first obtaining the consent of the Architectural Control Committee. The Owner and Owner's construction contractor must establish, to the satisfaction of the Architectural Control Committee, the necessity for such impact digging. The Owner or Owner's construction contractor must further satisfy the Architectural Control Committee that the Owner or Owner's construction contractor has obtained the advice of expert consultants that the proposed blasting or impact digging may be accomplished safely, without damage to Improvements on adjoining Lots. The Architectural Control Committee shall have no liability for any blasting or impact digging. The Owner or Owner's construction contractor shall also obtain, and provide the Architectural Control Committee with, proper permits from the City of Santa Fe and any other regulatory authority for any such blasting or impact digging.

6.4.10 Construction Signage. To the extent permitted by the City of Santa Fe, temporary construction signs shall be limited to one sign per site not to exceed six square feet of the total surface area. The sign shall be free standing and the design and location of such a sign shall first be approved by the Architectural Control Committee. Construction signs must be removed at the time the subject Improvements are substantially completed or when the Board directs the sign to be removed. The Architectural Control Committee will require all construction signs to meet the following criteria. (i) signs shall be single-faced, panel type and no additional sign may be attached to any construction sign by fastening directly to the main sign or by suspension below it; (ii) only the Owner's construction contractor's name and phone number, architect's name and phone number, and Owner's lender's name shall be listed, (iii) information such as "for sale", "available" or similar language, or descriptive phrases such as 3-bedroom may not appear on any construction sign, (iv) colors of sign backgrounds should be muted earth colors which harmonize with the natural landscape colors rather than sharply contrast with them, (v) and such signs may not be lighted and letter color should relate harmoniously with the background colors while providing sufficient contrast to enable the sign to be read from approximately twenty feet (20') away.

6.4.11 Period for Construction. Construction of any Improvement shall commence within one hundred twenty (120) days after final approval of the plans and specifications for the same by the Architectural Control Committee. Commencement of construction shall mean the first time onsite construction work is performed on a Lot (including construction staking). Once commenced, construction shall be continuous and proceed in an orderly fashion without interruptions. Any Structure or Improvement on a Lot shall be completed in a reasonable time, not to exceed eighteen (18) months from the commencement of construction. If the owner shall fail to comply with this deadline, construction shall cease until such time as the Owner has submitted a plan to the Architectural Control Committee setting forth steps and a timeline for completing the project. Construction may resume when the Architectural Control Committee has approved a plan for completion within a period not to exceed twenty-four (24) months from the initial commencement of construction. The Owner shall be charged for additional time spent by the Architectural Control Committee to review the completion plan. If construction is not completed within twenty-four (24) months after the initial

commencement of construction, the Owner shall be subject an Individual Assessment levied by the Board. The amount of the Individual Assessment shall be Two Hundred Dollars (\$200) for each day the construction period extends past the twenty-four (24) month allotted construction period. Such penalty shall be a lien on such Lot in accordance with this Declaration. The Board may elect to waive, in whole or in part, this penalty, if the Board determines that the delay in completion of construction is due to extenuating circumstances outside the reasonable control of the Owner of that the imposition of a full penalty is not appropriate under the circumstances. In the event the Owner abandons the project, the Association may levy and Individual Assessment and place a lien on the Owner's property for any damages sustained by such abandonment.

6.4.12 Time of Day for Construction Activities. All construction activities shall occur only during the hours of 7:00 a.m. to 7:00 p.m.

6.4.13 Prohibition Against Music. The playing of any music, talk show broadcasts, or other amplified form of entertainment on a Lot, during periods of construction on such Lot, is prohibited.

6.4.15 No Smoking. No smoking is allowed in the Subdivision, except in enclosed Improvements or in a person's motor vehicle, and no cigarette butts or cigarette related trash shall be deposited, thrown, or left in the Subdivision, except in appropriate waste containers.

6.4.14 Violations; Reimbursements of Association Costs. Any violation by an Owner's construction contractor, subcontractor or anyone else on the site of these regulations or any other provision of this Declaration, or the Rules and Regulations, shall be deemed to be a violation by the Owner of the Lot. Any cleanup costs incurred by the Board or the Association in enforcing these regulations, including as set forth in the Rules and Regulations, will be deducted from the construction deposit, and any balance due shall be billed to the Owner and assessed against the Lot as an Individual Assessment.

ARTICLE 7

USE RESTRICTIONS

The Subdivision shall be subject to the following use restrictions:

7.1 Single-Family Residential Uses. All Lots shall be used only for single-family residential purposes, and no part of any Lot, or Improvements thereon, shall be used, caused to be used, or permitted to be used, in any way, directly or indirectly, for any business, profession, or other non-residential purpose, except that a home occupation, allowed by ordinance of the City of Santa Fe, shall be permitted on a Lot if said home occupation:

(i) Does not cause there to be parked on such Lot or the Roads, at any time, more than one (1) vehicle which does not belong to the Owner or Occupant, or the Owner or Occupant's family, and which is not regularly parked on such Lot;

(ii) Does not involve clients, customers, employees, agents or independent contractors of such home occupation regularly visiting such Lot and does not otherwise generate any more traffic to and from such Lot than would normally be generated by a typical single-family use of such lot;

(iii) Does not generate noise or odors that would not otherwise be associated with or attendant to a single-family use of such Lot;

(iv) Does not involve the exterior storage of any materials, supplies or other items of any kind. Nothing in this Section shall be construed to restrict the ability of Declarant to improve, develop, and market real estate, lots, and residential units within the Subdivision.

7.2 No Subdivision of Lots; Lot Consolidation and Adjustment. No Lot within the Subdivision shall be further subdivided. If two (2) or more contiguous Lots are owned by the same Owner or Owners, such Lots may be combined into a larger, single Lot pursuant to and upon compliance with the requirements of governmental authorities; provided, however, that once such Lots are consolidated into a single Lot, such consolidated Lot may not thereafter be subdivided. The property line(s) separating contiguous Lots may be adjusted by the Owners thereof pursuant to and upon compliance with the requirements of governmental authorities, subject, however, to the prior written approval of the Board and provided that any such lot line adjustment shall not result in any violation of this Declaration.

7.3 Obstructions or Construction. There shall be no obstruction of, and nothing shall be constructed, placed, or stored upon or within, any portion of the Common Areas except as permitted by the Declarant or the Board.

7.4 Nuisances. No noxious or unreasonably offensive activities shall be carried on, nor shall anything be done or placed on the Subdivision which shall or will become a nuisance, or cause unreasonable disturbance or annoyance to any Owner or Declarant.

7.5 Rubbish and Weeds. No portion of the Subdivision shall be used or maintained by any Owner as a dumping ground for rubbish, trash or waste. Weeds, rubbish, trash and waste shall be regularly removed from a Lot by the Owner or Occupant of such Lot and shall not be allowed to accumulate thereon. Rubbish, weeds, trash, tree clippings, garden debris or any other waste shall not be kept on a Lot except in sanitary containers, which containers shall be kept screened and concealed from public view at all times (other than when being placed for pickup). Composting will be permitted, provided that it does not unreasonably attract flies, pests or generate odors.

7.6 Fires. There shall be no exterior fires or burning upon any portion of the Lots or Common Areas except in portable fire pits and patio fireplaces approved by the Architectural Control Committee.

7.7 Signs. No sign of any kind shall be placed or displayed in the Subdivision without the prior written consent of the Architectural Control Committee, except:

(i) Such signs as may be required by legal proceedings, or the prohibition of which is precluded by law;

(ii) During the time of construction of any improvement by Declarant, identification signs regarding location, financing, or construction, as allowed in Section 6.4.10;

(iii) Such signs as may be required by the Board for traffic control and regulation of areas within the Subdivision.

(iv) Such identification signs as may be deemed appropriate by the Board to designate facilities or areas within the Subdivision;

(v) Not more than one "for sale" sign having a maximum face area of six (6) square feet; and,

(vi) Such signs as Declarant deems necessary or desirable, in its sole discretion, to facilitate the marketing of real estate, building sites or residential units within the Subdivision.

7.8 No Oil, Quarrying, or Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted within or upon the Subdivision, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted within or upon the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted within or upon the Subdivision.

7.9 Vehicles. Except for construction vehicles during periods of active construction and related to such construction, the parking or storing of commercial, recreational, antique or disabled vehicles, including but not limited to mobile home, camper, camp trailer, motor home, boat, trailer, motor bike, motorcycles, mopeds, go-carts, trucks with a carrying capacity of over three-quarters of a ton, and snowmobiles, outside of garages shall be prohibited. A recreational vehicle, including a camper, camp trailer, motor home, and boat, may be kept outside of a garage only for so long as is reasonably required for packing and unpacking such vehicle. The use of motorcycles, motorbikes, or all-terrain vehicles in the Subdivision is prohibited, except as a means of ingress and egress to and from the Lot.

7.10 Maintenance of Vehicles. No vehicles shall be kept or stored on any Common Area or any driveway area or parking area on a Lot for purposes of accomplishing repairs thereto or the reconstruction thereof, except as permitted by the Board. Any such repairs shall be conducted within the interior of the garage on the Lot.

7.11 Animals and Pets. No animals of any kind shall be raised, bred or kept on any Lot, except for dogs, cats and other common, recognized household pets may be kept on a Lot in such numbers as do not create or constitute a nuisance. No Person shall keep or have on a Lot more than four (4) dogs or four (4) cats over ten (10) weeks of age. No chickens, ducks, geese or peacocks shall be raised, bred or kept on a Lot. No horses, mules, burros, or other animals shall be ridden on the Roads or other Common Areas within the Subdivision. The owner of any pet or animal shall be responsible for the immediate removal and clean-up of any such animal's waste. The owner of any pet or animal shall at no time allow such animal to run unrestrained on any Common Area, the Roads or other areas of the Subdivision (except for enclosed yards or patios), and the Owner shall at all times have full and complete control over such animal. No pet or animal creating excessive noise or odor shall be maintained within the Subdivision.

7.12 Livestock, Poultry, Bees, Commercial Pet Raising. No animal, bird, fish, or pet raising or trading as a business shall be carried on, directly or indirectly, on any part of the Subdivision.

7.13 Occupancy of Unfinished Structures. No residence situated within the Subdivision shall in any manner be occupied or lived in while in the course of original construction. No structure anywhere in the Subdivision, other than a residence, shall ever be lived in or used for dwelling purposes, including, but not limited to, tents, shacks, trailers, campers, motor homes, mobile homes, outbuildings, and garages. However, nothing in this Section shall be construed to prevent the erection, placement, or maintenance by Declarant of trailers, offices, or buildings in connection with the conduct of its business, or the improvement, development, and sale of any Lots or residential units within the Subdivision.

7.14 Time-Share Interest. No time-share interest or interests shall be allowed within the Subdivision.

7.15 Renting. The renting of residential units and/or guest houses for a short term (less than one (1) month) shall be prohibited. The renting of residential units and/or guest houses for a long term (one (1) month or more) shall be allowed on the condition that any tenants shall comply with the terms and provisions of this Declaration and all Rules and Regulations adopted pursuant hereto, and that the Owner(s) of such long term rented residential unit shall have continuing responsibility for the compliance by the tenant with the terms and provisions of this Declaration and all Rules and Regulations. Notwithstanding any other provision in this Declaration to the contrary, express or implied, the use of a house or guest house for short term rental purposes, as defined by 14-6.2 (A)(5) of the Santa Fe City Code, is prohibited.

7.16 Garage Doors. All garage doors shall be kept closed, except when in actual use.

7.17 Gardens. Noncommercial gardens not to exceed 1,000 square feet may be allowed, subject to the prior written approval of the Architectural Control Committee.

7.18 Building Materials. There shall be no storage of building materials within the Subdivision other than during construction.

ARTICLE 8

EXTERIOR MAINTENANCE

8.1 Owner's Responsibility. The Owner of each Lot shall maintain the facades and external aspects of all Improvements on his or her Lot in first class order and repair and in substantially the same condition as prevailed when the Improvements were newly completed. The Owner of each Lot shall maintain the landscaping and vegetation on a Lot in neat, orderly, and healthy condition.

8.2 Maintenance by Association. If the Owner of a Lot fails to comply with the provisions of the preceding section 8.1, the Board may give notice to the Owner, specifying the failure to comply, and requiring the Owner to take such action as is necessary to cause the facades and external aspects of the Improvements to be restored within sixty (60) days after the giving of such notice to first class order and repair, in substantially the same condition as prevailed when the Improvements were newly completed, and/or to cause the landscaping and vegetation to be restored within sixty (60) days after such notice to a neat, orderly, and healthy condition. If the Owner has not so restored the Improvements, landscaping, or vegetation within such allotted time, the Board shall be entitled to enter upon the Lot and to take such action as is necessary or reasonable to so restore the same. The cost of such activity shall be assessed against the Lot as an Individual Assessment. The remedy provided herein shall be in addition to and not exclusive of any other remedy which the Association may be entitled to at law or equity.

ARTICLE 9

EASEMENTS

9.1 Owner's Easement Across Roads and to Common Areas. The Owner of each Lot shall have a perpetual, nonexclusive easement and right-of-way for ingress and egress upon and along the Roads, together with a perpetual, nonexclusive easement to walk upon and across the Common Areas, which easements shall be appurtenant to, shall pass with, and shall not be severed from the title to each Lot.

9.2 Declarant's Reservation of Easements. Declarant reserves for itself and its assigns an easement and right-of-way in, through, over, under, across, and upon all portions of the Subdivision, including all Lots and Common Areas for the purpose of commencing, conducting, and completing its development and improvement work on the Subdivision. Declarant reserves the right to grant easements and rights-of-way in, through, under, over, across, and upon all portions of the Subdivision, including all Lots and Common Areas, for the installation, construction, operation, maintenance, inspection, repair, and replacement of lines and appurtenances for public or private water, sewer, drainage, telephone, cable television, gas power, or other utilities and for other materials or services necessary for the completion of said development and improvement work. Declarant shall have the right to change the location or terms and conditions of any such easement or right-of-way. Declarant reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers,

and drainage lines which may from time to time be in or along the Roads. In addition, Declarant reserves the right to use the Subdivision and any sales offices, model homes, signs, and parking spaces located or which may be located on the Subdivision in its efforts to develop, improve, and market portions of the Subdivision. Notwithstanding any other provisions herein to the contrary, this Section may not be amended without the prior written consent of Declarant. Any of the easements and rights reserved by Declarant in this Section may be assigned to Declarant's successors in interest and may be exercised by Declarant's agents, officers, employees, and representatives.

9.3 Easement for Common Property. Declarant reserves for itself and the Association an easement in, through, over, under, across, and upon all necessary portions of the Subdivision, including all Lots and Common Areas, for the installation, construction, operation, maintenance and inspection, repair and replacement of the Common Property.

9.4 Easement to Correct Drainage. Declarant reserves for itself, the Association and The City of Santa Fe, an easement to enter upon all necessary portions of the Subdivision, including all Lots and Common Areas, for the purposes of operating, inspecting, maintaining, repairing, or replacing the Centralized Stormwater Facilities and such other drainage ponds or erosion control devices or structures as may be deemed necessary. Prior notice of entry shall be given to the occupant, except to the extent prohibited by an emergency.

9.5 Easement for Emergency. Declarant reserves for itself and the Association an easement to enter upon all portions of the Subdivision, including all Lots and Common Areas and any improvement thereon, to perform emergency repairs. Prior notice of said entry shall be given to the Owner, except to the extent prohibited by the nature of the emergency.

9.6 Easement for Governmental Personnel. There is hereby established a right of entry for public officials, police, fire, rescue, and other personnel to come upon the Subdivision to carry out and enforce their official duties.

9.7 Right to Dedicate. Nothing contained in this Declaration shall be deemed to restrict or otherwise impede the Declarant or Association, at any time and from time to time, from dedicating portions of the Subdivision to any public or private agencies, authorities or utilities, prior to sale of such portion to an Owner.

ARTICLE 10

RIGHTS OF LENDERS AND PUBLIC AGENCIES

10.1 Interests Subject to Lenders' Rights. It is anticipated that part or all of the real estate or improvements within the Subdivision may be financed or the loans therefor insured or guaranteed for the Owners through agencies such as the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

The interest of the Association, and each of the Owners other than Declarant is and shall be subject to and subordinate to the rules, regulations, and requirements of such agencies purchasing, insuring, or guaranteeing mortgages or deeds of trust for portions of the Subdivision.

10.2 Access to Financial Records. Any Owner and any Mortgagee, upon written request to the Association shall be entitled to inspect the books and records of the Association during normal business hours, and to receive a copy of any financial statement of the Association prepared at the expense of the party making the request or, in the alternative, to receive an annual financial statement of the Association prepared in accordance with standard accounting principles.

10.3 Notice to Lenders. Any Mortgagee that has filed a written request for the same with the Association shall be entitled to:

(i) Written notice of all meetings of the Association and the right to designate a representative to attend all such meetings;

(ii) Written notice if the Association is to be abandoned or terminated;

(iii) Written notice of any material amendment to this Declaration or the Governing Documents of the Association;

(iv) Upon request, written notice of any default by such Mortgagee's mortgagor in the performance of that mortgagor's obligations to the Association;

(v) Any condemnation or casualty loss that affects a material portion of the Subdivision or the Lot securing the Mortgagee's mortgage;

(vi) Any lapse, cancellation or material modification of any insurance policy or bond maintained by the Association.

10.4 Filing with Association. Any Mortgagee may file copies of said instruments with the Association after taking such Lot and Improvement thereon as security for a debt.

ARTICLE 11

TERM, AMENDMENTS, DECLARANT'S RIGHTS

11.1 Duration. This Declaration, and the terms, provisions, covenants, conditions, restrictions and easements set forth herein, shall run with, and benefit and burden, the Lots and shall inure to the benefit of and be enforceable by the Declarant, the Association, and all Owners, their respective legal representatives, heirs, successors or assigns, for a period of thirty (30) years after the date that this Declaration is filed for record in the real property records of Santa Fe County, New Mexico, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each, unless Owners holding at least seventy-five percent

(75%) of the votes in the Association shall vote to revoke, rescind, and release all or any portion of the Lots from this Declaration, and the Association shall thereupon execute and acknowledge an appropriate instrument not more than one (1) year and not less than ninety (90) days prior to the expiration of said initial period or prior to the expiration of any ten (10) year extension period thereafter. Unless this Declaration is terminated, the Declarant or Association may re-record this Declaration or other notice of its terms at necessary intervals.

11.2 Amendment.

11.2.1 By Owners. Owners holding at least seventy-five percent (75%) of the votes in the Association may vote to change, amend, modify or revise any of the terms and provisions of this Declaration, at any time, with respect to all or any portion of the Lots, and the Association shall thereupon execute and acknowledge an appropriate instrument at any time; provided, however, that any such amendment shall require the written consent of the Declarant, unless the Declarant shall cease to hold record title to any Lot, in which event the consent of the Declarant to any such amendment, shall be unnecessary. Every such instrument shall be recorded in the records of Santa Fe County, New Mexico

11.2.2 By the Declarant. The Declarant specifically reserves the absolute and unconditional right to amend this Declaration, without the vote, consent or joinder of any party, including any other Owners or the Association, to clarify the Declaration's intent and provisions and to correct errors.

11.3 Limitation on Amendments. By the acceptance of a deed or execution of a real estate contract for any Lot, each Owner acknowledges and agrees, on behalf of himself and his respective heirs, legal representatives, successors, and assigns, that:

(i) This Declaration was created and recorded, in part, to protect and otherwise enhance the value of the Subdivision; and

(ii) In order to ensure such protection and enhancement in value, no provision or condition of this Declaration which either directly or indirectly affects the use or operation of the Subdivision, including, but not limited to, those provisions and conditions relating to the operation and management of the Common Areas, the use by any Owner or his licensees and invitees of any part of the Subdivision, or the operation of the Association, shall be amended or otherwise modified without the express written consent of Declarant as long as the Declarant owns record title to any Lot.

11.4 Development Rights. Because the completion of development of the Subdivision and the development and marketing of portions thereof and improvements thereon is essential to the welfare of all Owners, nothing in this Declaration or any amendment hereto shall be understood or construed to prevent Declarant or any of its contractors, subcontractors, representatives, agents, or assigns from doing, upon any portion of the Subdivision, including and Lot or Common Area, the following:

(i) Activities reasonably necessary or appropriate in connection with the development or improvement of the Subdivision in accord with the Plat, Development Plans, and Drainage Plan;

(ii) Erecting, constructing, and maintaining such structures and facilities as may be reasonably necessary for the development or improvement of the Subdivision; or

(iii) Maintaining such signs on the Subdivision as the Declarant may deem necessary for the sale, lease, or disposition thereof.

Until all of the Lots are sold to an Owner other than Declarant, the Association may not use its financial resources to defray any costs of opposing development or improvement activities which are not inconsistent with the Plat or Development Plans. Nothing in this section shall be construed to limit the right of members to act as individuals or in affiliation with other members or groups.

11.5 Rights of Declarant. For so long as the Declarant shall own any portion of the Subdivision, unless Declarant gives its prior written consent, its rights and interests shall not be prejudiced by any amendment to this Declaration or any Governing Documents which:

(i) Discriminates or tends to discriminate against Declarant's rights as an Owner;

(ii) Changes the definitions in Article 1 in a manner which alters Declarant's rights or status;

(iii) Alters the character and rights of membership or the rights of the Declarant as set forth in Article 4;

(iv) Alters previously recorded or written agreements with public or quasi-public agencies or utilities with respect to easements and rights-of-way;

(v) Alters Declarant's rights with respect to architectural review of improvements, plans and specifications, as provided in Article 6;

(vi) Alters the basis for assessments, as provided in Article 5;

(vii) Alters the provisions of the use restrictions set forth in Article 7;

(viii) Alters the Declarant's easement rights, as provided in Article 9;

(ix) Alters the number or selection of members of the Board of Directors of the Association, as provided in the Bylaws and this Declaration; or

(x) Alters the Declarant's rights provided under this Article 11.

ARTICLE 12

GENERAL PROVISIONS

12.1 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of the Lots.

12.2 Assignment of Declarant's Rights. At any time, Declarant may assign any or all of the rights of Declarant under this Declaration to any successor or assign all or substantially all of its interests in the development and operation of Lots.

12.3 Invalidity. The invalidity of any part of this Declaration shall not impair or affect the validity or enforceability of the rest of the Declaration, which shall remain in full force and effect.

12.4 Enforcement of Declaration.

12.4.1 Owner's Responsibility. Each Owner and Owners' invitees, guests, customers and tenants shall conform and abide by the covenants contained in this Declaration and any Rules and Regulations which may be adopted from time to time by the Association. Each Owner shall be responsible for assuring such compliance and any violation by invitees, guests, customers or tenants may be considered to be a violation by the Owner.

12.4.2 Notice Hearing and Fines. Except as otherwise provided in this Declaration, any Owner who is believed to be in violation of this Declaration, or the Rules and Regulations, shall be given notice and an opportunity to be heard. Except as otherwise provided in this Declaration, after such hearing, the Association shall have the right to assess fines, up to a maximum of five hundred dollars (\$500.00) for a single violation or Fifty Dollars (\$50.00) per day for a continuing violation (to be adjusted annually according to increases in the cost of living). Fines shall be charged against the Lot as an Individual Assessment. Any fines collected shall be contributed to the Association's general fund.

12.4.3 Tenant Violations. If a tenant (or lessee) is believed to be in violation of the Declaration or Rules and Regulations the Association shall notify the Owner and tenant and provide an opportunity for hearing. If the Association determines after notice and opportunity for hearing that a tenant has violated either this Declaration or Rules and Regulations, the Association may assess fines against the Owner as provided in Section 12.4, and the Association is granted the further right, but not the obligation, as Owner's agent and attorney, to evict any tenant in violation of these provisions. Each Owner by acceptance of a deed irrevocably appoints the Association as its agent and attorney-in-fact in such an action against any tenant of such Owner. All costs related to such action shall be charged to the Owner as an Individual Assessment.

12.4.4 Corrective Action for Lot Maintenance. If the Association determines after notice and hearing that any Owner has failed to maintain any part of the Lot or

Improvements thereon in a clean, attractive and safe manner, in accordance with the provisions of this Declaration, the Design Guidelines, or the Rules and Regulations, the Association shall notify the Owner of its findings and may assess fines as provided in Section 12.4.2 above. If the violation continues for ten (10) days after notice to the Owner, the Association shall have the right without liability to enter upon such Lot and Improvements to correct, repair, restore, paint and maintain any part of such Lot and Improvements and to have any objectionable items removed from the Lot and Improvements. The Association may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action shall be assessed to the Owner as an Individual Assessment.

12.4.5 Additional Remedies. All remedies listed in this Section are non-exclusive and may be applied cumulatively. The Association shall also have the right to bring suit for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity.

12.4.6 No Waiver. Failure by the Declarant, the Association, or any Owner to enforce any provision of this Declaration, the Design Guidelines, or the Rules and Regulations shall not be deemed a waiver of the right to do so at any time thereafter.

12.4.7 Legal Fees. The court shall have the power to award attorneys' fees and court costs to the party substantially prevailing in any suit brought under this Declaration.

12.5 Notices. Unless the Owner notifies the Association otherwise, the address for an Owner of a Lot that has completed Improvements shall be assumed to be the address of the Lot. Any notice required to be sent to the Owner shall be deemed to have been properly sent when mailed, postage prepaid, or hand delivered to the Lot and, if different, to the last known address of the Person who appears as Owner of the Lot as that address is stated on the records of the Association at the time of the mailing. Each Owner shall provide the Association with such Owner's current address. Any Owner may change his address by giving notice thereof to the Association such address as may be specified by the Association by written notice to the Owners in the manner provided in this Section. If intended for Declarant, notice shall be directed to the following address or such other address as the Declarant may notify the Association of, in writing:

Bradley C. Karp
653 Paseo de la Cuma
Santa Fe, New Mexico 87501

12.6 Gender and Number. The use of the masculine gender herein shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

12.7 Consent of Mortgagees.

12.7.1 When Consent Required. This Declaration contains provisions concerning various rights, priorities, remedies and interests of Mortgagees. Such provisions are

to be construed as covenants for the protection of the Mortgagees on which they may rely in making loans secured by a mortgage on a Lot. Accordingly, no amendment or modification of this Declaration specifically impairing such rights, priorities, remedies or interests of a mortgagee shall be adopted without the prior written consent of Mortgagees as provided in the following Section. This section shall not be construed, however, as a limitation upon the rights of the Declarant or the Owners to make amendments that do not adversely affect the Mortgagees.

12.7.2 Percentage Required. Wherever consent of the Mortgagees is specifically required under this Declaration, it shall be sufficient to obtain the written consent of Mortgagees holding a lien on a majority of all Lots Lots encumbered by a mortgage, unless a smaller percentage is specified.

12.7.3 Timely Response. Any such required consent shall be given promptly and shall not be unreasonably withheld. Any consent not given or denied within thirty (30) calendar days of receipt of request for consent shall be deemed given.

12.8 Law to Govern. This Declaration shall be construed in accordance with the laws of the State of New Mexico. Any suit concerning any provision of this Declaration must be brought in Santa Fe County, New Mexico, unless both parties agree otherwise.

12.9 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date indicated above.

700 HPR, LLC,
a New Mexico Limited Liability company

By: _____
Cody North
Its: Managing Member

By: _____
Bradley C. Karp
Its: Managing Member

STATE OF NEW MEXICO }
 }
COUNTY OF SANTA FE } SS

 This Declaration was acknowledged before me this _____ day of _____,
20____, by Cody North and Bradley C. Karp, as the Managing Members of 700 HPR, LLC, a
New Mexico limited liability company, on behalf of such company.

Notary Public

My Commission Expires:

EXHIBIT A

CENTRALIZED STORMWATER FACILITIES MAINTENANCE GUIDELINES

Maintenance of the ponds and other structures comprising the Centralized Stormwater Facilities shall occur based upon the following schedule:

Spring Maintenance:	March 21 st	Clearing and Maintenance For All Centralized Stormwater Facilities Shall Occur Within 30 Days to Date. Remove Sediment Build Up In All Ponds and Reseed.
Fall Maintenance:	September 18 th	Clearing and Maintenance For All Centralized Stormwater Facilities Shall Occur Within 30 Days of Date.
Periodic Maintenance:	After Significant Storms	Clearing and Maintenance For All Centralized Stormwater Facilities Shall Occur Within 30 Days of Storm.

Whenever maintenance and repair work is performed on the drainage structures, every effort shall be made to preserve and protect established vegetation and plantings. At any time sediment is removed, the terrain will be raked clean and re-seeded according to the seeding mixes specified in the landscaping plan. Any trees or major planting that are damaged in the process of sediment removal shall be tended and any destroyed plantings shall be replaced.

Additional maintenance of the Centralized Stormwater Facilities shall include, but not limited to, the following: (1) restoration of eroded areas; (2) rodent control; (3) riprap maintenance; (4) maintenance of culverts/pipes and related structures; and (5) any other measures necessary to maintain the functional capability of the drainage system(s).

Planning Commission
January 5, 2017

EXHIBIT 3

Development Review Team
Comment Form

Date: July 13, 2016

To: Donna Wynant, Land Use Department, Case Manager

From: Sandra Kassens, Engineer Assistant, DRT staff member *SK*

Dept/Div: PWD/ Engineering/Traffic



Case #2016-51. Haciendas del Mirasol, 700 Hyde Park Road, Preliminary Subdivision Plat.
Cody North, agent for 700 HRP, LLC, requests preliminary subdivision plat approval for 8 lots on 28 acres to be accessed by a private driveway via a connector road off of Hyde Park Road. The property is zoned PRC (Estancia Primera Planned Residential Community). (Donna Wynant, Case Manager)

Case Mgr: Donna Wynant, Senior Planner, LUD/Current Planning Division, 955-6325

Review by this division/department of a revised plan set received via email on 07-12-16 has met our initial conditions of approval for the preliminary subdivision plat as stated in the revised conditions chart with applicant response.

Conditions of Approval:

Must be completed by:

1 Conditions of Preliminary plat approval required from the Traffic Engineering Division have been met to a sufficient degree* for this level of review per the revised plan set rec'd on 7-11-16.

Done

Technical Corrections:

Must be completed by:

1 *The sight visibility easements for Hyde Park Rd. and Camino Mirasol shown on the plat & landscape sheets are incorrect and should be replaced with the AASHTO method triangles as shown on Sheets 8-4 & 8-5 of the revised plan set.

Must be completed prior to final sign-off on subdivision plat and Dev. plan.

The applicant should be aware that the following code provisions or other requirements will apply to future phases of development of this project:

1. N.A.

Explanation of Conditions or Corrections (if needed):

- Comments on other technical corrections will be made at final subdivision plat review.

If you have any questions or need further information, feel free to contact me at 955-6697. Thank you.

✓
completed on Final Plat

Development Review Team
Wastewater Management Division
E-Mail Delivery
Comment Form

Date: July 14, 2016

Staff person: Stan Holland, Engineer

Dept/Div: Public Utilities/Wastewater



Case #2016-51. Haciendas del Mirasol, 700 Hyde Park Road, Preliminary Subdivision Plat.
Cody North, agent for 700 HRP, LLC, requests preliminary subdivision plat approval for 8 lots on 28 acres to be accessed by a private driveway via a connector road off of Hyde Park Road. The property is zoned PRC (Estancia Primera Planned Residential Community).

Case Mgr: Donna Wynant, Senior Planner, LUD/Current Planning Division, 955-6325

The subject property is accessible to the City public sewer system. Accessible is defined as within 200 feet of a public sewer line.

Review by this division/department has determined that this application will meet applicable standards if the following are met:

Conditions of Approval:	Must be completed by:
1. None	

Technical Corrections*:	Must be completed by:
1. Add note to the plat that Wastewater Utility Expansion Charges (UEC) shall be paid at the time of building permit application.	<i>all completed on Final Plat</i>
2. Add note to the plat stating that no fences, walls, or other obstructions shall be placed or constructed across or within public sanitary sewer or utility easements	
3. Add note to the plat that the Development is served by a private sewer system	
4. Add note to the sewer utility sheet that the connection to the existing public sewer manhole shall be core drill	
5. Provide detail for the LPS sewer line connection to the existing public manhole	
6. Add the word "Private" to the title block wording on sheets 6-3 & 6-4	
7. A base course driving surface will need to be added to the portion of the public sewer easement access to the tie-in public sewer manhole that is within the development. In addition, it will need to be verified if a gate will be required at the property line where the public sewer line enters the development	
8. Confirm that a locate wire system is part of the private low pressure sewer system design	

Development Review Team

Comment Form

Date: 7/12/16

Staff person: Dee Beingessner

Dept/Div: Public Utilities/Water Division



Case #2016-51. Haciendas del Mirasol, 700 Hyde Park Road, Preliminary Subdivision Plat.
Cody North, agent for 700 HRP, LLC, requests preliminary subdivision plat approval for 8 lots on 28 acres to be accessed by a private driveway via a connector road off of Hyde Park Road. The property is zoned PRC (Estancia Primera Planned Residential Community). (Donna Wynant, Case Manager)

Case Mgr: Donna Wynant, Senior Planner, LUD/Current Planning Division, 955-6325

~~The developer has submitted preliminary water plans to the water division, so all requirements for water at this stage have been met.~~

Preliminary Subdivision Plat

Completed
on Final Plot

Development Review Team
Comment Form

Date: 7/11/16

Staff person: Reynaldo Gonzales

Dept/Div: Fire



Case #2016-51. Haciendas del Mirasol, 700 Hyde Park Road, Preliminary Subdivision Plat.
Cody North, agent for 700 HRP, LLC, requests preliminary subdivision plat approval for 8 lots on 28 acres to be accessed by a private driveway via a connector road off of Hyde Park Road. The property is zoned PRC (Estancia Primera Planned Residential Community). (Donna Wynant, Case Manager)

Case Mgr: Donna Wynant, Senior Planner, LUD/Current Planning Division, 955-6325

Review by this division/department has determined that this application will meet applicable standards if the following are met:

Conditions of Approval :

Must be completed by:

None	
------	--

Technical Corrections*:

Must be completed by:

None	
------	--

*Must made prior to recording and/or permit issuance

The applicant should be aware that the following code provisions or other requirements will apply to future phases of development of this project:

1. Standard comments have been addressed by the applicant (via Santa Fe Eng Consultants) and still apply in the revised plan for future construction and plan review.

Development Review Team

Comment Form

Date: 7/11/16

Staff person: Somie Ahmed, Planner Technician Senior

Dept/Div: LUD/Technical Review Division



Case #2016-51. Haciendas del Mirasol, 700 Hyde Park Road, Preliminary Subdivision Plat.

Cody North, agent for 700 HRP, LLC, requests preliminary subdivision plat approval for 8 lots on 28 acres to be accessed by a private driveway via a connector road off of Hyde Park Road. The property is zoned PRC (Estancia Primera Planned Residential Community). (Donna Wynant, Case Manager)

Case Mgr: Donna Wynant, Senior Planner, LUD/Current Planning Division, 955-6325

Review by this division/department has determined that this application will meet applicable standards if the following are met:

Conditions of Approval :

Must be completed by:

1. As stated in Article 14-5.6(D)(1) "Location of Structures," For all lots subdivided after February 26 th , 1992, development in the Ridgetop Subdistrict of the Escarpment overlay district, other than driveway access and utilities, is prohibited.	At time of building permit.
2. For lots subdivided after February 26 th , 1992, the structure shall be designed and built as far from the viewline as possible in the Foothills Subdistrict [Article 14-5.6(D)(3)(e)].	Final Plat
3. All structures must be located within the buildable areas as delineated on the Plat.	Final Plat
4. All development in the Foothills Subdistrict must comply with all the provisions of Article 14-5.6 "Escarpment Overlay District."	At time of building permit.
5. Proposed monument sign must comply with Article 14-8.10(E)(4) "Freestanding Signs" which requires that an area equal to the sign area shall be landscaped at the base of the sign. Landscaping shall be with five-gallon shrubs with a minimum mature height of thirty (30) inches with one shrub planted for every ten (10) square feet.	Final Plat
6. Outdoor lighting and accent lighting must comply with Article 14-8.9 "Outdoor Lighting."	At time of building permit.

*Completed
on
Final
Plat*

Technical Corrections*:

Must be completed by:

Amend notes on Sheet 4-3 (Siting Plan) to change the statement
"The building roofline for each dwelling unit shall not exceed 15 vertical feet
above the highest point of natural grade surface on the building side.
Chimneys are excepted from this height limitation" to:

Final Plat

(5) The maximum height of any structure in the foothills subdistrict shall
be determined by the more restrictive of the following calculations:

(a) The highest point on the structure shall not exceed a maximum
height of fourteen (14) feet above the highest natural grade at the
perimeter of the structure.

(b) The highest point on the structure shall not exceed a maximum
height of twenty (20) feet above each and every point of measurement
along the structure perimeter. This measurement shall be from the
undisturbed natural grade of the land at the perimeter, or from the
finished grade at the perimeter, whichever is more restrictive in height.

(c) The highest point on the structure includes the tops of parapets and
clerestories, except that chimneys may exceed the maximum height by
not more than three (3) feet above the immediately adjacent roof.

Adding fill dirt to the natural grade in order to increase the height is
prohibited.

Completed
on
Final Plat

Planning Commission
January 5, 2017

EXHIBIT 4

WYNANT, DONNA J.

From: Justin Greene <contactjustin@yahoo.com>
Sent: Thursday, January 05, 2017 3:19 PM
To: SHANDLER, ZACHARY A.; WYNANT, DONNA J.; MARTINEZ, LISA D.
Subject: Fw: 607 Campana place
Attachments: 2418-2-EX.pdf

Donna,
Please include in tonight's Planning Commission meeting (for the Haciendas case) the following surveyor's opinion regarding Lot 22a whose Warranty Deed is titled to Justin & Sandra Greene.
The surveyor also included a drawing showing how the property falls into the meets and bounds of the 1981 rezoning area.
It is specifically within Tract A.

Previous claims by staff have questioned its ownership and inclusion in the planning area covered under 1981-3. This should clarify this issue and correct the planning drawings and information provided to Commissioners and the review team.

It also appears that all previous drafts of plans for Tract A included this parcel in the master plans (Los Vicinos 1995 plan for Tract A and draft Estancia Primera 1981 master plan).

Also of note: While it appears that a partial master plan was approved at the Planning Commission meeting of July 9, 1981 (case 1981-60) that covered the southern Tract B, we cannot find record of a master plan being approved for the northern Tract A. In fact, we see that the northern parcel was specifically excluded from the approval at that meeting (Minutes of Nov 1, 2012 Summary Committee Lot Split page 43+)

Thank you

-----Hit the "REPLY" button now-----
-----JUSTIN GREENE-----
----- contactjustin@yahoo.com -----

On Thursday, January 5, 2017 10:07 AM, Paul Rodriguez <paulrodriguez@paramountsurveys.com> wrote:

Upon reviewing this description of Tract A (Re: an ordinance), I find that the property description does in fact contain Lot 22A within its limits, as shown on the sketch attached herewith. Let me know if you have any other questions.

Paul

On 1/5/2017 9:42 AM, Justin Greene wrote:

Deed, survey and rezoning ord attached.

.....Pardon the brevity.....
----Sent from my iPhone----
Hit the "reply" button now

Planning Commission
January 5, 2017

EXHIBIT 5

Prepared by:
James W. Siebert & Assoc., Inc
January 4, 2017

Time Line for Haciendas del Mirasol Development Review

<u>Action</u>	<u>Date</u>
ENN:	4/11/16
Application submitted for Preliminary Plat:	5/4/16
Prelim plat initially scheduled for P.C. hearing:	6/16/16
Prelim plat tabled:	6/16/16 & 7/7/16
Prelim plat heard by P.C:	8/4/16
Application submitted for final plat:	9/19/16
Appeal to City Council tabled:	11/9/16
Appeal heard by City Council:	12/14/16
P.C. hearing on final plat:	1/5/17

*eight months to review the submittals

Planning Commission
January 5, 2017

EXHIBIT 6

"The Greater Callecita Neighborhood Association" requests the following
Be voted on by the January 5, 2017 Planning Commission:

**CONDITIONS OF APPROVAL REQUIRED PRIOR TO THE FINAL PLAT APPROVAL
AND PRIOR TO RECORDATION of THE PROPOSED 8-LOT HACIENDAS DEL MIRASOL:**

1. The approved requirement by the City Council (that there will never be any Air-BnB's) added to all the CC+Rs required by "Ordinance 1981-3".
2. All of the "Conditions of Approval" or "Technical Corrections" required by City Staff be approved tonight.
 - A) Except the Roadway Lighting Plan that calls for Pole Lighting (that would not meet the dark sky requirements as viewed from all the neighbors below the 8-lots). CC+Rs should state no pole lighting allowed through the 8 Lots.
 - B) Except the Water infrastructure being allowed prior to the Estancia Primera or Greater Callecita neighbors seeing the final location they will make to connect to water (currently being shown as adjacent to Estancia Primera but notes indicate the location may change).
3. The "Technical Correction" new "base course driving surface" road and gate location that abuts the neighbors (to access the new private sewer line required by City Waste Management Staff) has not yet been shown on any plans, and should be drafted and shown to the neighbors, prior to Planning Commission approval of the location.
4. The 20 foot wide private driveway to the 8 homes, be added to the CC+Rs, with a written agreement to not have any Guest Houses (due to 9 homes or 16 homes would require a 40 foot wide road not allowed on the ridgetop),
5. The CC+R's to state if Phase Two is built, the 20-foot driveway entry at Hyde Park Road will be widened to a 40 foot road to hold more than 8 homes worth of cars (as required by City code), with an easement wider than 38 feet (shown on today's plans) to assure proper road width, and to provide for retaining walls, and proper road turn-out lanes for both uphill and downhill site visibility easements.
6. The final copy of the CC+Rs be provided to both the neighbors and the City Staff (to assure all written requirements of Ordinance 1981-3-7C.3+4+5 and 7D4 and are provided and binding with all successors, to protect adjacent property owners from failure of drainage and erosion control structures) prior to recordation.
7. 14-5.6(G) states...no retaining walls greater than six feet are allowed AND Ordinance 1981-3.3.2 and 3.3.3 require at preliminary plat ...grading envelopes defined, and plans for each lot with limitations of cut and fill. These "plans" have not yet been provided. We request they be added as a condition of approval.

Planning Commission
January 5, 2017

EXHIBIT 7

January 5, 2017

Case No. 2016-106

Haciendas del Mirasol
700 Hyde Park Road
Final Subdivision Plat

**PROPOSED CONDITIONS OF APPROVAL
FOR MIRASOL FINAL SUBDIVISION PLAT**

1. The total impervious areas per subdivision lot shall not exceed 3,500 square feet for residents, including guesthouses and garages, and 1,200 square feet for drives, sidewalks, patios, etc. The total impervious area shall not exceed 4,700 square feet.
2. The total volume of water to be stored for impervious areas shall be at least 1,214 cubic feet.
3. All roofs shall be provided with cisterns and the cistern shall be sized to capture at least one gallon per square foot of roof area.
4. The total volume of water that shall be stored for the residents shall be at least 607 cubic feet or 50% of the 1,214 cubic feet for all impervious area, which ever is greater.

By: Peter Thomas White
Peter Thomas White
501 Hillside Avenue
Santa Fe, New Mexico 87501