

8.5. **Individual Charges.** Individual Charges shall be levied by the Association against an Owner and such Owner's Lot for:

8.5.1. costs incurred in bringing Owner or Owner's Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines;

8.5.2. any other charge designated as an Individual Charge in the Declaration, the Articles, Bylaws or Association Rules;

8.5.3. fines levied or fixed by the Board under Section 5.4, by the ACC under Section 14.6, or as otherwise provided herein; and

8.5.4. attorneys' fees, interest and other costs or charges provided to be paid as, or which are incurred in connection with, an Individual Charge in accordance with this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines.

In the event the Association undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not accepted by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be an Individual Charge.

8.6. **Capital Improvement Assessments.** In addition to Regular Assessments, the Board may levy a Capital Improvement Assessment in any fiscal year after the year 2009 with the affirmative vote or written consent of a Majority of Members (excluding Developer) and with the consent of Developer (so long as Developer owns any property subject to this Declaration), for the purpose of defraying, in whole or in part, the cost of any action or undertaking on behalf of the Association in connection with, or the cost of, any construction or replacement of Majority upon the Common Areas, including the necessary fixtures and personal property related thereto. All amounts collected as Capital Improvement Assessments (a) may only be used for capital improvements; (b) shall be deposited by the Association in a separate bank account for such purposes; and (c) shall not be commingled with any other funds of the Association, and (d) shall be deemed a contribution to the capital account of the Association by the Owners.

8.7. **Uniform Assessment.** Except as provided in Section 8.4 subject to any subsequent amendment, the amount of any Regular Assessment, Capital Improvement Assessment, and Reconstruction Assessment shall be fixed at a uniform rate per Lot.

8.8. **Time and Manner of Payment; Late Charges and Interest.** Assessments and Individual Charges shall be due and payable by Owners in such manner and at such times as the Board shall designate. If not paid when due, each such Assessment and Individual Charge shall have added to it a late charge equal to 10% of the amount of Assessment or Individual Charge or such other charge as the Board may specify from time to time. Thereafter, any such delinquent Assessment or Individual Charge and the applicable late charge shall bear interest from the tenth day after the due date at the Default Rate of Interest until paid. Alternatively, the Board may from time to time fix a schedule of late charges (not directly requiring the computation of changing interest rates) applicable to delinquent Assessments and Individual Charges. The Board may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of his delinquency, and if any suit, action or arbitration proceeding is brought to collect and/or foreclose the Assessment Lien for any such Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.



8.9. **No Offsets.** All Assessments and Individual Charges shall be payable in the amount specified in the Assessment or by notice and no offsets against the specified amount shall be permitted for any reason including, but not limited to, a claim that (a) the Association, the Board, or Developer is not properly exercising its duties and powers as provided in this Declaration; (b) Assessments for any period exceed Common Expenses; or (c) an Owner has made, or elects to make, no use of the Common Areas.

8.10. **Homestead Waiver.** To the extent permitted by law, each Owner hereby waives the benefit of any homestead or exemption laws of the State of New Mexico now in effect, or in effect from time to time hereafter, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future.

8.11. **Reserves.** Any reserves included in the Common Expenses, which are collected as part of the Regular Assessments, shall be deposited by the Board in a separate bank account to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of New Mexico or the United States relating to non-profit corporations or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the Association by Owners. The responsibility of the Board (whether while controlled by Developer or the other Members) shall be only to provide for such reserves, if any, as the Board in good faith deems reasonable, and the Developer, the Board (nor any member thereof) shall not have any liability to any Owner, other Person or to the Association if reserves prove to be inadequate after the Board satisfies the obligations provided for in this sentence. Developer shall provide a \$20,000.00 reserve on October 1, 2009.

8.12. **Certificate of Payment.** Any Person acquiring an interest in any Lot (and which does not already own the Lot) shall be entitled to a certificate from the Board setting forth the amount of due but unpaid Assessments and Individual Charges relating to the Lot, if any, and such a Person shall not be liable for, nor shall any lien attach to the Lot in excess of the amount set forth in the certificate, except for Assessments and Individual Charges which occur or become due after the date thereof and any interest, costs, attorneys' fees and any late charges related to such Assessments and Individual Charges.

8.13. **Rules Regarding Billing and Collection Procedures.** The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments and Individual Charges provided for herein (including denial of the right to use the Clubhouse if Assessments are delinquent), and for the billing and collection thereof, provided that the procedures are not inconsistent with the provisions hereof. Any failure of the Association to send a bill to an Owner shall not relieve an Owner of his liability for any Assessment or charge under the Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Owner has been given such notice prior to such foreclosure or enforcement as may be required by law or provided for in the Bylaws. Such a notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an assessment period. Successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

8.14. **Enforcement of Lien.** The Assessment Lien may be foreclosed by the Association in any manner provided or permitted for the foreclosure of mortgages or deeds of trust in the State of New Mexico. All of the provisions of this Section relating to the enforcement of the Assessment Lien provided for herein shall apply with equal force in each other instance provided for in this Declaration or the Association Rules or Design Guidelines wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by the Assessment Lien. Nothing herein shall be construed as requiring the Association to take any action hereunder in any particular instance, and the failure of the Association to take such action at any



time shall not constitute a waiver of the right to take the same or similar action at a later time or in a different instance. In the event of a judicial foreclosure, the redemption period shall be one month in lieu of nine months.

8.15. **Pledge of Assessment Rights as Security.** The Association shall have the power to pledge the right to exercise its assessment powers and rights provided for in this Declaration as security; provided, however, that any such pledge occurring after the Transition Date shall require (a) the prior affirmative vote or written assent of a Majority of members (except Developer), and (b) the consent of Developer (so long as Developer owns any property subject to this Declaration).

8.16. **Lien on Unsold Lots or Parcels.** Notwithstanding anything herein to the contrary, prior to the Transition Date, no Assessments or Individual Charges shall be levied upon Developer, or payable with respect to any Lot owned by or leased to Developer or by any trustee for any of the aforesaid Persons, until the Lot has been conveyed to a retail purchaser. For all other Lots, Assessments shall commence, and Owners (and their Lots) shall be subject to Individual Charges, upon the date the Lot is conveyed to a retail purchaser or upon the first day of the month after such a conveyance, as the Board may elect.

9. **MAINTENANCE AND SECURITY**

9.1. **Common Areas and Rights-of-Way.** The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, including, but not limited to, private roads, any landscaping, walkways, riding paths, parking areas, drives, recreational facilities and the roofs, interiors and exteriors of the buildings and structures located upon said properties; provided, however, the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas which are part of Lots unless (a) such landscaping or structures are available for use by all Owners and Occupants or are within easements intended for the general benefit of the Property, and (b) the Association assumes in writing the responsibility for such maintenance, or such responsibility is set forth in a Recorded instrument as hereinafter provided.

The Board shall use a reasonable standard of care in providing for the repair, management and maintenance of Common Areas so that the Property will reflect a pride of ownership. In this connection the Association may, subject to any applicable provisions relating to Capital Improvement Assessments, in the discretion of the Board:

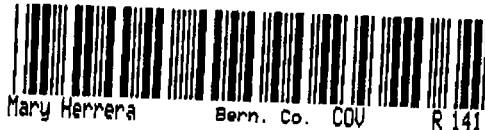
9.1.1. Construct, reconstruct, repair, replace or refinish any improvement or portion thereof upon Common Areas;

9.1.2. Replace injured and diseased trees and other vegetation in any Common Areas, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

9.1.3. Place and maintain upon any Common Area such signs as the Board and ACC may deem appropriate for the proper identification, use and regulation thereof; and

9.1.4. Do all such other and further acts which the Board deems necessary or appropriate to preserve and protect the Common Areas and the beauty thereof, in accordance with the general purposes specified in this Declaration.

9.2. **Association Discretion.** The Board and ACC shall be the sole judges as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative



action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

In the event any subdivision plat, deed restriction, or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Areas, Private Streets or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants of the Property for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Section 9 and, in order to promote uniformity and harmony of appearance, the Board also may cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Board and Owner may agree upon.

9.3. **Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas.** In the event the need for maintenance, repair or replacement of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Owner or Occupant or the family, guests, or invitees of either, the cost of such maintenance or repairs shall be an Individual Charge against the Owner and his Lot secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to Section 8 in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also be an Individual Charge and shall be secured by the Assessment Lien.

9.4. **Improper Maintenance and Use of Lots.** In the event any portion of any Lot is so maintained as to present a public or private nuisance or an unreasonable condition (as determined by the Association) with respect to other Owners or Occupants, or as to detract substantially from the appearance or quality of the surrounding Lots or other areas of the Property or the Community which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot, or portion thereof is failing to perform any of its obligations under the Declaration, or applicable Design Guidelines, the Board may by resolution make a finding to such effect specifying the particular condition or conditions which exist, and pursuant thereto give notice to the offending Owner that unless corrective action is taken within ten days, the Board may cause such action to be taken at the Owner's cost. If, at the expiration of the ten-day period of time, the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause remedial action to be taken. The cost of any such remedial action shall become an Individual Charge against the offending Owner and the Owner's Lot and shall be secured by the Assessment Lien. Notwithstanding the foregoing, if the Board believes that immediate action is or may be necessary to avoid a risk of serious physical injuries to persons or damage to property, the Board shall be entitled to take whatever action it may believe to be minimally necessary to guard against or prevent such injuries or damage without being required to wait ten days after giving notice to the affected Owner.

9.5. **Security.** The Association, or its duly delegated representative, may operate a security system for the Property and the Community as follows:

9.5.1. **General Security.** The security system may (but is not required to) include guard gates and other security points, both manned and unmanned, at entries to various portions of the Property or the Community; patrol vehicles, patrolmen and security supervisors; computer and/or other monitoring equipment; television monitoring devices; burglar and fire alarm devices installed in buildings located on Common Areas, Association Land and Private Streets; communications equipment; direct line phones; and



such other security protection devices as may be deemed appropriate by the Board. The cost of any such security shall be part of the Common Expenses.

9.5.2. Right of Entry. Representatives and agents of the Association, including, but not limited to, security patrolmen, shall have the right to enter upon all Lots, and Common Areas when responding to alarms or when otherwise reasonably deemed necessary for the protection of Persons or property, and neither the Association, nor any representative or agent thereof, shall have any liability to any Person when acting in good faith in effecting such entry.

9.5.3. Liability for Security. The Board shall use a reasonable standard of care in providing for and operating any security (or similar) system(s) for the Community. The Developer or the Board shall have discretion to leave gates open during period of marketing or events. However, neither the Association, nor Developer is or should be considered a guarantor or insurer of security in the Community. Neither the Association, nor Developer (nor any committee, officer, director or agent of any of them) shall be liable to any Owner, Occupant or other Person if any security (or similar) system is ineffective to prevent or detect in any case the risk for which it is intended.

10. INSURANCE

10.1. Authority to Purchase. The Board shall have the power and authority to purchase with Association funds such public liability, casualty, officers' and directors' liability and indemnity, workmen's compensation and other insurance and such fidelity bonds as the Board shall deem necessary or appropriate from time to time. Policies shall be on such terms and conditions as the Board shall direct. All such policies and claims thereunder shall be administered by the Board. To the extent reasonably available, the Association shall maintain at least \$1,000,000.00 (combined limits) of insurance against liability incurred as a result of death or injury to Persons or damage to property on the Common Areas.

10.2. Owner's Responsibility. It shall be each Owner's responsibility to provide any insurance on his own Lot or Parcel, additions and improvements thereto, furnishings and personal property therein, his personal property stored elsewhere within the Property, his personal liability to the extent not covered by public liability insurance obtained by the Association, and such other insurance as the Owner desires.

10.3. Non-Liability of Association, Board and Officers. Neither the Association, nor any Board member, nor any officer of the Association, nor Developer shall be liable to any Owner, Mortgagee or other Person if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each such Owner, Mortgagee and other Person to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner, Mortgagee or other Person may desire.

10.4. Premiums. Premiums upon insurance policies purchased by the Board shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or of the Common Areas, by an Owner, or an Occupant of the Owner's Lot, or the agent, employee or invitee of either, shall be assessed against the Owner as an Individual Charge.

10.5. Insurance Claims. The Association, through such Persons as the Board may delegate, is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The



Board, at its discretion, may appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

10.6. **Benefit.** Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any Insurance Trustee shall be held or disposed of for the Association and the Owners, or other interested Persons, as their interests may appear.

11. DAMAGE AND DESTRUCTION OF COMMON AREAS

11.1. **Duty of Association.** In the event of partial or total destruction of the Common Areas, or any improvements thereon, the Association may restore and repair the same, subject and pursuant to this Section 11. The proceeds of any casualty insurance maintained by the Association may be used to the extent available for such purpose, subject to the prior rights of Mortgagees whose interests may be protected by the policies.

11.2. **Vote of Members.** If the amount available from the proceeds of any insurance policies for such restoration and repair, together with any uncommitted or unreserved capital of the Association, is less than the estimated cost of restoration and repair, the Common Areas may be replaced or restored unless a Majority of Members, at a special meeting held for such purpose, disapprove of such replacement or restoration. If such Members do not disapprove the proposed replacement or restoration, the Board may levy a "Reconstruction Assessment" against each Owner and his Lot(s), and cause the damaged or destroyed Common Areas to be repaired or restored. If such Members disapprove of the repair or restoration of the damaged or destroyed improvements on the Common Areas as provided above, the Common Areas so damaged or destroyed shall be cleared and landscaped for Common Area use or other use determined by the Board, and the costs thereof shall be paid from insurance proceeds (to the extent available).

11.3. **Excess Insurance Proceeds.** In the event any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Section 11, the Board, in its sole discretion, may retain such sums in the general funds of the Association or may distribute all or a portion of such excess to the Owners in the ratio that they would pay a Reconstruction Assessment hereunder, subject to the prior rights of Mortgagees whose interest may be protected by the insurance policies carried by the Association and subject to any restrictions under applicable law. The rights of an Owner or the Mortgagee of a Lot to any distribution shall be governed by the provisions of the Mortgage encumbering the Lot or Parcel.

11.4. **Use of Reconstruction Assessments.** All amounts collected as Reconstruction Assessments shall only be used for the purposes set forth in this Section 11 and shall be deposited by the Association in a separate bank account for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Owners. Any Reconstruction Assessment shall be secured by the Assessment Lien.

11.5. **Insurance Proceeds Trust.** Upon receipt by the Association of any insurance proceeds, the Board may cause the insurance proceeds to be paid directly to a bank, savings and loan association, or trust company located in Bernalillo County, New Mexico, designated by the Board as trustee (the "Insurance Trustee"). Such funds shall be received, held and administered by the Insurance Trustee subject to a trust agreement consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Board. Disbursements to contractors performing any repair or reconstruction upon the Property shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Albuquerque, New Mexico.

12. EMINENT DOMAIN

12.1. **Definition of Taking.** The term "Taking" shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

12.2. **Representation in Condemnation Proceedings.** The Owners hereby appoint the Association through such Persons as the Board may delegate, to represent all of the Owners in connection with any threatened Taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

12.3. **Award for Common Areas.** Any awards received by the Association on account of the Taking shall be paid to the Board. The Board may, in its sole discretion, retain any award in the general funds of the Association, expend the funds for restoration and repair of Common Areas or distribute all or any portion thereof to the Owners in the ratio they would pay a Reconstruction Assessment hereunder, or as their interests otherwise may appear. The rights of an Owner and the Mortgagee of his Lot as to any distribution shall be governed by the provisions of the Mortgage encumbering such Lot or Parcel.

13. ARCHITECTURAL CONTROL COMMITTEE

13.1. **Appointment of ACC.** To ensure the maintenance of the standards established by this Declaration, an Architectural Control Committee made up of property owners shall be created. All ACC decisions shall be made in writing. The ACC shall consist of not less than three (3) persons owning Lots within Nature Pointe. Developer shall serve as the ACC until 90% of Phase 1 and Phase 2 lots are sold, unless Developer elects to have an election of ACC members sooner. The initial ACC need not be comprised of more than one person and may be replaced by the Developer at will. The ACC may grant variances (at its discretion) to this Declaration where they do not violate any county or other governmental agency law or regulation. The ACC may inspect any property to verify compliance with this Declaration at any time. All variance requests must be made in writing and if approved, the variance shall be approved in writing. See submittal and review provisions contained Section 14. Owners should consult with the ACC as to any covenants in which such Owner requires clarification. House review fees may be distributed to the ACC members as compensation for their review time.

13.2. **Design Guidelines.** The ACC, with Board approval, shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines (the "Design Guidelines"), which the Board may, from time to time in its sole discretion, amend, repeal or augment. After the Transition Date (or after Developer's voluntary relinquishment of control of the ACC, if sooner), any change in the Design Guidelines will be effective only if it is approved by Developer (so long as Developer owns any property subject to this Declaration). The Design Guidelines are incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on all Owners, Members and other Persons as if expressly set forth herein; provided, however, that neither the provisions of this Section 13 nor the Design Guidelines shall apply to clubhouse buildings and other structures or improvements within common areas constructed by Developer or its agents or employees, and such buildings and other structures may have an architectural style and present general aesthetics which are quite distinct from the architectural styles and aesthetics elsewhere in the Property or the Community. A copy of the current Design Guidelines shall at all times be a part of the Association's records. The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

13.2.1. Designation of a Building Envelope within a Lot, thereby establishing the maximum developable area of the Lot where terrain, size or other factors require such designation;



13.2.2. Procedures for assuring conformity of completed improvements to drawings and specifications approved by the ACC; provided, however, as to purchasers and encumbrancers in good faith and for value, unless notice of noncompletion or nonconformance identifying the violating Lot and specifying the reason for the notice, executed by the ACC, is Recorded with the County Recorder of Bernalillo County, New Mexico, and given to the Owner of the Lot within one year following completion of the improvement, or unless legal proceedings shall have been instituted to enforce compliance or completion within said one-year period, the completed improvements shall be deemed to be in compliance with plans and specifications approved by the ACC and in compliance with the architectural standards of the Association and this Declaration, but only with respect to purchasers and encumbrancers in good faith and for value; and

13.2.3. Such other limitations and restrictions as the ACC in its reasonable discretion shall adopt, including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, wall or fence, including, but not limited to, the nature, kind, shape, height, materials, exterior color, surface texture, and location of any such improvement, exterior artwork and works of art visible from any other Lots or Common Areas, including, but not limited to, sculpture and statues.

13.2.4. SUBJECTIVE DETERMINATIONS AND/OR CRITERIA BEARING ON COMPATIBILITY WITH ARCHITECTURE, STYLE, DESIGN AND APPEARANCE GENERALLY, OTHER RESIDENCES, THE TERRAIN WITHIN THE PROPERTY OR VISIBLE FROM IT AND SUCH OTHER MATTERS AS THE ACC MAY CONCLUDE, IN GOOD FAITH BUT IN THE EXERCISE OF THE ACC'S DISCRETION, ARE RELEVANT OR APPROPRIATE TO A HARMONIOUS APPEARANCE AND LIFESTYLE WITHIN THE PROPERTY AND THE COMMUNITY.

13.3. **General Provisions.**

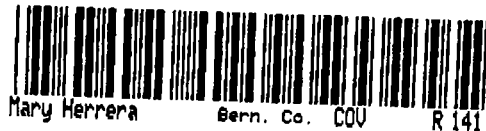
13.3.1. The ACC may delegate its responsibilities for reviewing drawings and specifications, except Final Review and approval as may be required by the Design Guidelines, to one or more of its members or architectural consultants retained by the ACC. Upon any such delegation, the interim approval or disapproval of drawings and specifications by the member or consultants shall be equivalent to interim approval or disapproval by the entire ACC.

13.3.2. The address of the ACC shall be the address established for giving notice to the Association, unless otherwise specified in the Design Guidelines or by written notice to Owners. The ACC's address shall be the place for the submittal of drawings and specifications and the place where the current Design Guidelines shall be kept.

13.3.3. The Design Guidelines shall not apply to, and nothing contained in this Section 13 shall be construed to prevent or impair in any way, any development, operation, construction or improvement by Developer or any other Person on property that is not made subject to this Declaration.

13.3.4. The establishment of the ACC and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Declaration, the Bylaws or Association Rules.

13.3.5. The ACC, at the request of an Owner (including, but not limited to, Developer) may, but shall have no obligation to, (i) change the size, configuration or location of any Building Envelope on the Owner's Lot, or (ii) approve the changing of the natural grade of a Lot, or portions thereof, by cut, fill or similar procedures.



14. PROCEDURES FOR APPROVAL

14.1. **Submission of Plans.** Before commencement of construction, including without limitation, site preparation, clearing of natural vegetation or excavation, installation, remodeling, or alteration of any building, swimming pool, wall, fence, tank, antenna, satellite receiver dish, or other structure whatsoever, on any Lot, plans shall be submitted to the ACC that comply with the Nature Pointe Design Guidelines and all the requirements listed below.

14.1.1. The owner and/or his/her representative shall conduct a Pre-Plan Submittal Meeting on site with a designated representative of the ACC, prior to preparation of any plans or drawings.

14.1.2. A Preliminary Design Review must be submitted prior to commencement of any plans or drawings in accordance with the Design Guidelines.

14.1.3. Two complete sets of the final plans and specifications for said work shall be submitted for the Final Review.

14.1.4. No construction, structure, or improvement shall commence or shall be erected, altered, placed or maintained upon any Lot unless and until the final plans, elevations, and specifications therefor have received such written approval as herein provided. All construction, improvements, installations, remodeling, or alternations shall comply strictly with the approved plans and any terms and conditions imposed by the ACC in its written approval. Once approved, no construction, structure, or improvement may vary from the approved plan without further written approval of the ACC. Any person purchasing any portion of the property subject to this Declaration acknowledges that the breach or violation of this covenant is likely to result in irreparable harm to the rights and interests of other owners in the subdivision and that the Developer, the ACC or the Association, on behalf of such owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available hereunder or at law or equity.

14.1.5. The ACC is authorized to charge \$300.00 for review of plans payable at the Preliminary Design Review. At the time of submission of the plans and specifications as set forth herein, the Owner shall pay the Design Guidelines Committee a deposit of \$3,000.00 which will be held in a non-interest bearing account. The ACC shall provide full approval, conditional approval, or disapproval of said plans and specifications in writing within fifteen (15) business days from the receipt thereof. All conditions of approval and variances shall be confirmed in writing. One set of said plans and specifications with the ACC's approval or disapproval endorsed thereon shall be returned to the Owner and the other copy thereof shall be retained by the ACC. Should the ACC fail either to approve or disapprove any plans or specifications submitted to it within said fifteen (15) business day period, failure to do so shall not be construed a waiver of the ACC's absolute authority to approve plans and specifications prior to construction, alteration, or placement of improvements. Approval of plans and specifications for all construction, installations, improvements, remodeling or alterations shall be valid only for a period of one year. Failure to commence and/or complete construction within one year following the date of approval shall require reapplication and resubmittal of plans, specifications, and fees to the ACC. Upon completion of the construction, in compliance with the approved plans, \$3,000.00 of the deposit will be refunded to Owner. If the improvements are not completed in accordance with the approved plans, in addition to all other remedies it may have, the ACC may use the balance of the deposit to correct any defect or deficiency.

14.1.6. The ACC shall have the right to disapprove any plans, specifications or details submitted to it, if such plans and specifications are not in accord with all the provisions of this Declaration. Considerations may include, but shall not be limited to, the following: if a proposed color is not a natural



earth tone (brown) or other color approved in writing by the ACC; if the proposed structure is not in harmony with the general surroundings of such lot or the adjacent structure; if the structure shall unduly interfere with the view from nearby residences; if the ACC deems said plans and specifications to be contrary to the interest and the welfare and rights of all or any part of Nature Pointe. The decision of the ACC in any of these matters shall be final, and no building or improvement of any kind shall be constructed or placed upon any Lot in Nature Pointe, without the prior written consent of the ACC.

14.2. **Non-Liability for Approval of Drawings and Specifications.** Drawings and specifications shall be approved by the ACC as to style, exterior design, appearance and location, and are not approved for engineering design or for compliance with zoning and building ordinances. By approving such drawings and specifications neither the ACC, the Association, the Board, the Developer, or any Member, officer or director thereof, assumes any liability or responsibility therefor, or for any defect in any structure constructed from such drawings and specifications. Neither the ACC, the Association, the Board, the Developer, or any Member, officer or director thereof shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of:

14.2.1. the approval or disapproval of any drawings and specifications, whether or not defective;

14.2.2 the construction or performance of any work, whether or not pursuant to approved drawings and specifications;

14.3.3. the development, or manner of development of any property within the Property;

14.4.4. the change in the size, configuration or location of any Building Envelope or the changing of the natural grade of any Lot; or

14.4.5. the execution and filing of an estoppel certificate pursuant to the Design Guidelines (whether or not the facts therein are correct) if the action, with the actual knowledge possessed by him/her, was taken in good faith.

Approval of drawings and specifications by the ACC, or the approval of any change in the size, configuration or location of any Building Envelope, or a change in the natural grade of any Lot is not, and shall not be deemed to be, a representation or warranty that the drawings, specifications or changes comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

14.3. **Inspection and Recording of Approval.** Any member or authorized consultant of the ACC, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, except the interior of any occupied Dwelling Unit, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot, or any changes in the grade thereof, to ascertain that such improvements or changes have been or are being built or changed in compliance with the Design Guidelines and this Declaration. The ACC shall cause such an inspection to be undertaken within 30 days of a request from any Owner as to his Lot. If such an inspection reveals that the improvements or changes located on such Lot have been completed in compliance with this Section 14 and the Design Guidelines, the ACC shall provide the Owner a notice of approval in Recordable form which, when Recorded, shall be conclusive evidence of compliance with the provisions of this Section 14 and the Design Guidelines as to the improvements or changes described in the Recorded notice, but as to such improvements or changes only.



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14.4. **Reconstruction of Common Areas.** Any reconstruction by the Association or Developer after destruction by casualty or otherwise of Common Areas, which is accomplished in substantial compliance with "as built" plans for the Common Areas, shall not require compliance with the procedural provisions of this Section 14 or the Design Guidelines.

14.5 **Emergencies.** Notwithstanding the foregoing, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of Persons or property within the Property, the Board, the ACC and Developer shall have authority (without the prior approvals described above) to take whatever remedial action may be necessary anywhere in the Property to protect Persons and property until such time as applicable approval procedures provided for in this Section 14 can reasonably be utilized.

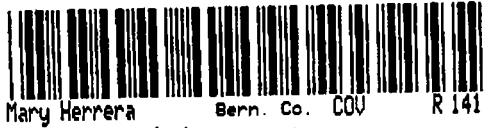
14.6 **FINES.** THE ACC MAY FIX A FINE OF UP TO \$10,000.00 AGAINST ANY OWNER AND ANY LOT SUBJECT TO ASSESSMENTS HEREUNDER FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE ACC OR FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF SUCH APPROVALS OR SECTIONS 13 OR 14 HEREOF AND MAY REQUIRE SECURITY DEPOSITS TO ASSURE COMPLIANCE WITH PROPERTY RESTORATION AND OTHER REQUIREMENTS.

15. RIGHTS OF MORTGAGEES

15.1. **General Provisions.** Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the following provisions shall apply to and benefit each holder of a First Mortgage on a Lot.

15.2. **Subordination of Lien.** The Assessment Lien against a Lot shall be subordinate to the lien of a prior Recorded First Mortgage on the Lot, acquired in good faith and for value, except to the extent it secures the amount of any unpaid Assessment or Individual Charge (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto) which accrues from and after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first. If the Assessment Lien for unpaid Assessments or Individual Charges that become payable after Recordation of the First Mortgage and prior to the date the First Mortgagee comes into possession of or acquires title to the Lot is not extinguished to the extent it secures said unpaid Assessments or Individual Charges by the process by which the First Mortgagee acquired title to the Lot, neither the First Mortgagee nor a third-party purchaser shall be liable for the unpaid Assessments or Individual Charges. Upon written request to the Association by the First Mortgagee or purchaser, the Assessment Lien shall be released in writing by the Association to the extent it secures such unpaid Assessments or Individual Charges. Nevertheless, if the Owner against whom the original Assessment or Individual Charge was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Association, or by the Board, for the respective Lot's Assessment or Individual Charge including those due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment or Individual Charge shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Association, and the Board may use reasonable efforts to collect the same from the Owner even after he is no longer the Owner of the Lot. Any unpaid Assessments or Individual Charges which are extinguished pursuant to this Section 15.2 may also be reallocated by the Board among all Owners as part of the Common Expenses. Except as above provided (and except for liens for taxes and other public charges which by applicable law are made prior and superior), the Assessment Lien shall be prior and superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed on any Lot.

15.3. **No Personal Liability.** A First Mortgagee shall not in any case or manner be personally liable for the payment of any Assessment or charge, nor the observance or performance of any covenant,



restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by prohibitory injunction or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 15.

15.4. **Enforcement After Foreclosure Sale.** An action to recover assessments imposed after the foreclosure sale or to abate the breach of any of the covenants, conditions, restrictions, servitudes and reservations in this Declaration may be brought against any purchaser who acquires title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to any such purchaser, even though the breach existed prior to the time the purchaser acquired an interest in the Lot or Parcel.

15.5. **Exercise of Owner's Rights.** During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption), the First Mortgagee, or a receiver appointed in any such action, may, but shall not be required to, exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member of the Association in the place and stead of the defaulting Owner if the First Mortgagee or receiver gives the Association written notice of its claimed rights and such evidence as the Board may reasonably request demonstrating the existence of the claimed rights.

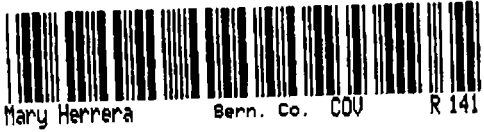
15.6 **Subject to Declaration.** At such time as a Mortgagee comes into possession of or becomes Record Owner of a Lot or Parcel, the Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay (and be personally liable for) all Assessments and charges accruing thereafter, and the obligation to cure any physical conditions on the Lot which constitute a default under or violation of this Declaration or the Design Guidelines in the same manner as any other Owner, whether or not the condition existed before the Mortgagee came into possession of or became the Record Owner of the Lot.

16. **EASEMENTS**

16.1. **Blanket Easements and Utility Construction Easements.** There is hereby created a blanket easement upon, across, over and under the Property for ingress and egress for the purposes of installing, constructing, replacing, repairing, maintaining and operating all utilities (whether public or private) including, but not limited to, water, sewer, gas, telephone, electricity, cable (including, but not limited to, television cable), security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for Developer and its contractors and/or the Association, and/or the providing utility company to construct (including, but not limited to, underground installation) and maintain the necessary facilities, wires, circuits, conduits, cables and related appurtenances, facilities and equipment for the Community on every part of the Property including, but not limited to, the Lots, and to enter upon every part of the said Property to accomplish the foregoing.

Without limiting the generality, scope or duration of the easements described above in this Section 16, there is hereby additionally created the following temporary construction easement for the purpose of the construction of the improvements contemplated by the underlying permanent easement described on any plat, map of dedication or similar Recorded instrument relating to the Property, including the right to enter upon the hereinafter described land and to clear, grade, level, excavate, fill, install and build the improvements contemplated for the underlying permanent easement:

A strip of land 20 feet on each side of the center line of, and which shall overlay, each easement designated as a water line easement, a public or private utility, trail,



easement, or any similar easement on a plat, map of dedication or similar Recorded instrument relating to the Property;

provided, however, the easement granted in this sentence shall automatically terminate and be of no further force and effect at such time as the improvements defined by the underlying permanent easement are complete and accepted by Developer, the Board and the County or any utility company having a right of approval.

16.2. **Use of Common Areas.** Except for the provisions hereof permitting Special Use Fees, each Owner shall have the nonexclusive right to use the Common Areas in common with all other Owners as required for the purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Lot owned by the Owner or Common Areas available for the Owner's use. This right to use the Common Areas for purposes of access and ingress and egress shall, subject to the Association Rules, extend to each Owner, Occupant and the agents, servants, tenants, family members and invitees of each Owner, and shall be appurtenant to each respective Lot, subject to and governed by the provisions of this Declaration, the Articles, Bylaws and Association Rules and such reasonable limitations and restrictions as may from time to time be contained therein.

16.3. **Wall or Fence Easement.** There is hereby created an affirmative easement in favor of Developer, the Association, and their employees and agents, upon, over and across each Lot affected, for reasonable ingress, egress, installation, replacement, maintenance and repair of a perimeter wall, fence or other boundary control for the Property.

16.4. **Developer Easement.** There is hereby created an affirmative, nonexclusive easement appurtenant to the Property and to those portion(s) of any annexed property which, by amendment hereto, Developer specifies as benefitted by this easement (whether or not ever annexed or ever withdrawn from being annexed property), for ingress, egress and the installation and maintenance by Developer (and its agents, employees and invitees) of utilities and drainage facilities over all Common Areas including, but not limited to, Private Streets, and for Developer (and such agents, employees and invitees) to go over, under and across, and to enter and remain upon all Common Areas and all unoccupied Lots (to the minimum extent reasonably required) for all purposes reasonably related to Developer's rights and obligations hereunder, and Developer's development, operation, maintenance, management, administration, advertisement, sale, rental and use of the Property and any portion(s) of the annexed Property which Developer specifies by amendment hereto as benefitted hereby.

16.5. **Roads.** Access roads to the community roads are as shown on the recorded plat of the Community. No access roads, public or private, shall be constructed other than as shown on the Plat.

17. LIMITATION ON DEVELOPER'S LIABILITY

Notwithstanding anything to the contrary in this Declaration, each Owner, by accepting title to any portion of the Property and becoming an Owner, and each other Person acquiring an interest in the Property including, but not limited to Mortgagees, acknowledges and agrees that neither Developer (including, but not limited to, any assignee of the interest of Developer hereunder) nor any related entity (or any partner, shareholder, trustee, officer, director, principal or similar Person holding an interest or position in any such assignee of the interest of Developer) shall have any personal liability to the Association, or any Owner, Member, or Mortgagee or other Person, arising under, in connection with, or resulting from (including, but not limited to, resulting from action or failure to act with respect to) this Declaration, the Association or the ACC except to the extent of such Person's interest in the Property; and, in the event of a judgment, no



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execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

18. TERM; TERMINATION

This Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect until January 1, 2040, and thereafter shall continue for consecutive periods of 25 years each, unless there is an affirmative vote, not more than 360 days prior to the date otherwise scheduled for commencement of the next extension of the term of this Declaration, to terminate this Declaration by a vote of a Majority of Members at a duly held meeting of the Members, or without any meeting if all Members have been duly notified and if a Majority of Members consent in writing to such termination within said 360-day period. This Declaration may be terminated and the Plat may be withdrawn by Developer without the approval or consent of any other Person if such action is taken before any sale to a retail purchaser. Thereafter, this Declaration may be terminated at any time upon a vote in favor of termination, after the Transition Date, by 90% of all of the Members except Developer and by the Developer. Developer may, but shall not be obligated to, release its consent rights under the preceding sentence by Recorded instrument. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period of 180 days prior to such vote to 180 days after such vote, from the holders of Recorded First Mortgages on 90% of the Lots upon which there are such Recorded First Mortgages. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Bernalillo County, New Mexico, and/or other appropriate governmental offices, a Certificate of Termination, duly signed by the President or a vice president of the Association and attested by the secretary or an assistant secretary of the Association, with their signatures acknowledged. Thereupon, this Declaration, as of the date of Recordation of the certificate of Termination (or such later date as may be specified in the Certificate of Termination), shall have no further force and effect, and the Association shall be dissolved.

19. AMENDMENT

19.1. **Amendment to Declaration.** Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided in this Declaration, any proposed amendment must be approved by a majority of the Board prior to its adoption by the Members. Prior to the Transition Date, amendments may be adopted only by Developer as provided in Section 19.3.1. After the Transition Date, amendments may be adopted only with the affirmative vote or written consent of a Majority of the Members except Developer and with the affirmative vote or written consent of Developer (so long as Developer owns any property subject to this Declaration). In any vote by Members, the percentage of Members necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under the clause or provision. In all events, the amendment when adopted shall bear the signature of the President or a vice president of the Association and shall be attested by the secretary or an assistant secretary of the Association, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon Recording in the appropriate governmental offices, or at such later date as may be specified in the amendment.

19.2. **Effect of Amendment.** It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all provisions of this Declaration which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.



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19.3. **Required Approvals.** Notwithstanding the foregoing provisions of this Section 19, until the Transition Date, Developer reserves the right to amend this Declaration without the approval of the Board or the other Members; provided, however, that after the conveyance of the first Lot to a retail purchaser, Developer may not amend the following provisions of this Declaration without the affirmative vote or written consent of a Majority of Members (excluding Developer). Developer may not amend: (a) the Start Date to advance the date upon which Regular Assessments for such benefited Members begins; (b) Section 8.6 to permit Capital Improvement Assessments against Members prior to the year provided for in said section; or (c) this Section 19 to diminish the rights given therein to the benefitted Members.

19.4. **Requested Amendment; Legislative Change.** Developer specifically reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") and to further amend to the extent requested by any other federal, state or local governmental agency, department, board or commission which requests such an amendment as a condition precedent to such entity's approval of this Declaration (for example, but not as a limitation, to obtain authorization from state or federal authorities to sell or offer to sell any portion(s) of the Community within the state or in interstate commerce), or by any federally or state chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. It is the desire of Developer to retain control of the Association and its activities for so long as Developer desires to do so. If any amendment requested pursuant to the provisions of this Section 19.4, or if any federal, state or other legislation hereafter enacted, diminishes or alters such control, Developer shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions to achieve said control or equivalent control.

20. GENERAL PROVISIONS

20.1. **Notices.** Notices to the Association provided for in this Declaration, the Bylaws, or Association Rules, shall be in writing and shall be addressed to the Association at the address specified in the Bylaws. The Association may designate a different address or addresses for notice by giving written notice to all Owners. If applicable law, this Declaration or a resolution of the Board requires notice of any meeting or of any action or proposed action by the Association, the Board or any committee, to be given to any Owner or Occupant then, unless otherwise specified herein or in the resolution of the Board, or in the Bylaws, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the County or the Community. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

20.2. **Captions and Exhibits; Construction.** Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. Any exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property as hereinabove set forth.

20.3. **Severability.** If any provision of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or any Section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines shall be construed as if such invalid part were never included therein.



20.4. **Rule Against Perpetuities.** If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue until 21 years after the death of the survivor of the now living descendants of New Mexico Governor Gary Johnson, and New Mexico Senators Pete Domenici and Jeff Bingaman.

20.5. **Mortgage of Lots and Parcels.** Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his respective Lot. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot.

20.6. **Power of Attorney.** Unless otherwise specifically restricted by the provisions of this Declaration, in any instance in which the Association is empowered to take any action or do any act including, but not limited to, action or acts in connection with the Common Areas or sale thereof, which may at any time be deemed to require the act of an Owner or Member, the Owners and Members and each of them hereby constitute and appoint the Association (acting through the Board) as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming an Owner or a Member of the Association or by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, or any interest therein, or a Membership in the Association, each Owner and Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

20.7. **Gender.** Masculine, feminine and neuter references herein each shall include the others as the context requires.

20.8. **Interpretation.** Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the provisions hereof.

20.9. **References to Declaration in Deeds.** Deeds to and instruments affecting any Lot or any part of the Property may contain the provisions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, all of the provisions hereof shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns as though set forth at length in such instrument.

20.10. **Legal Actions.** This Declaration, the Articles, Bylaws, Association Rules and Design Guidelines shall be subject to, and construed in accordance with, New Mexico law. It shall be lawful for any Owner of Nature Pointe real property to prosecute any proceeding at law or in equity against any parties hereto, or their heirs or assigns who shall violate or attempt to violate any of the restrictions herein, and either prevent said violating parties from so doing, or to recover damages or other due for such violation. However, the disputing parties agree to first seek remedy through mediation. In the event that any court, arbitrator or mediator stipulates damages are owed to the Association and these damages are not paid, then Owner agrees in advance that they shall be considered a lien on the offender's property. Owner agrees to hold the Association, the Developer, the ACC, the Clubhouse director and all other Owners faultless in the event of any injury occurring in any trail area, easement area, the Clubhouse, park area or any other area accessible within Nature Pointe (excluding any party confirmed of malicious intent). Furthermore, Owner shall defend and hold the Association, Developer and other Owners harmless in the event that the guest(s)



of Owner files suit against any of the foregoing. Owner agrees to educate guests of general conditions and rules regarding safe usage of any activity the guests may participate in within Nature Pointe. Owner is responsible for the safety of Owner's guests and damages or any injuries caused by Owner's guests. Invalidation of any one of these restrictions by judgment of court order shall in no way affect any other provisions, which remain in full force and effect. No easement of any kind may be granted on any portion of any Lot without permission from the Developer. Provided, however, nothing herein shall be deemed to require a party to indemnify any other party against the negligence of the indemnified party, or its agents, servants or employees, to the extent §56-7-1 NMSA (1978) is applicable to this paragraph.

21. ZONING AND PLAN

21.1. **Zoning and Plan.** Each Owner, by accepting title to a Lot and becoming an Owner, and each other Person, by acquiring any interest in the Property, acknowledges awareness that the Community is an extensive Community, the development of which is likely to extend over many years, and agrees, so long as he is the Owner of the Lot, or holds any other interest in the Property, not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of the Property, or (b) changes in any conceptual plan for Property, provided, in either case, the zoning, use, density, or conceptual, development or plan revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by this Declaration (as amended from time to time). Notwithstanding anything to the contrary in this Section 21.1, the provisions of this Section 21.1 shall be enforceable only to the extent they are not in violation of any applicable provision of law. Owner understands that governmental authorities may from time-to-time restrict the use of all or portions of the Property as permitted by governmental laws or regulations.

21.2. **Personal Debt of Owner.** The amount of the assessments or fines chargeable against any Lot or its Owner shall be the personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for such assessments or fines shall be maintainable without foreclosing or waiving the lien securing same.

21.3. **Disputes and Method for Resolution.** Claims, disputes or other matters arising between or among the Association, any of its committees, including but not limited to the ACC, or any of the Owners, which arise out of or relate to the Declaration, Subdivision Rules, or any other Subdivision-related agreements, shall be subject to and decided by arbitration in accordance with the Subdivision Rules of the New Mexico Uniform Arbitration Act, NMSA 1978, Sec. 44-7-1 et. seq., unless the parties mutually agree otherwise. Notice for demand for arbitration should be filed in writing with the other party within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question, would be barred by the applicable statute of limitations. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

The parties to the arbitration shall attempt to agree upon a single arbitrator, but if they are unable to do so, then each party shall, within thirty (30) days after a demand for arbitration has been made, select an arbitrator of his choice. The two arbitrators so chosen shall, within thirty (30) days after selection, appoint a third arbitrator, and the three arbitrators so chosen shall hear and render a decision on the matter as soon as practicable thereafter. If two arbitrators are chosen by the parties hereunder and cannot agree on a third arbitrator, the presiding judge of the Second Judicial District Court shall appoint a third arbitrator.

[SIGNATURE PAGE FOLLOWING]



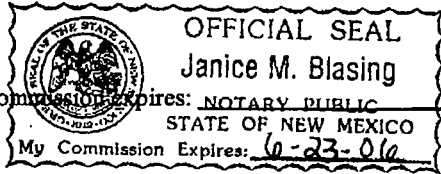
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ACKNOWLEDGMENTS

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

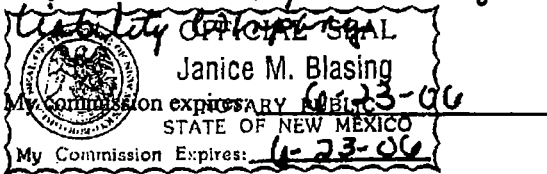
This instrument was acknowledged before me on this 15th day of February, 2006, by Alex Leonard as Manager of and on behalf of Vista del Oro, LLC, a New Mexico limited liability company.



Janice M. Blasing
Notary Public

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 15th day of February, 2006 by Alex Leonard, as Manager of Vista del Oro, a LLC limited liability company

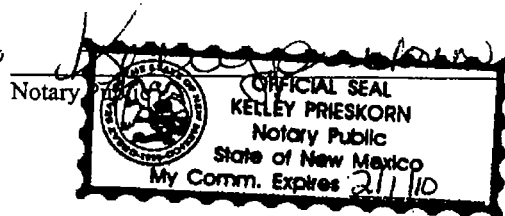


Janice M. Blasing
Notary Public

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 10 day of February, 2006, by Scott Horton.

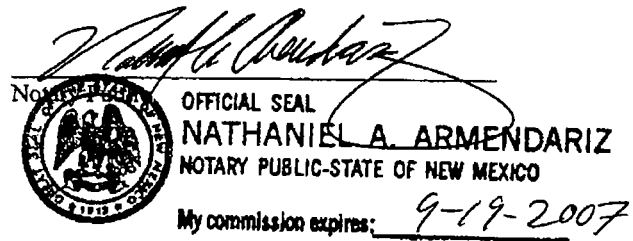
My commission expires: February 1st 2010



STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this 8th day of February, 2006, by Rebecca Horton.

My commission expires: 9-19-2007





Mary Herrera

Bern. Co. COU

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IN WITNESS WHEREOF, Developer has caused this instrument to be duly executed.

DEVELOPER:

Vista del Oro, LLC,
a New Mexico limited liability company

By:



Alex Leonard, Manager

OWNER:

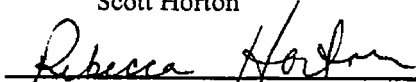
Vista del Oro, LLC,
a New Mexico limited liability company


Alex Leonard, Manager

APPROVED AND CONSENTED TO BY:



Scott Horton



Rebecca Horton

Exhibit A

Legal Description

A certain tract of land situate within the east half of Section 8, Township 10 North, Range 6 East, and the northeast quarter of Section 17, Township 10 North, Range 6 East, N.M.P.M., Bernalillo County, New Mexico, which includes in part Tracts A-1 through A-4 of Vista de Oro as shown and designated on the plat filed December 23, 1993, in Volume 93C, Folio 367, of the records of Bernalillo County, New Mexico, and Tracts 1 through 4 of Vista de Oro south as shown and designated on the plat filed April 7, 1997, in Volume 97C, Folio 105, of the records of Bernalillo County, New Mexico, and also including Tract "A" as shown and designated on the plat filed June 17, 1987, in Volume B22, Folio 57, of the records of Bernalillo County, New Mexico, and being more particularly described as follows:

Commencing at the section corner common to Sections 8, 9, 16 and 17 of Township 10 North, Range 6 East, N.M.P.M., marked with a standard BLM brasscap monument in place and also the northwest corner of Five Hills Subdivision as shown and designated on the plat of said subdivision filed September 9, 1960, in Volume C5, Folio 28 of the records of Bernalillo County, New Mexico; thence S00° 19' 33" E along the section line common to said Sections 16 and 17 and the west boundary of said Five Hills Subdivision a distance of 2623.44 feet to the southeast corner of the tract herein described, being the east quarter corner of said Section 17 marked with a standard BLM brasscap monument; thence S87° 47' 39" W along the southern boundary of said tract described, a distance of 2625.56 feet to the southwest corner of the tract herein described, a point on the easterly boundary of the Cibola National Forest which bears S00° 18' 25" E a distance of 126.56 feet from the Section 17 center quarter; thence N00° 18' 25" W along the east boundary of said Cibola National Forest a distance of 2618.33 feet to the north quarter corner of said Section 17 marked with a standard BLM brasscap, a point on the south boundary of Vista de Manana Subdivision as shown and designated on the plat of said subdivision filed January 27, 1989, in Volume C38, Folio 104 of the records of Bernalillo County, New Mexico; thence S89° 32' 58" E along the section line common to said Sections 8 and 17 being the south boundary of said Vista de Manana Subdivision a distance of 1302.88 feet to a point being the southeast corner of Vista de Manana Subdivision; thence N00° 11' 30" E along the east boundary of said Vista de Manana Subdivision a distance of 2556.97 feet to a point on the east line of the Lands of Joe Mercer as shown and designated on the plat of said lands filed xxxxx xx, 1990, in Volume xxC, xxx, of the records of Bernalillo County, New Mexico; thence N00° 20' 58" E along the east boundary of said Lands of Joe Mercer a distance of 1336.00 feet to the northwest corner of the tract herein described, a point on the south boundary of El Pinar Estates as shown and designated on the plat filed October 8, 1963, in Volume D3, Folio 79 of the records of Bernalillo County, New Mexico; thence S89° 38' 23" E a distance of 648.07 feet to a point, being also the northwest corner of the Lands of McNown as shown and designated on the plat of said lands filed June 17, 1987, in Volume B22, Folio 58 of the records of Bernalillo County, New Mexico; thence S00° 21' 07" W along the west boundary of said Lands of McNown a distance of 1342.13 feet to a point; thence S89° 05' 52" E along the south boundary of the Lands of McNown a distance of 648.05 feet to the northeast corner of the tract herein described being also the east quarter corner of said Section 8 and monumented with a marked stone in place; thence S00° 07' 22" W along the east line of said Section 8 a distance of 2546.77 feet to the point of beginning, containing 256.2787 acres, more or less.



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Exhibit B

DRAINAGE COVENANT

This Drainage Covenant, between [state the name of the present real property owner exactly as shown on the real estate document conveying title to the present owner and state the legal status of the owner, for example, "single person," "husband and wife," "corporation of the State of X," "partnership"] ("Owner"):

Vista del Oro LLC.

[his, her, their, or its] heirs, executors, successors, assigns and transferees, whose address is

3206 Indian NE, Albuquerque, New Mexico 87110

and the County of Bernalillo, a New Mexico political subdivision ("County"), whose address is One Civic Plaza, Albuquerque, New Mexico 87103, is made in Albuquerque, Bernalillo County, New Mexico and is entered into as of the date Owner signs this Easement.

1. Recital. Owner is the owner of certain real property located at [give general description, for instance, subdivision, lot and block or street address] : Nature Pointe Community Subdivision in Bernalillo County, New Mexico (the "Property").

Pursuant to County ordinances, regulations and other applicable laws, the Owner is required to construct and maintain certain drainage facilities on the Property, and the parties wish to enter into this agreement to establish the obligations and responsibilities of the parties.

2. Description and Construction of Drainage Facilities. Owner shall construct the following "Drainage Facility" within the Property at Owner's sole expense in accordance with the standards, plans and specifications approved by the County:

Approved Terrain Management Plan, dated 11/24/05

The Drainage Facility is more particularly described in the attached Exhibit A. The Owner shall not permit the Drainage Facility to constitute a hazard to the health or safety of the general public.

3. Maintenance of Drainage Facility. The Owner shall maintain the Drainage Facility at Owner's cost in accordance with the approved Drainage Report and plans.

4. County's Right of Entry. The County has the right to enter upon the Property at any time and perform whatever inspection of the Drainage Facility it deems appropriate, without liability to the Owner.

5. Demand for Removal, Construction or Repair. The County may send written notice ("Notice") to the Owner requiring the owner to construct, remove or repair the Drainage Facility within 60 days ("Deadline") from the receipt of the Notice, as provided in Section 11, and the Owner shall comply promptly with the requirements of the Notice. The Owner shall perform all required work by the Deadline, at Owner's sole expense.

6. Failure to Perform by Owner and Emergency Work by County. If the Owner fails to comply with the terms of the Notice by the Deadline, or if the County determines that an emergency condition exists, the County may perform the work itself. The County then may assess the Owner for the cost of the work and for any other expenses or damages which result from Owner's failure to perform. The Owner agrees promptly to pay the County the amount assessed. If the Owner fails to pay the County within thirty (30) days after the County gives the Owner written notice of the amount due, the County may impose a lien against Owner's Property for the total resulting amount plus interest.



7. Liability of County for Repair after Notice or as a Result of Emergency.

The County shall not be liable to the Owner for any damages resulting from the County's repair, removal or maintenance following a notice to the Owner as required in this agreement or in an emergency unless the damages are the result of the reckless conduct or gross negligence of the County.

8. Indemnification. As a part of the consideration for this grant, subject to the provisions of the New Mexico Tort Claims Act and all other applicable New Mexico laws, the County agrees to save Owner harmless from any and all liability arising from the County's negligent use of the Drainage Facility. The County does not agree to save Owner harmless from any liability, which may arise from Owner's use or misuse of the Drainage Facility and the Property.

The Owner hereby agrees to hold harmless, indemnify and defend the Bernalillo County, its Officers, Agents and Employees from and against any and all liability, suits, actions, claims, damages, costs of defense and fees arising out of or resulting from the Owner's and/or any of his employee's, agent's, or officer's conduct, performance, act(s), errors or omission(s), relating in any manner whatsoever to this Covenant.

Provided, however, such indemnity shall not extend to liability, claims, damages, losses or expenses, including attorney's fees, arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee, or the giving of or the failure to give directions or instructions by the indemnitee, where such giving or failing to give directions or instructions is a primary cause of bodily injury to persons or damage to property.

9. Cancellation of Agreement and Release of Covenant. This agreement may be cancelled and Owner's covenants released by the County by the County's mailing to the Owner notice of its intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release shall be effective thirty (30) days from the date of mailing the notice to the User unless a later date is stated in the notice or in the Cancellation and Release. After the effective date, the County will record the Cancellation and Release with the Bernalillo County Clerk.

10. Assessment. Nothing in this agreement shall be construed to relieve the Owner, his heirs, assignees, transferees and successors from an assessment against Owner's Property for improvements to the Property under a duly authorized and approved Special Assessment District or applicable law. The Parties specifically agree that the value of the (Drainage Facility) will not reduce the amount assessed by the County.

11. Notice. For purposes of giving formal written notice to the Owner, Owner's address is:

3206 Indiana NE, Albuquerque, New Mexico 87110

Notice may be given to the Owner either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received by the Owner within six (6) days after the notice is mailed if there is not actual evidence or receipt. The Owner may change Owner's address by giving written notice or change by certified mail, return receipt requested, to the Bernalillo County Public Works Division 2400 Broadway SE, Albuquerque, New Mexico 87102.

12. Term. This agreement shall continue until terminated by the County pursuant to Section 9 above.

13. Binding on Owner's Property. The covenants and obligations of the Owner set forth herein shall be binding on Owner, his heirs, assigns, transferees and successors and on Owner's Property and shall constitute covenants running the Owner's Property until released by the County.



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14. Entire agreement. This agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

15. Changes to agreement. Changes to this agreement are not binding unless made in writing, signed by both parties.

16. Construction and Severability. If any part of this agreement is held to be invalid or unenforceable, the remainder of the agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

17. Captions. The captions to the sections or paragraphs of this agreement are not part of this agreement and will not affect the meaning or construction of any of its provisions.

18. Form Not Changed. Owner agrees that changes to the wording of this form are not binding upon the County unless initialed by the Owner and approved and signed by the County Commission Chair or his/her designee in writing on this form.

OWNER:
By: Alex Leonard
Its: Manager
Dated: 2/16/06

State of New Mexico)
COUNTY OF Bernalillo) ss

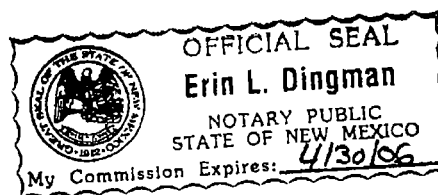
The foregoing instrument was acknowledged before me this 16th day of February, 2006, by [name of person signing]: Alex Leonard, [Title or capacity, for instance, "President" or "Owner"]:
Manager,
Vista del Oro of [name of the entity which owns the Property if other than the individual signing, for instance, the name of the corporation, partnership, or joint venture]:
_____.

Erin L. Dingman
Notary Public

My commission expires:

4/30/06


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DISCLOSURE STATEMENT

Nature Pointe Community

PLEASE REVIEW PRIOR TO THE PURCHASE OF PROPERTY LOCATED WITHIN THE SUBDIVISION

This disclosure statement is intended to provide you with information to make an informed decision on the purchase or lease of property described in this statement. You should read carefully all of the information contained in this statement before you decide to buy or lease the described property.

Various public agencies may have issued opinions on both the subdivision proposal and the information contained in this disclosure statement. Summaries of these opinions are contained in this disclosure statement. They may be favorable or unfavorable. You should read them closely.

The County Planning Commission has examined this disclosure statement to determine whether the subdivider can fulfill the conditions that the subdivider claims in the disclosure statement. However, the County Planning Commission does not vouch for the accuracy of what is said in this Disclosure Statement. In addition, the disclosure statement is not a recommendation or endorsement of the subdivision by either the County or the State. It is informative only.

The County Planning Commission recommends that you inspect the property before buying, leasing, or otherwise acquiring it. If you have not inspected the parcel before purchasing, leasing, or otherwise acquiring it, you have (6) six months from the time of purchase, lease, or other acquisition, to personally inspect the property. After inspecting the parcel within the six (6) month period, you have three (3) days to rescind the transaction and receive all of your money back from the subdivider when merchantable title is vested in the subdivider. To rescind the transaction you must give the subdivider written notice of your intent to rescind within three (3) days after the date of the inspection of the property.

County regulations require that any deed, real estate contract, lease, or other instrument conveying an interest in a parcel in the subdivision be recorded with the County Clerk.

Building permits, wastewater permits, or other use permits must be issued by State or County officials before improvements are constructed. You should investigate the availability of such permits before you purchase, lease, or otherwise acquire an interest in the property. You should also determine whether such permits are required for construction of additional improvements before you occupy the property.

1. NAME OF SUBDIVISION:

Nature Pointe Community, Bernalillo County, New Mexico

2. NAME AND ADDRESS OF SUBDIVIDER

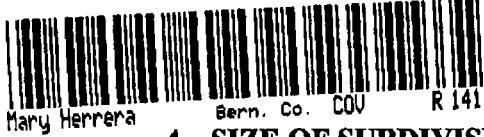
Vista Del Oro LLC
3206 Indiana NE, Alb., NM 87110

3. NAME OF PERSON IN CHARGE OF SALES, LEASING OR OTHER CONVEYANCE IN NEW MEXICO

Yet to be determined



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- 4. **SIZE OF SUBDIVISION BOTH PRESENT AND ANTICIPATED**
Present: Vista del Oro 11 parcels totaling 256 acres
Anticipated: Nature Pointe Community, 111 residential lots, 3.9 acre recreation center, and a 1.3-acre park totaling 256 acres, to be built in two phases of 62 and 49 lots per phase respectively. Second Phase is expected to be built approximately 24 months after the first phase.
- 5. **SIZE OF LARGEST PARCEL OFFERED FOR SALE WITHIN THE SUBDIVISION SHALL BE:** 2.8 Acres
- 6. **SIZE OF SMALLEST PARCEL OFFERED FOR SALE WITHIN THE SUBDIVISION SHALL BE:** 2.0 Acres
- 7. **PROPOSED SELLING RANGE OF PARCELS**
Yet to be determined
- 8. **FINANCING TERMS**
Yet to be determined
- 9. **NAME AND ADDRESSE OF HOLDER OF LEGAL TITLE**
Mary Keeling 201B Edith NE, Alb., NM 87106
Florence Reynolds, 8621 Avenales NE, Alb., NM 87111
Chrisanto Underwood, 1501 California NE, Alb., NM 87110
Estate of Anne Pickard, 9 Longview Ave., North Caldwell, NJ 07006
Charter Mortgage, 2130 Eubank NE, Alb., NM 87111 (Horton)
First State Bank, Attention Bobby Nafus, 7900 Jefferson NE, Alb., NM 87109
- 10. **NAME AND ADDRESSE OF PERSONS HAVING EQUITABLE TITLE**
Vista del Oro LLC, 3206 Indiana NE, Alb., NM 87110 Alex Leonard manager, at the same address
Buena Vista Land Development Inc., 3206 Indiana NE, Alb., NM 87110
Alex Leonard and Deborah Leonard are both officers at same address
Tierra Land Development Inc., 3206 Indiana NE, Alb., NM 87110
Alex Leonard and Deborah Leonard are both officers at same address
Alex Leonard and Deborah Leonard 3206 Indiana NE, Alb., NM 87110
Scott and Rebecca Horton, 43 Vista de Oro Road, Tijeras, NM 87059 (lot 75, tract B)
- 11. **CONDITION OF TITLE**
Existing equitable title is subject to:
 - a.) To be determined.
 - b.) Patent reservations, easements, and other reservation of record, and standard title policy exceptions.
 - c.) Taxes for the current year and thereafter.
 - d.) Declaration of Protective Covenants and Restrictions for Nature Pointe Community, Articles of Incorporation of Nature Pointe Homeowners Association, Inc. and Bylaws of the Nature Pointe Homeowners Association, Inc.
 - e.) Easements as shown on the recorded Subdivision Plat.
 - f.) Entranosa Water and Wastewater Association.
 - g.) Other items of record that will be reflected on Schedule "B" of preliminary title commitment.

12. STATEMENT OF ALL RESTRICTIONS OR RESERVATIONS OF RECORD THAT SUBJECT THE SUBDIVIDED LAND TO ANY CONDITIONS AFFECTING ITS USE OR OCCUPANCY

Purchasers will be required to become members of the Entranosa Water and Wastewater Association, Inc., The Nature Pointe Homeowners Association, Bylaws of the Nature Pointe Homeowners Association, Inc. and subject to recorded Declaration of Protective Covenants and Restrictions.

13. ESCROW AGENT

Yet to be determined

14. UTILITIES

Electricity provided by: PNM Gas and Electric	estimated at \$600.
Gas service	not available
Water provided by Entranosa Water Association	estimated at \$5000.+ meter \$700.
Telephone provided by USWEST	estimated at \$250.
Note: Developer will provide above utilities stubbed to each lot at lot line; it is the responsibility of lot purchaser to pay for extending utilities to residence.	
Solid Waste provided by Private Hauling Company	estimated at \$14.00/month
Liquid waste system provided by lot owner	

15. INSTALLATION OF UTILITIES

Phase I:

Electricity	approximately	7-20-05
Gas		not available
Water	"	7-20-05
Phone	"	7-20-05
Liquid Waste		unknown date

Phase II: Development will occur 2006 or later

16. UTILITY LOCATION

All utilities shall be provided to each parcel (excepting Liquid Waste), and all utilities shall be underground.

17. WATER AVAILABILITY

The maximum annual water requirements as calculated by the developer using the Office of the State Engineer Tech 48 Report, is 38 acre-feet (calculation sheet supplied).

See Offsite Water System Report, and Request for Water Service, dated 3/2004 prepared by Dennis Engineering, attached. Water shall come from Entranosa Association lines from the East.

Water Conservation measures are required:

Water saving toilets rated at 1.6 gallons or less per flush, 1.3 gallons preferred.

Water saving dishwashers rated at no more than 13 gallons per load (8 gallons preferred) and have a "reduced partial load" capability.

Water restricting shower heads (2.5 or less gallons preferred) and faucet flows with aerators rated at 1.5 GPM. Showers should be equipped with a cutoff valve for lather/hair wash mode.



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Side loading clothes washers having a cycle use of 25 gallons per load or less should be given preference.

Hot water heater should be located central to most plumbing appliances in house. Refrigerated Air Conditioners should be considered over evaporative coolers. All evaporative coolers must be the more efficient single side opening style and be thermostatically controlled. Evaporative coolers must be equipped with a dump pump in place of a water wasting bleed-off valve.

Water Softeners should be selected that regenerate automatically with a low regeneration water requirement. Additional Water Conservation requirements are listed in the Protective Covenants. A copy of the water company's rules and regulations are available at Entranosa Association office at 1330 Old Highway 66, Tijeras, NM 87509. Rules and limitations of use are provided by the water company.

This subdivision is a water conserving development and in so doing a maximum average of .33 acre-feet of water per lot per year has been allocated for consumptive [sfd/dwelling], fire protection, irrigation, and recreational use.

The combined water quantity of 67.8 acre-feet of water per year for this development was required by the Bernalillo County Commission.

18. FOR SUBDIVISIONS WITH COMMUNITY WATER SYSTEMS

Entranosa Water and Wastewater Association, P.O. Box 2380, Tijeras, NM 87059
Water is sourced through the Entranosa system and will nominally come from well E-1521-S-CLW. The Entranosa Association rules control water use and their conservation plan is continually in effect. The drought management plan can be implemented by decision of Board of Directors of the Association. Individual wells are prohibited for residential use.

19. FOR SUBDIVISIONS WITH INDIVIDUAL WELLS OR SHARED WELLS

There will be no individual or shared wells allowed in subdivision.

20. LIFE EXPECTANCY OF WATER SUPPLY

Water supply life expectancy at the well, pumping at full capacity is in excess of 70 years. The Balleau Geohydrology Report dated July 18, 2003 supports this conclusion. Nature Pointe Community will provide and dedicate water rights to meet this commitment.

21. SURFACE WATER

Not applicable as community water will serve as source of supply.

22. NM STATE ENGINEER'S OPINION ON WATER AVAILABILITY

The State Engineer did not issue a formal opinion, but requested additional information with respect to water to be delivered to the subdivision. The Developer provided additional information with respect to its agreement with Entranosa Water Association to deliver water to the Subdivision. Based upon additional information, the Bernalillo County Commission found that the Subdivider can furnish water sufficient in quantity to fulfill the maximum annual water requirements of the

subdivision, including water for indoor and outdoor domestic uses and can fulfill the proposals in this Disclosure Statement concerning water.

23. WATER QUALITY

Entranosa Water Association will provide water. Water complies with safe drinking water act and is suitable for domestic use. The secondary quality of the water can best be described as moderately mineralized, very hard and moderately aggressive since total dissolved solids exceed 500 mg/l, total hardness exceeds 250 mg/l and a PH between 6.8 and 7.1.

24. NMED OPINION ON WATER QUALITY

Entranosa Water and Wastewater Association meets all Governmental quality tests on a monthly test schedule, in addition to printing an Annual Water Quality Report. NMED did not respond to the Nature Pointe Community subdivision application, but Bernalillo County has determined submittal is in compliance with the Subdivision Ordinance.

25. LIQUID WASTE DISPOSAL

Each residence shall install a Bernalillo County approved septic system conforming to the latest Bernalillo County Wastewater Ordinance prior to issuance of building permit. Lots with shallow soils require engineered systems. Prospective purchasers are encouraged to acquire wastewater system cost estimate prior to lot purchase. Homeowners Association (in coordination with Entranosa Water and Wastewater) shall contract with septic tank pumping company to ensure septic tanks are pumped a minimum of every 3 years, cost to be paid by homeowner.

26. NMED OPINION ON LIQUID WASTE

NMED did not respond to the submittal but Bernalillo County has determined application is in compliance with the Subdivision Ordinance.

27. SOLID WASTE DISPOSAL

A private waste hauling company approved by the Homeowners Association and will be contracted to haul solid waste and may be added to the monthly Homeowners Association dues for homes that are completed. Recycling bins are expected at Community Center.

28. NMED OPINION ON SOLID WASTE DISPOSAL

NMED did not respond to Nature Pointe Subdivision submittal, but Bernalillo County has determined the application is in compliance with the Subdivision Ordinance.

29. TERRAIN MANAGEMENT

The Terrain Management report has been submitted to the by Bernalillo County Public Works Dept. with conditions. The revised report/plan is attached, in summary:

Minimal earthmoving will be completed for the construction of the subdivision. Construction will be limited to the road and drainage improvements within the private access "easement/tract", 'D'. There will be no mass grading or construction of any



kind other than the stubbing of utilities as described in this Disclosure on the individual lots by the developer. Temporary "stockpiling" may occur during construction periods. Drainage improvements will consist of culverts for road crossings, downstream ditches, and roadside ditches. Lot owners will be responsible for their driveway culverts in accordance with Bernalillo County and any other government requirements (see attached Public Works Division Operations and Maintenance Department Rights of Way Memoranda). Some lots will have drainage easements, which are shown on the recorded plat. All drainage improvements are designed for the 100-year storm. Drainage of individual lots is the responsibility of the homeowner, but downstream facilities are designed so that no detention or retention facilities are required, excepting lot 107. Additional information is contained in the drainage report. All areas disturbed by roadway construction will be re-vegetated to prevent erosion, if required. There are certain limitations as the result of potential soil conditions that should be taken into consideration by purchasers of lots, including, but not limited to depth of rock and soil plasticity (strength). Additional lot development costs to be paid by lot purchaser at time of home construction.

There are no FEMA flood maps available for subdivision. Portions of lots contain slopes greater than 8%. See Terrain Management Plan or developer prior to lot purchase for areas of lot containing slopes greater than 8%.

The Developer shall construct drainage structures prior to completion of roadways. Lot Owners are responsible to maintain existing incidental cross-lot drainage runoff in addition to flows specifically designated on the Grading and Drainage Plan. In the event that the County is asked to accept dedication of roadways and to take over maintenance of the roads and right-of-way (tract B), the County will require the paving of the landscape planters at the end of the cul-de-sacs, paid by the Homeowners Association.

30. NATURAL RESOURCES CONSERVATION DISTRICT'S OPINION ON TERRAIN MANAGEMENT

Soils:

According to the SCS Soil Survey, the predominant soil association at the site is the Silver and Witt soils (SwC), 5-9 % slopes, the Laporte-Rock outcrop-Escabosa complex (LRD), 5-20% slopes, and the Seis complex (SHF), 30-60% slopes. Approximate percentages of the area covered by the three soils series are SwC 50%, LRD 36%, and SHF 14%.

The SwC and LRD soils are rated as moderately to highly susceptible to water erosion. The SHF soil is rated as susceptible to water erosion. All soils are highly corrosive to uncoated steel. The design and construction of roads and building foundations located on Silver and Witt soils should take into account their low strength and high shrink/swell potential to avoid structural damage. Additionally, roads and building foundations located on LRD and SHF soils should take into account their moderate to severe limitations on shallow excavation due to the depth to rock, slope and the presence of large stones.

Most of the subdivision is located on Silver and Witt soils. Limitations for septic system absorption fields for SwC soils are rated as severe due to slow percolation rates. Oversized or alternating absorption fields will be required for on-site liquid waste systems situated on this soil.



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In addition, limitations for the LRD and SHF soils are rated as severe due to the depth to rock and slope. Traditional septic tank/absorption field systems should not be installed where slope and shallow depth to bedrock preclude their use. Alternative systems, such as the proposed cluster systems, will likely be required on much, if not all, of the LRD and SHF soils.

Grading, Drainage and Erosion Control

The District recommends that the maximum site grading without erosion protection should be at 3 horizontal to 1 vertical, 3:1, for the SwC and LRD soils.

Based on the information provided the Terrain Management Report states that a majority of the project soils experience a low shrink/swell potential. Since the major project soil in subdivision is the SwC soil, this statement should be amended to reflect the moderate to high shrink/swell potential of SwC soils as indicated in the SCS Soil Survey.

During the site visit it was noted that the entrance and exit of drainage structure 5 (DS-5) was partially filled with sediment and partially collapsed. This culvert should be repaired prior to or concurrent with the commencement of construction. Additionally, maintenance of the culverts under private roads should be addressed in the Terrain Management Report and in the Disclosure Statement.

Stormwater runoff can cause erosion in roadside ditches along sections where the ditches drain to rundowns on slopes from the road surface to the natural drainageway DS-12. Installing small check dams on long slopes and stilling basins at points where runoff enters the drainageway can reduce runoff velocity and mitigate this problem. According to the Disclosure Statement, all areas disturbed by roadway construction will be revegetated to prevent erosion if required. Guidelines for Non-erosive Velocities in Roadside Ditches provides guidelines for the subdivider to use in determining locations where vegetative or structural erosion control is necessary. A copy is enclosed with this report.

The methods and materials used for stabilizing trails to prevent erosion throughout the subdivision should be addressed in the disclosure statement and in the covenants.

31. SUBDIVISION ACCESS

Access roads to the subdivision are all paved. Reference the Traffic Impact Study prepared for Nature Pointe Community, attached. Subdivision is accessible at all times and under all weather conditions. Roadway surfacing within the subdivision shall be 26 feet wide asphalt with 2 feet wide gravel shoulders within a nominal 50 feet wide private Tract 'D', and granted on the subdivision plat. All roads will be private. Road maintenance and drainage structures maintenance shall be the responsibility of the Nature Pointe Homeowners Association, paid by monthly dues.

During Phase One, a secondary, temporary, emergency access will be provided to the southeast, via a gravel, privately maintained easement connecting to the existing Falcon Ridge Road (f/k/a Vista de Oro Drive), which is a 24' wide, graveled surface connecting to Five Hills Drive. Upon completion of Phase Two, all roads within the subdivision will be paved. Falcon Ridge Road will then provide a full-gated access connection to Five Hills Drive upon completion of Phase Two.



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32. STATE HIGHWAY DEPARTMENT'S OPINION ON ACCESS

The State Highway Department has accepted Nature Pointe's submittal recommendations.

33. CONSTRUCTION GUARANTEES

Any roads or drainage structures not completed prior to lot sale shall be bonded with a suitable bond or letter of guarantee suitable to Bernalillo County Public Works Department.

34. ADVERSE OR UNUSUAL CONDITIONS

None

35. RECREATIONAL ACTIVITIES

A Community Center will be developed on Tract C, with all or some of the following amenities: Indoor Pool, Cardiovascular and Weight Equipment, Indoor Basketball, Game Room, Caterers Kitchen, Living Room, Card room, Outdoor Patio, Barbeque, Spa, Playground, Play Field, Tennis Court, Volleyball Court, Racquetball Court, Bocce Ball Courts, Basketball Court, Locker Room, Reflection Pond. Five miles of private trails run throughout the development. Estimated Construction start date will be prior to lot sales, improvements paid solely by developer. Letter of credit/bond is not planned for improvements. The Nature Pointe Homeowners Association shall own and pay for maintenance of facility.

36. FIRE PROTECTION

See Fire Protection Plan, attached. Fire protection will be enhanced by the addition of a 165,000-gallon tank connected to the Five Hills-Twin Pines area system. The combined tank storage of the two water tanks serving subdivision will be 320,000 gallons. Fire Hydrants shall be located approximately every 500' along subdivision roadways. The project is located within Fire District 13 of the Bernalillo County Fire Department. Distance to the nearest fire station is approximately two (2) miles to the east located off Dressage Road and Old Highway 66 (NM 333). This station is staffed full-time and the project is reached from Old 66 west to Five Hills Road, west on Sedillo Road to Avenida Allegre, then south to proposed Nature Pointe Road. Response time is estimated to be within 5 minutes of call.

37. POLICE PROTECTION

Sheriff's Department is 4.8 miles west of subdivision at South Zamora Road.

38. PUBLIC SCHOOLS (Nearest)

Nearest public elementary school is 6.7 miles away, A.Montoya Elementary School. Nearest public middle school is 6.6 miles away, Roosevelt Middle School. Nearest public high school is 15 miles away, Manzano High School. High school students are also eligible to apply at the East Mountain Charter High School located in Sandia Park.

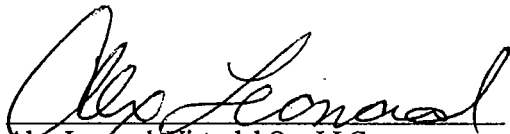


39. HOSPITAL (Nearest)

Nearest hospital is Presbyterian-Kaseman Hospital 12 miles from the entrance of subdivision at Avenida Allegre, east on Sedillo Road, north on Five Hills Road, west on Old 66, west on I-40 to Wyoming, then west on Indian School Road.

40. PUBLIC TRANSPORTATION

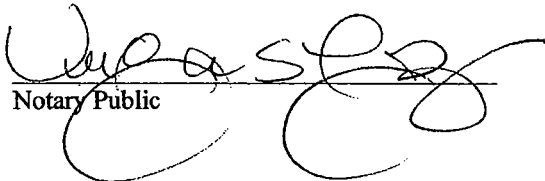
There is no public transportation that serves the subdivision at this time.


Alex Leonard, Vista del Oro LLC., manager

7/19/09
Date

State of New Mexico)
 ss)
County of Bernalillo)

This instrument was acknowledged before me on August 9, 2005.

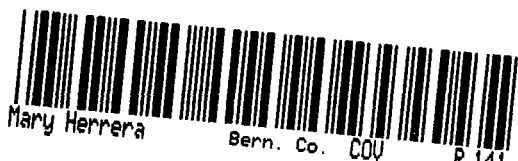

Notary Public

7/19/09
My Commission expires



OFFICIAL SEAL
VIRGINIA S. GOMEZ
NOTARY PUBLIC-STATE OF NEW MEXICO

My commission expires: _____



Mary Herrera

Bern. Co. COU

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**PUBLIC WORKS DIVISION
OPERATIONS AND MAINTENANCE
DEPARTMENT**

2400 Broadway SE Albuquerque, NM 87102

Property Owner Responsibilities in Bernalillo County Rights of Way

In an effort to maintain clean and debris-free thoroughfares in our community, the Bernalillo County Public Works Operation and Maintenance Department reminds property owners that they have a responsibility for the "setback area."

The **setback area** is that portion of public land along the road between the private property line and the curb, or pavement, or edge of the dirt or gravel lane that is driven by automotive traffic. Bernalillo County Code Section 66-225 (c) states:

66-225 (c) "The setback area and all plantings therein shall be maintained by the owner, occupant or agents in charge of the adjoining property".

The Operations and Maintenance Department will respond to requests for functional, shoulder, drainage ditch or borrow ditch mowing, grading, and/or clearing both up and down stream from private driveways, but not including private driveways. Please call 848-1503 if you would like to report any of these problems. The width of this service ranges from 0 feet to 7 feet from the edge of the road depending on the posted speed limit, pursuant to AASHTO Standards providing for a "Clear Zone" for traffic safety. Only certain items are allowed in the clear zone, such as mail boxes, break-away fire hydrants, and break-away street signs, which do not interfere with traffic safety.

Maintenance of decorative landscaping or removal of weeds or trash against a property fence, or maintenance of the driveway condition, or private tree limbs hanging within the right of way is the adjoining property owner's duty and responsibility.

In addition, the throwing of greenwaste or other debris into the setback area is technically defined as illegal dumping and carries a possible \$1000 fine and/or imprisonment. Yard waste and refuse must be disposed of properly. The Solid Waste Department (224-1639) can give information about free and low cost refuse deposit locations and free curbside appliance removal services.

For more detailed information on what is allowed in the setback area by property owners, call 848-1503.



Mary Herrera

Bern. Co. COV

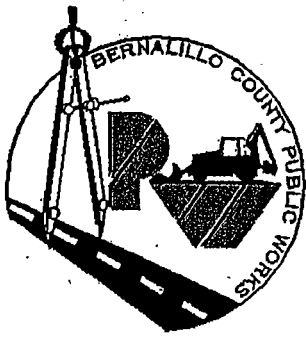
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**COUNTY OF BERNALILLO
OPERATIONS AND MAINTENANCE
DEPARTMENT**

2400 Broadway SE Albuquerque, NM 87102

MEMORANDUM



TO: PROPERTIES HAVING DRIVEWAY CULVERTS

FROM: Dave Mitchell, Road Maintenance Manager

DATE: August 17, 2000

RE: Rights and Responsibilities Per County Codes and Ordinance

This will serve to identify the conditions by which driveway culverts are allowed in making connections from private property into public rights of way. There are two ordinances that speak to the issue; the sidewalk/access ordinance, and the drainage ordinance. They were originally passed by the County Commission in 1988 and 1990, and have since been codified and amended slightly.

Driveways and culverts serve to benefit private property's ability to use public facilities. Each driveway presents an obstruction to drainage patterns or new point of potential traffic conflict, so these ordinances were passed to address issues associated with private structures within the public space.

Public Works (which is now a Division having 3 Departments), in general, cannot publicly maintain private property by State Law. Driveways and their culverts are considered to be privately held structures.

Installations by permit:

Code Section 66-211. Drainage Ditch (borrow ditch) means a ditch parallel to the driving surface to convey rainwater runoff from the right-of-way. Where no curb or sidewalk exists, driveway construction shall not block the drainage ditch without providing proper drainage structures.

Section 66-222 Curb cut requirements, g. In rural (without curb and gutter) road sections, driveway accesses shall provide for drainage by means approved by the public works department. Hydraulic design may be required. No culvert under any driveway access shall be less than 18 inches in diameter unless a variance is approved by the public works department.

Section 66-227. non-conforming: (2) All curb cuts on designated roadways, which are determined by the public works department to constitute a traffic hazard, and which become nonconforming upon March 12, 1996, shall be subject to revocation (as provided in subsection.) [No "grandfathered" accesses after 3-12-96] {66-213 This article is declared to be remedial and is intended to secure the following objectives (1) Provisions for safe and efficient driveway accesses, drivepads and street drainage;}

Maintenance:

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The Operations and Maintenance Department will respond to requests for drainage ditch or borrow ditch mowing, grading, and/or clearing both up and downstream from private culverts. The Operations and Maintenance Department, road maintenance dispatch line is 848-1503.

Section 38-206 (b) Minor facilities (less than 48" diameter inlet, allowing for 6" sediment) shall be maintained by their owners to county engineer standards. Based on likelihood and consequence of failure, or failure to maintain, the county engineer may require a drainage covenant. (a legal document in a form provided by the county)

Both the access and drainage sections of the Code provide for notification of noncompliance, an allowance for reasonable corrective time (usually 30 days) and possible repairs by the County if the property owner does not remedy. Both codes provide for liens against the property for repairs made by the County.

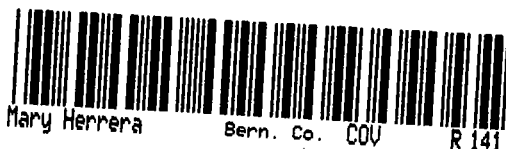
Where the County has installed culverts as part of a road improvement project, and a particular culvert is not maintained, the County can and has removed such culverts.

Summary

All of this is interpreted to mean that over-the-counter permits for new culverts or culverts installed in conjunction with a building permit that do not have hydraulic design, are subject to replacement by their owners if a problem is demonstrated.

Some engineered subdivisions have master drainage plans associated with their creation and can be referenced by the original engineering firm, or development company. The designed flows in a roadside borrow ditch can then be provided to any registered engineer for a culvert sizing calculation.

Where no drainage plan exists, builders and property owners bear the burden and liability for assuring that their driveways are installed properly, and not adversely affecting their neighbors. Permits are issued by the County to insure that minimums are met, and that work within the right-of-way is by licensed, insured individuals or companies. The County does not perform design verification for private driveways.



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BERNALILLO COUNTY ZONING, BUILDING AND PLANNING DEPARTMENT

Notice of Preliminary Impact Fee Assessment

Bernalillo County is authorized to impose Impact Fees on new development for financing Parks, Open Space, Fire/EMS, Roadway, and Drainage facilities. Impact fees are assessed based on the Bernalillo County Code Chapter 46 Impact Fees adopted January 1997, amended July 2002. The assessment is the determination of the one time charge on new development to finance the capital improvements needed to accommodate new growth.

The amount of the fee is based on project location, land use category (i.e.: single family dwelling, commercial, etc.), and number of dwelling units or gross floor area. The impact fee is collected prior to the building permit being issued. The collection amount may be charged based on Impact Fee credits acquired or received.

DATE: February 17, 2004
CASE NO.: SC 40001
PLAT OF: A tract of land situated within the NE1/4 of Section 17 and the E1/2 of Section 8. T10N, R6E, containing 256 acres±
OWNER: Vista del Oro LLC
LAND USE TYPE: Agricultural (A-2) Zone Atlas: H-32, H-33, J-32, J-33

IMPACT FEE SCHEDULE			
Impact Fee Category	Assessment per lot	Notes:	Beginning 7/25/02
	100%		.4
Parks (1)	736.00		305.20
Roadway	3068.00		1,227.20
Open Space	0		0
Fire/EMS .245 sq.ft.*	612.50	Est 2,500 sq. ft.	245.00
Drainage **	0		0
TOTAL	\$ 4,416.50+		\$ 1,777.40+

- *Based on an estimated gross floor area of 2,500 sq. ft..
- **The drainage fee is calculated based on a total gross floor area.

+ THIS ASSESSMENT IS BASED ON INFORMATION PROVIDED FOR SUBDIVISION REVIEW. THE ACTUAL AMOUNT MAY VARY FROM THE ASSESSMENT AND WILL BE CALCULATED AT THE TIME FINAL PLANS ARE SUBMITTED FOR BUILDING PERMIT.

Impact Fee Administrator
Jimmy Best

Date

5/27/05

Property owner(s): _____

Date

Date

VERIFICATION

STATE OF NEW MEXICO
County of Bernalillo

_____, SUBSCRIBED and SWORN TO before me on

_____, 20_____
My Commission expires:

Notary Public: _____



Mary Herrera

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