



**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
NATURE POINTE COMMUNITY**



Mary Herrera

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Exhibit A - Legal Description

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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR NATURE POINTE COMMUNITY**

KNOW ALL MEN BY THESE PRESENTS:

This *Declaration of Covenants, Conditions and Restrictions* ("**Declaration**") for Nature Pointe Community, a subdivision in Bernalillo County, New Mexico ("**Nature Pointe**") as shown on the Plat thereof filed in the Office of the County Clerk of Bernalillo County on February 9, 2006 as Document No. 2006019177, in Book 2006C, Pages 1-10 ("**Plat**"), is made and entered into on this 14th day of February, 2006. Land not included in the foregoing filed Plat but within the legal description set out in *Exhibit A* attached hereto, may be annexed and be a part of Nature Pointe and subject to this Declaration by the filing of an amendment hereto by Developer. After annexation, all additional land shall be referred to as "**Nature Pointe**" or the "**Community**." This Declaration does not affect any property which has not been so annexed.

Vista del Oro, LLC ("**Developer**") and the undersigned parties being the owners of the following described property situate in Bernalillo County, New Mexico as described in *Exhibit A* attached hereto, hereby declares as follows:

DECLARATIONS

A. Developer has established, and does hereby establish a general plan for the improvement, development and restriction of Nature Pointe, subject to which all Lots in said subdivision shall be owned, sold or conveyed.

B. All covenants, reservations and restrictions hereinafter set forth are made for the benefit of each and every subsequent Owner of any portion of the land in Nature Pointe or any interest therein; shall run with the land and be binding upon the Property; and shall inure to and bind all subsequent Owners thereof. Said covenants, reservations and restrictions being as set out below. The Association and/or any Owner shall have the right to enforce the covenants in this Declaration.

C. This Declaration is very detailed in order to preserve the natural beauty of the land, encourage wildlife, promote safety and enhance property values.

1. DEFINITIONS

The following terms used herein are defined as follows:

- 1.1. "**ACC**" means the *Architectural Control Committee* established in Section 13.
- 1.2. "**Approvals**" means all approvals discussed in all Nature Pointe documents which must be completed in writing. Oral statements are not valid.
- 1.3. "**Articles**" means the *Articles of Incorporation* of the Association, as amended from time to time, and of any successor thereto.
- 1.4. "**Assessments**" means the *Homeowners Association Assessments* as determined in Sections 5.18 and shall include the following:
 - 1.3.1. "**Regular Assessment**" as determined in Section 8.4.
 - 1.3.2. "**Capital Improvement Assessment**" as determined in Section 8.6.

- 1.3.3. "Reconstruction Assessment" as determined in Section 11.2.
- 1.5. "Assessment Lien" means the lien created and imposed by Section 8.2.
- 1.6. "Association" means the *Nature Pointe Homeowners Association Inc.*, a New Mexico non-profit corporation, its successors and assigns.
- 1.7. "Association Land" means such part or parts of the Property and such buildings (including the Clubhouse) structures and improvements thereon, and other real or personal property or interests therein as the Association may at any time own in fee or in which the Association may at any time have a leasehold interest including, but not limited to, Common Areas, for as long as the Association is the owner of the fee or leasehold interest, including any Private Streets owned by the Association.
- 1.8. "Association Rules" means the rules and regulations adopted by the Board pursuant to Section 5.4, as such rules and regulations may be amended from time to time.
- 1.9. "Board" means the *Board of Directors* of the Association.
- 1.10. "Business Use" shall be construed to have its ordinary, generally accepted meaning and shall include any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor. The leasing of an Owner's own Lot for single family residential purposes shall not be considered a trade or business. A "Permitted Business Use" shall mean a business use which complies with all of the following: (i) the existence or operation of business activity is not apparent or detectable by sight, sound or smell from outside a Lot on which it occurs; (ii) the business activity does not involve more than two individuals coming onto a Lot who do not reside on the Lot or door-to-door solicitation of residents of Lots; (iii) not more than one employee which is not a family member works on a Lot; (iv) any commercial deliveries to a Lot may not be made with 5-ton or greater rated trucks before 8:30AM or after 5:00PM; and (v) the business activity is consistent with a residential character of property use and not a nuisance, or a hazardous or offensive use, or a threat to the security or safety of other Owners and Occupants, as may be determined in the sole discretion of the Board, and is not in violation of any state, federal, or local regulation.
- 1.11. "Bylaws" means the *Bylaws* of the Association and its successors adopted in accordance with the Articles, as such Bylaws may be amended or supplemented from time to time.
- 1.12. "Clubhouse" means, when constructed, a facility owned or controlled by the Association for the benefit of the Members and which will contain meeting rooms and recreational facilities.
- 1.13. "Common Areas" means all real property interests (not just fee title and leasehold interests) and the improvements or amenities thereon which may from time to time be owned or leased by the Association or otherwise held by the Association for the common use and enjoyment of the Owners and Occupants. The Common Areas include, but are not limited to, the Clubhouse, if any, Private Streets, perimeter fencing, pocket park, security gates, key gates and like gates at entrances to the Community or Property and other Association Land so designated. Any real property interests, and improvements or amenities thereon, which are described as part of the "common areas" in a recorded plat shall, for all purposes, be integrated into and deemed to be a part of the Common Areas subject to this Declaration, unless otherwise specified in the recorded plat.



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1.14. "Common Expenses" means the costs incurred by the Association in (a) conducting its operations and activities; (b) administering, maintaining and operating the Property; and (c) owning or leasing any portions thereof, including, but not limited to, the following:

1.13.1. costs of any maintenance, management, operation, repair and replacement of the Common Areas, including the Clubhouse, if any, Private Streets, and all other areas in the Property which are managed or maintained by the Association, other than those areas being managed or maintained as an Individual Charge pursuant to Section 8.5;

1.13.2. unpaid Assessments and Individual Charges;

1.13.3. costs of maintenance by the Association of areas within the right-of-way of any public streets in the vicinity of the Property which may be provided for in this Declaration or pursuant to agreements with the County or other governmental agency;

1.13.4. costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

1.13.5. costs of utilities and services (including, but not limited to, water, electricity, propane, sewer, trash pick-up and disposal) which are provided to the Association or the Common Areas, landscaping maintenance and other services which generally benefit and enhance the value and desirability of the Property and which are provided by the Association;

1.13.6. costs of insurance maintained by the Association as permitted herein;

1.13.7. reasonable reserves for contingencies, replacements and other proper purposes, if deemed appropriate by the Board, to meet anticipated costs and expenses including, but not limited to, maintenance, repairs and replacement of those Common Areas which must be maintained, repaired, or replaced on a periodic basis;

1.13.8. costs which the Board may elect to incur to provide fidelity bonds on the members of the Board, officers of the Association, any professional managing agent or any other Person handling the funds of the Association;

1.13.9. taxes paid by the Association;

1.13.10. amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;

1.13.11. costs incurred by the ACC;

1.13.12. costs and expenses incurred by any other committees established by the Board or the President;

1.13.13. costs of operation and maintenance of any entry gates, key gates and like gates at entrances to the Property and any other security systems or services installed, operated or contracted for by the Association (including, but not limited to, patrols for the Common Areas), as provided in Section 9.5.1, but excluding the cost of security service to individual Lots;



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1.13.14. costs of capital improvements, subject to the provisions hereof for Capital Improvement Assessments, in the event that the Board elects to dedicate or transfer a Private Road to public use and expenses must be incurred for the purpose of bringing the Private Road into conformance with the specifications of the County; and

1.13.15. other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas, or the costs of any other item or items designated by, or to be provided or performed by the Association pursuant to, this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.15. **“Community”** means the development and improvement of the Property which is subject to this Declaration, including all elements reasonable and necessary for its completion.

1.16. **“County”** means the County of Bernalillo, a political subdivision of the State of New Mexico.

1.17. **“Declaration”** means this *Declaration of Covenants, Conditions and Restrictions for Nature Pointe Community* and all supplemental declarations, as such declarations may be amended from time to time.

1.18. **“Default Rate of Interest”** means an annual rate of eighteen percent (18%) per annum or such lesser amount as may be established from time to time by the Board.

1.19. **“Design Guidelines”** means the architectural standards and design guidelines from time to time adopted by the ACC pursuant to Section 13.2 and approved by the Board.

1.20. **“Development Plan”** means the development plan approved by the County, as the same may be amended from time to time.

1.21. **“Developer”** means *Vista del Oro, LLC*, a New Mexico limited liability company, its predecessors, successors and assigns, or any Person to whom Developer's rights hereunder are hereafter assigned in whole or in part by Recorded Instrument, or any Mortgagee of Developer which acquires title to or succeeds to the interest of Developer in any portion of the Community by reason of a foreclosure (or conveyance in lieu of foreclosure) or trustee's sale under the Mortgage of said Mortgagee. The term **“Developer”**, as used herein, shall include not only the named Developer but also any of the foregoing successors, assigns, assignees of right(s) and Mortgagees. An assignment by Recorded Instrument of all of Developer's rights shall vest in the assignee all of Developer's rights hereunder (including, but not limited to, all of Developer's easements, rights of consent or approval and voting rights) on the same terms that they were held by Developer hereunder. An assignment by Recorded instrument of part of Developer's rights shall vest in the assignee the specific Developer's right(s) named in the instrument of assignment on the same terms that they were held by Developer hereunder. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Developer's rights shall not deprive the assignor of any protection, indemnity or freedom from liability that would otherwise exist under this Declaration if the assignor had retained all of the Developer's rights hereunder.

1.22. **“Dwelling Unit”** means any building or portion of a building situated upon a Lot, designed and intended for use and occupancy as a residence.

1.23. **“Exempt Property”** means the following parts of the Property:



1.22.1. all land and improvements owned by or dedicated to and accepted by the United States, the State of New Mexico, the County, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective;

1.22.2. all Association Land, for as long as the Association is the owner or lessee thereof;
and

1.22.3. all land and improvements owned or leased by a utility company providing services to the Community.

1.24. **"First Mortgage"** means a Mortgage which is the first and most senior of all Mortgages upon the same property.

1.25. **"First Mortgagee"** means the holder of a First Mortgage.

1.26. **"Individual Charge"** is defined in Section 8.5.

1.27. **"Insurance Trustee"** is defined in Section 11.5.

1.28. **"Lot"** means any area of the Property designated as a Lot or Tract on any subdivision plat Recorded by or with the consent of Developer.

1.29. **"LUS"** means a *Lot Usage Sheet* which is a drawing for each Lot prepared by Developer showing grade contours, height restrictions, utility and trail easements, special restrictions, no-build buffers, Building Envelope size and location, driveway location, etc.

1.30. **"Member"** means every Person who is a member of the Association.

1.31. **"Mortgage"** means any Recorded Instrument, filed or otherwise perfected instrument, which is not a fraudulent conveyance under New Mexico law, given in good faith and for valuable consideration as security for the performance of an obligation including, but not limited to, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.32. **"Mortgagee"** means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.

1.33. **"Mortgagor"** means the party executing a Mortgage as obligor.

1.34. **"Nature Pointe"** means the *Nature Pointe Community*.

1.35. **"Occupant"** means any Person, other than an Owner, in rightful possession of any portion of the Property, whether as a guest, tenant or otherwise.

1.36. **"Owner"** means the Record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, of any Lot, including contract purchasers that have a right of possession, but excluding those having such interest merely as security for the performance of an obligation. If fee simple title to any Lot is vested of Record in a trustee pursuant to New Mexico law (as amended from time to time), legal title shall be deemed to be in the beneficiary.



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1.37. **“Plat”** shall mean any final plat or plats for the Community as recorded and/or amended from time to time.

1.38. **“Person”** means an individual, corporation, partnership, trustee or other entity capable of holding title to real property, and their respective heirs, personal representatives, successors and assigns.

1.39. **“President”** means the duly elected or appointed president of the Association.

1.40. **“Private Roads”** and **“Private Streets”** are synonymous and mean any street, roadway, drive, walkway, trail, path or other right-of-way within, or partly within, the Property which has not expressly been dedicated to the public use and is required to be maintained under this Declaration (and include, but are not limited to, the streets and rights-of-way within the Property designated as private access ways and public utility easements and which are not required to be maintained under any Declaration).

1.41. **“Property”** means any real property made subject to this Declaration together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.42. **“Record,” “Recording”** or **“Recordation”** means an instrument of record in, or the act of recording an instrument with, the Office of the County Clerk for Bernalillo County, New Mexico.

1.43. **“Recorded Instrument”** means an instrument or document that has been recorded in the Office of the County Clerk for Bernalillo County, New Mexico.

1.44. **“Single Family”** means one or more individuals, each related to the other by blood, marriage or legal adoption, living together as a “traditional” family. If two unmarried individuals are living together, all other persons living in the residence must be related to at least one such individual by blood or legal adoption. “Single family” does not include any “group home” or similar uses, even though the individuals in such group may have common needs, interests or medical conditions. “Single family” shall be deemed to include minor children which are residing on a Lot while waiting adoption by the owners or occupants of the Lot or which are being provided for by agreement with an agency of the State of New Mexico.

1.45. **“Special Use Fees”** means special fees which an Owner, Occupant or any other Person is obligated by this Declaration or Association Rules to pay to the Association for use of or access to an amenity, facility or other improvement, including, but not limited to, the Clubhouse, if any, a Common Area or Association Land, or for the granting of a right or privilege with respect thereto, over, above, and in addition to any Assessment hereunder.

1.46. **“Taking”** is defined in Section 12.1.

1.47. **“Transition Date”** means the date upon which over 90% of the Lots in the Community are sold to third parties unrelated to Developer or sooner if Developer so elects.

1.48. **“Variance”** means a variance from this Declaration or other document defining the use of a Lot which has been approved by the ACC.



2. PROPERTY SUBJECT TO DECLARATION

2.1. **General Purpose.** Developer intends to develop the Community by platting various Lots and Common Areas, and to develop and/or sell and convey Lots as portions of the Community are developed. All of the real property within the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration, and any Recorded supplemental declarations, as amended or modified from time to time. However, property which is Exempt Property shall not be subject to the Declaration while it is thus dedicated, although restrictions imposed in this Declaration upon the Owners and Occupants concerning the use and maintenance of such public areas shall at all times apply to the Owners and Occupants. This Declaration and any supplemental declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property, the Community and every part thereof. This Declaration shall run with all Lots, Association Land and tracts for all purposes and shall be binding upon and inure to the benefit of Developer, all Owners and Occupants and their successors in interest. **NOTHING IN THIS DECLARATION SHALL BE CONSTRUED TO PREVENT DEVELOPER FROM (a) MODIFYING THE DEVELOPMENT PLAN OR ANY PORTIONS THEREOF, OR (b) DEDICATING OR CONVEYING PORTIONS OF THE COMMUNITY, INCLUDING STREETS OR ROADWAYS, FREE AND CLEAR OF THE DECLARATION, AND/OR FOR USES OTHER THAN AS A LOT, OR ASSOCIATION LAND.**

2.2. **Association Bound.** Upon the incorporation of the Association, this Declaration shall be binding upon and shall benefit the Association and its Members.

3. RIGHTS OF ENJOYMENT

3.1. **Right of Enjoyment.** Every Owner and Occupant shall have a nonexclusive easement to use and enjoy the Common Areas, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in the Declaration, including, but not limited to, the following provisions:

3.1.1. The right of the Board to (a) impose reasonable limits on the number of guests of Owners and Occupants; (b) impose reasonable limits on the use of the Common Areas; and (c) to charge admission, membership and other Special Use Fees for the use of any recreational or other facility situated upon the Common Areas when all or any portion of the costs of ownership, operation, maintenance and repair of such facilities should, in the opinion of the Board, be borne by users of the facilities rather than by all Members of the Association;

3.1.2. The right of the Board to establish reasonable rules and regulations, which are not inconsistent with this Declaration pertaining to or restricting the use of the Common Areas by Owners, Occupants or other Persons;

3.1.3. The right of the Board to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas or adding new Common Areas and, in aid thereof, to mortgage said property;

3.1.4. The right of the Board to suspend the right of an Owner, Occupant or any Person (including, but not limited to, a member of the family of an Owner) to use the Common Areas or any designated portion thereof (and to suspend the Owner's voting rights) during any time in which any Assessment or Individual Charge respecting such Owner or such Owner's Lot remains unpaid and delinquent, or for any infraction of the Association Rules or breach of this Declaration, and for any repetition of any such payment delinquency or infraction, in accordance with the provisions of this Declaration and the



Bylaws. Notwithstanding the foregoing, the Board shall not have the right hereunder to limit or suspend any Owner's rights to such an extent that the Owner is denied access to his Lot, except through foreclosure of any lien provided for herein;

3.1.5. The right of the Board to dedicate or transfer all or any part of, or interest in, the Common Areas to any public agency, authority or utility (whether public or private) for such purposes and subject to such conditions as may be agreed to by the Board without the consent or approval of any Member or other Person except as expressly required herein (by way of illustration and not limitation, the Board shall have a right to dedicate or transfer to the public all or any portion(s) of the Private Roads at any time or from time to time), but no such dedication or transfer by the Board shall be effective without the written consent of Developer (so long as Developer owns any property subject to this Declaration); and

3.1.6. The right of the Board to change the size, shape or location of Common Areas, to exchange Common Areas for other lands or interests therein which become Common Areas and to abandon or otherwise transfer Common Areas.

3.2. **Delegation of Use.** No Owner may delegate his right to use and enjoy the Common Areas to any Person, except to the members of his immediate family, to Occupants of his Lot, or to his invitees, in each case as permitted by the Association Rules.

3.3. **Waiver of Use.** No Owner may exempt himself/herself, and no Owner shall be exempt from personal liability for Assessments and Individual Charges, and no Owner may release any Lot owned by him/her from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, by voluntary waiver of, or suspension or restriction of, the Owner's right to use and enjoy the Common Areas, or by the abandonment of the Owner's Lot.

3.4. **Business Activity.** Except as provided herein, no business use shall be carried out on any residential lot, or any activity done on any lot, which may be or may become an annoyance or nuisance to the neighborhood. The ACC may approve arts and crafts studios, professional offices, etc. providing the activity does not result in frequent multiple vehicular traffic, noise, or other annoyance and provided the same is a Permitted Business Use.

4. PERMITTED USES AND RESTRICTIONS

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Common Areas, the Owners thereof, and all Occupants.

4.1. **Accessory Equipment or Structures.** Gazebos, picnic tables, propane tanks, benches, etc. (must be shielded from passers-by view) may be permitted outside Building Envelope only with ACC approval. Playground equipment must be located within the Building Envelope and must also be approved by the ACC and located so as to minimize visibility by passers-by. Garbage cans, clotheslines and other similar items shall be screened from neighbors and passers-by. ACC at its discretion may require screening of other items visible from neighbors or passers-by. Satellite dishes must be located along building walls on pitch roof houses and painted to minimize its visual impact.

4.2. **Animals.** To enhance safety and enjoyment within Nature Pointe there are pet/animal guidelines that must be followed. Those guidelines are set out herein and may be adopted or modified in the Association Rules. Animals may not cause any material nuisance to other residents. Horses, cows, pigs, fowl, goats, and other barnyard animals shall not be permitted within Nature Pointe. No household pets or animals shall be raised for commercial purposes. No such animals shall be kept in quantities that may become an



annoyance. Dogs or other animals shall not be allowed to be a noise nuisance. Dog breeds known to be vicious, pit bulls, wolves, or any derivation shall not be kept or allowed within Nature Pointe. Dog-bites (past, present and future) must be reported to Association. *If a dog has bitten anyone during its lifetime, the Association shall decide if the animal is allowed within the community (additional restrictions may be imposed).* The total number of dogs and/or cats cumulatively allowed on any Lot shall be limited to five (5). It is recommended that dogs/cats be neutered or spayed. Animals that are kept outside, other than dogs or cats must be approved by ACC. Owners shall restrain all animals, including cats, to the Lot or must keep all such animals on a leash except in areas approved by the Association. Based upon noise complaints, the ACC may require a bark collar or other bark modification device (as is necessary). Owners must insure their animals do not become a nuisance to anyone in the Community or their guests due to barking, aggressive behavior, smells, flies or any safety concerns. The ACC will require screening of dog runs/kennels from neighbors and passers-by. Dog runs/kennels may not be located nearer than 90 feet of any neighbor's bedroom without variance. No animal shall be boarded for hire and no breeding operation will be allowed. Animal areas must be kept in a sanitary area free of refuse.

4.3. **Animal Fencing.** Owners may install an underground "invisible electric fence" to keep their pet and/or animal on their property provided all of the following requirements are met:

- 4.3.1. the fence is properly installed and maintained;
- 4.3.2. the pet and/or animal being restrained is properly trained;
- 4.3.3. there are two (2) or more signs indicating that an invisible fence is in use;
- 4.3.4. the animal being restrained is not aggressive;
- 4.3.5. the fence is located so as to restrain the pet and/or animal inside the Building Envelope; and
- 4.3.6. the pet and/or animal being constrained has not crossed an activated invisible fence on more than three (3) occasions.

Owner shall be fully responsible for such Owner's pet and/or animal's actions. Any mixture of: *German Shepherd, Husky, Sharpei, Akita, Doberman Pincher*, guard-dog, or any dog exhibiting aggressive behavior may not be restrained with an invisible fence.

4.4. **Architectural Style.** All building on all Lots shall be of an architectural design, typical of New Mexico and the Southwest, including: *Pueblo, Pueblo Revival, Northern New Mexico, Santa Fe, Southwestern Contemporary, Tuscan and Territorial* or variation thereof as may be approved by the ACC. All buildings are to be finished (exterior finish) within twelve (12) months from start of construction. The ACC may grant variance on the house styles if the ACC believes style will not be out of character within the subdivision or diminish lot values. Acceptable exterior finishes include stucco or adobe, with or without rock accents. Aluminum siding, wood siding, brick or brick veneer are prohibited. Garages shall be attached (unless ACC grants a variance) to the main structure with garage doors located away from the view from the front street, as practical. No garage may not be converted into living space without ACC approval. No manufactured or prefabricated homes shall be allowed in the Community except that Developer or contractors may use a prefabricated unit as a sales or construction office during the period of sales or construction. See Design Guidelines for specific design requirements and approval requests. Owner should consult with the ACC prior to purchasing a Lot if uncertain that the proposed style of the residence or any other Lot improvement is in accordance with this Declaration or the Design Guidelines.



4.5. **Motor Homes, Boats and Motor Vehicles.** Except as specifically permitted by the Association Rules,

4.5.1. no commercial vehicles, motor homes, trucks, boats, trailers, busses, mobile homes, campers, camper shells, recreational vehicles or other vehicles shall be visibly parked or stored in or upon a Lot except within an enclosed garage as permitted by the Design Guidelines;

4.5.2. motor homes if stored off site are allowed within Building Envelope for the purpose of loading and unloading for trip preparation for a period of three (3) days or less per month

4.5.3. Owner's guest's motor homes may be parked within a Building Envelope for a maximum of three weeks a year;

4.5.4. no vehicle shall be visibly repaired, serviced or rebuilt on any Lot; and

4.5.5. no vehicle, trailer or other transportation device shall be parked overnight on the streets except in such parking areas as may be designated by the ACC or on a recorded subdivision (or similar) plat.

4.5.6. boats must be stored in an approved garage.

The Board may remove, or cause to be removed, any unauthorized vehicle or trailer at the expense of Owner. For the purpose of this covenant, a 3/4 ton or smaller truck shall not be deemed a commercial vehicle or truck, unless equipped for commercial uses or an identification sign.

4.6. **Building.**

4.6.1. **Building Color.** Exterior and roof colors shall generally be natural earthtone and blend in with the natural surroundings (see Design Guidelines for pre-approved colors). Wood or asphalt shingles are not allowed. Owners and builders should refer to the Design Guidelines for specific design criteria.

4.6.2. **Building Height.** The maximum building height shall be 26 feet (exclusive of chimneys) measured mid-span from the natural ground at the highest point at the foot of the building wall. Mid-span measurement is taken at the highest roof plane of building, then measuring the middle of the span to closest pre-construction natural grade. The second story of residences shall not be more than 33% of the total heated living area square footage. Lots 10, 11, 21-23, 45 & 47 (if in meadow), 57, 61 and 62 shall be limited to single story residences only. See the Design Guidelines for additional height restrictions.

4.6.3. **Building Size.** The heated area of the main structure on any lot, exclusive of porches and garages shall be not less than 2,400 square feet (measured to exterior walls). Guest houses ("casitas") require ACC approval and shall not be less than 400 square feet and are permitted only if they are connected by a breezeway with the primary residence.

4.7. **Building Envelopes.** Building Envelopes have been established so as to preserve portions of the land in its natural condition for the purpose of protecting and preserving the habitat for native plants and animals. Building Envelopes have been created for the purpose of encouraging views, minimizing impacts to neighbors, creating a more natural "open" feel within Nature Pointe, limit surface disturbance, and encourage wildlife habitat/corridors. Building Envelopes are set out on the LUS for each Lot and provide exclusive areas for building location, outbuilding construction, clearing, grading and general



construction. ACC approval of a Site Plan is required prior to any tree removal, grading or surface disturbance. [See *Procedures for Approval*, Article 14.] Excessive removal of vegetation or grading (even within the Building Envelope) will not be approved. Tennis court(s) are not allowed on Lots. Future removal of live trees requires approval by the ACC.

4.8. **Sheds**. No sheds shall be permitted without prior approval of the ACC. If approved shed must be stuccoed and screened from neighbors and passer-bys.

4.9. **Continuous Construction**. Construction of any structure or improvement shall be continuous and proceed in an orderly fashion without interruptions, and any structure or improvement on a Lot shall be completed in a reasonable time, not to exceed twelve (12) months from the date the plans are approved by the ACC. Failure to complete structures or improvements within a twelve (12) month time frame will necessitate re-application in accordance with Article 14.

4.10. **Construction Debris/Staking**. All debris from construction or site clearing must be confined to the Lot and shall be confined to a trash receptacle or other storage method approved by the ACC prior to start of construction. Each builder shall use 3 foot tall orange nylon fencing to delineate areas where subcontractors may confine activity to minimize accidental damage to a Lot.

4.11. **Developer's Exemption**. Nothing contained in this Declaration shall be construed to prevent or materially impair the erection, operation, maintenance, replacement and repair by Developer, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, operation and sale or leasing of property within the Community, whether or not such property is (or is intended to be) a part of the Property. Without limiting the generality of the preceding sentence and notwithstanding any contrary provision herein, (a) Developer is expressly exempted from the provisions hereof requiring submittals to or authorizations by the ACC, and (b) Developer shall have the right to erect, operate and maintain one or more administrative and sales office(s) (including manufactured buildings) on any property within the Community owned or leased by Developer. Common Areas buildings and improvements including the Clubhouse are exempt from the provisions of this Declaration.

4.12. **Diseases and Insects**. No Owner shall permit any thing or condition to exist upon the Property which shall induce, breed or harbor infectious plant disease or noxious insects.

4.13. **Drainage Easements**. Land within any drainage easement shown on any Recorded Instrument shall not be disturbed and no dwelling or other buildings shall be placed within the easement. Some lots have drainage easements granted by Plat and dedicated to the County of Bernalillo. The use of these easements are restricted to drainage, flood control, conveyance of storm water, trails, and the construction, operation, and maintenance of and access to such facilities. Except by written approval of the County Engineer, no fence, wall, building or other obstruction may be placed or maintained in said easements, and there shall be no alteration of the grades or contours in said easements. The granting of easements does not obligate the County of Bernalillo to maintain natural arroyos, drainage channels, or facilities that do not meet the standards of the County Engineer for design and construction nor is the County of Bernalillo obligated to provide protection of the property lying outside of the easements granted. Safe locations for structures built on lands adjacent to dedicated easements may be substantially outside of the area described by the easements. Any portion of any lands, right-of-way, or easements dedicated or granted shall revert to the owner, its successors and assigns, as and to the extent any easement is abandoned or vacated or is declared unnecessary for flood control and drainage by the County of Bernalillo. Vacation approval consistent with the Bernalillo County Subdivision Ordinance may be required. The County of Bernalillo has required that Developer enter into a Drainage Covenant, a copy of which is attached hereto as *Exhibit B*. Owner agrees to comply with all terms thereof as may be applicable to Owner's Lot together



with any modifications thereof adoption by the Bouny of Bernalillo. Association has the right to and may maintain drainage structures adjoining streets.

4.14. **Driveways.** Driveway locations are shown on the LUS for each Lot. Two driveway loop connections to the roadway are not allowed. The preliminary driveway location is shown on the LUS and the driveway design may require curves so as to lessen driveway visibility of the house from streets. Any driveway crossing a water channel shall require an appropriately sized culvert. Approval from the Bernalillo County Fire Department may be required for all driveway designs. Driveway gates require ACC approval and must have a 60 foot minimum setback from the front of the Lot line.

4.15. **Easements.** Access roads and utility easements are dedicated and reserved as shown on the plat of Nature Pointe. All rights to minerals, water, oil and natural gas underlying the Property are reserved to the Developer. A Lot Owner shall not have the right to grant an easement without prior ACC approval.

4.16. **Erosion Control.** Certain Lots within the subdivision have erosion control terraces constructed on them. These terraces may also have significant historical value. It is the responsibility of the Owner to maintain these terraces to prevent erosion. Guidance for maintenance shall be sought from Ciudad Soil and Water Conservation District.

4.17. **Fencing.** No fencing of any kind may be installed without the approval of the ACC. Perimeter fencing is NOT allowed on any individual Lot except where previously installed around the subdivision perimeter. The Association is responsible for maintenance and requires access for maintenance of the perimeter fence and a general access easement is hereby reserved for that purpose. The location, height, material, workmanship, and color of any proposed fence must all be approved by ACC prior to commencement of construction. Height limitations may be required by the ACC depending on topography, proximity to street or houses. Fencing is discouraged in favor of a stuccoed courtyard wall (also must be approved by the ACC) of similar construction to house within the vicinity of the house. Fencing in the meadow areas (less than 30 trees in the immediate vicinity of house) are designated as "limited approval" areas for fencing due to the planning efforts to retain natural open areas. Fencing or courtyard walls shall not exceed 5 feet in height. The ACC may allow a wall or fence up to 6 feet if site conditions warrant. Chain link, T-post, or barbwire fencing is not allowed within the subdivision, except existing perimeter fence. It is the intent of the declarations to create an open natural feel throughout the community. The ACC will limit the size and quantity of enclosed areas and maximum heights to accomplish this goal. Generally wall/fences shall not be allowed to extend beyond the Building Envelope. Stucco walls are preferred and must be similar in color to the main structures. Wrought iron, naturally rusted is a preferred choice. Coyote fencing (latillas) may be utilized if incorporated with stucco/rock pilasters at a maximum 18 foot spacing. Field fencing may only be allowed if the ACC approves its location, height, and color. Field fencing may have limited approval areas on meadow lots. Estate fencing will be considered by ACC for approval depending upon location, color and style. Walls and fencing should be designed as an extension of the residence, blending improvements within the natural surroundings.

4.18. **Fires.** Other than barbecues and outside fireplaces in properly constructed barbecue pits or grills, approved common areas, and fire pits in compliance with the Association Rules and the Design Guidelines, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted in the Community nor shall any other similar activity or condition be permitted which would tend to increase the risk of fire or the insurance rates for the Common Areas or for other Owners. Fire safety and prevention shall be promoted by Nature Pointe by encouraging creation of defensible spaces (thinning of trees a minimum of 30 feet) around structures, fire evacuation plans, fire resistant roofing recommendations, mowing, educational awareness, burying of propane tank (when practical), safe fire fighting apparatus access



(through driveway design) and recommendation of gel polymer fire extinguisher kits at each residence. Roof eaves and patios, shall be constructed to minimize potential fire footholds.

4.19. **Garage Doors.** Garage doors shall be kept closed at all times except when in immediate use.

4.20. **Health, Safety and Welfare.** In the event any uses, activities, and facilities are deemed by the Board to be an unreasonable annoyance or a nuisance, or to adversely affect the health, safety or welfare of Owners or Occupants, the Board may make such rules restricting or regulating their presence on the Property as part of the Association Rules or may direct the ACC to make rules governing their presence on Lots as part of the Design Guidelines. Any such rules shall be consistent with the provisions of this Declaration including, but not limited to, Section 4.35. Residents agree to inform the ACC and the Association of any existing/future safety issues or safety improvements that may be made.

4.21. **Landscaping.** The ACC must approve all landscape plans in accordance with the Design Guidelines prior to approval of final building plans. To protect the natural beauty of the subdivision no mass vegetation removal or mass grading shall take place within the Lot without ACC approval. Natural vegetation will be left undisturbed, except for access to property, clearing of building sites, or establishment of lawns, gardens, and landscaped improvements within the immediate vicinity of the dwelling. To preserve water, irrigated lawns, gardens, and patio areas collectively, shall not exceed 1,000 square feet. Lawns may not exceed 400 square feet. Collection of runoff of roof water and storage for later use is encouraged. In order to increase the overall beauty of the subdivision, Developer may plant trees at the driveway on a Lot prior to the sale of the Lot (shown on the LUS). Owner agrees to supplement water during drier months until trees become fully established.

4.22. **Lighting.** ACC approval is required for all exterior lighting plans at the time of final building plan approval. No spotlights, flood lights, neon arc lamps, mercury lights or other high intensity lighting shall be placed or utilized upon any Lot which, in any manner, will allow light to be directed or reflected on the Common Areas, or any part thereof, or any other Lot or Parcel, except as may be expressly permitted by the Association Rules or the Design Guidelines. All exterior lighting shall be maintained and installed to minimize light pollution. To encourage clarity of the night skies, the ACC shall encourage low light fixtures and compliance with Bernalillo County Light Ordinance 91-2 and any modifications, amendments or replacements thereof. Lighting shall be shielded and set by timer to turn off prior to ten o'clock pm. Lighting shall not cause undesirable glare or unnecessary illumination of adjacent properties. All exterior lighting must be approved by the ACC.

4.23. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a single family residential building, appurtenant structures, or other improvements; or (b) that which Developer or the Association may require for the operation and maintenance of the Property.

4.24. **Maintenance of Grounds.** Each Owner shall keep all shrubs, trees, hedges, grass and plantings of every kind located on Owner's Lot(s) or Parcel(s) (including setback areas, easements and Common Areas) neatly trimmed, shall keep all such areas free of trash, weeds and other unsightly material and shall maintain all paved, concrete and other synthetically surfaced areas, including, but not limited to, driveways, roadways and parking areas, in good condition and repair.

4.25. **Mining; Wells.** No portion of the Property shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind. Without



limiting the generality of the foregoing, no well for the pumping or removal of water shall be utilized, placed or maintained in or upon any Lot, except as may be approved by Developer.

4.26. **Model Homes.** The provisions of this Declaration which prohibits nonresidential use of Lots and regulates parking of vehicles shall not prohibit the construction and maintenance of model homes by Persons engaged in the construction of Dwelling Units on the Property and parking incidental to the visiting of such model homes so long as the location of such model homes is approved by the ACC, the opening and closing hours are approved by the Board, and the construction, operation (including means of access thereto, amount of lighting and number and appearance of signs) and maintenance of such model homes otherwise comply with all of the provisions of this Declaration and the Association Rules. The ACC may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the County and any rules of the ACC. Any residences constructed as model homes shall cease to be used as model homes at any time the Owner or Occupant thereof is not actively engaged in the construction and sale of single family residences on the Property or in the Community and no residence shall be used as a model home for the sale of homes not located in the Community. Notwithstanding the foregoing, the provisions of this Section shall at all times be subject and subordinate to the provisions of Section 4.37.

4.27. **No Obstructions to Drainage.** No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated by Recorded plat or other Recorded instrument as a "drainage easement" except that, with the prior consent of the County and the ACC, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

4.28. **Nuisances and Unsightly Storage.**

4.28.1. There shall be no storage of any unsightly items visible from passers-by or neighbors. ACC may require removal of such by written notice to Owner. No offensive activity shall be carried on or maintained, nor shall anything be done or be permitted to be done thereon which may be or may become a nuisance in the Community. The Association has the authority to determine what activities are offensive. No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Property, which will obstruct or interfere with the rights of Developer, other Owners, Occupants or authorized Persons to use and enjoy the Common Areas, or annoy them by unreasonable noises or otherwise, nor shall an Owner commit or permit any nuisance. The foregoing shall include a prohibition against speakers, horns, whistles, bells or other devices, except security devices used solely for security purposes, which are audible from neighboring lots. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration unless they are in violation of the Design Guidelines or requirements of the ACC. The Board, in its sole discretion, but subject to the provisions hereof, shall have the right to determine the existence of any unreasonable annoyance or nuisance under this Declaration.

4.28.2. Noise restrictions are required to preserve the serenity within Nature Pointe. ACC shall determine the standards of allowable noise from any source. Quiet hours from 9:30PM to 7:30AM shall be observed Monday through Saturday and until 9:00AM Sunday. Any vehicle required to be licensed by the State of New Mexico shall be licensed before use on the Community roadways. Vehicles which are not required to be licensed must be approved by the ACC prior to operating on community roadways. All terrain vehicles, off-road motorcycles (dirt bikes) or any other motorized off-road device are not allowed. The Association may impose additional noise restrictions as deemed advisable. Vehicles which are not licensed must be approved by the ACC prior to operating on community roadways. No devices emitting noise levels exceeding 60 decibels shall be permitted in the subdivision.



4.29. **Outbuildings.** Guest houses (casitas), garages, sheds, etc., must be of similar design, workmanship, construction and finish as the residence. No outbuilding shall be located on any lot nearer than 125 feet to the front property line, unless variance is granted. Outbuildings must be located within Building Envelope.

4.30. **Outside Structures Screened.** Accessory equipment or structures, gazebos, picnic tables, playground equipment and other items visible from the street or neighboring Lot may require screening, as may be approved by the ACC, to minimize visual impact.

4.31. **Parking.** Owners shall provide adequate parking for residents and guests of the Owner's Lot. Storage and parking of commercial vehicles, equipment, machinery, shall not be permitted. The ACC may require screening of parked automobiles from view of neighbors and passers by. Automobiles, trucks, etc. shall be screened from view of neighbors and passers-by. The acceptable alternatives for screening shall be approved by ACC (garage may be required). Parking should be within Building Envelope or in proximity.

4.32. **Partial Invalidity.** Invalidation of any covenant, restriction or rule (by court judgment or otherwise) shall not affect in any way the validity of all other covenants, restrictions or rules, all of which shall remain in full force and effect. Acquiescence of any violation shall not be deemed a waiver of the right to enforce against the violator or others the conditions so violated or any other conditions; and Developer or Association shall have the right to enforce against the violator or others the conditions so violated or any other conditions; ACC shall have the right to enter the lot of the violator and correct the violation, or to require that the same be corrected.

4.33. **Removal of Debris.** In the event any Owner fails to remove debris or unsightly material, the Developer or the Association may remove said debris or unsightly material and assess the cost of removal, including reasonable overhead charge, against the Owner as an Individual Charge.

4.34. **Rental.** No room or rooms, casitas or guest quarters in any residence may be rented or leased to any person, providing however, that nothing contained herein shall be construed as preventing the renting or leasing of an entire Lot together with its improvements as a single unit to a single family. An Owner who leases or otherwise grants any Person occupancy rights to his Lot shall be responsible for assuring compliance by the Occupant with all of the provisions of this Declaration, the Articles, Bylaws, Association Rules and Design Guidelines and shall be jointly and severally responsible for any violations by the Occupant thereof. The foregoing provisions shall not apply so as to prohibit payment of rent by a family member in order to qualify for Medicare or a similar program. Living quarters provided to a full-time housekeeper, nanny, grounds keeper or similar person shall not be deemed a rental.

4.35. **Residential Use.** Lots within the Property are classified as Single Family Residential and may be used only for the construction and occupancy of Single Family detached Dwelling Units, related buildings and typical residential activities incidental thereto. All such property shall be used, improved, and devoted exclusively to Single Family residential use, except as otherwise provided herein. No Business Use or other nonresidential use shall be made of any such property, except as provided in Sections 1.10 and 3.4 hereof. This provision shall not prevent the combination of adjoining lots for one dwelling. All lots shall be known and described as residential lots.

4.36. **Safe Condition.** Without limiting any other provision in this Section, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners and Occupants of their respective Lots or the Common Areas.



4.37. **Signs.** Except as provided below, no signs may be installed that are visible to any resident or passer-by without written approval by the ACC. Driveway entry signs are provided by the Developer and shall be the only entry sign allowed. Room is available on the entry sign for Owner's name. Design of name shall be consistent with provided sign lettering. Any lighting of entry sign must be approved by ACC. Realtor, builder and contractor signs and their location must be approved by ACC prior to installation otherwise removal may occur. Custom Nature Pointe sign frames are required for all Realtor and contractor signs placed within the Community. The maximum number of signs per Lot shall be limited to two (2). Custom sign frames will be available without cost, but will require a deposit to assure return of the sign frame. No sign of any kind shall be displayed to the public view from any Lot or Common Area without the approval of the ACC, except:

4.37.1. such signs as may be used by Developer in connection with the development, management, administration and sale or leasing of Lots or other property in the Property;

4.37.2. such signs as may be required by legal proceedings, or the prohibition of which is precluded by law;

4.37.3. such signs as may be required for traffic control and regulation of Common Areas;

4.37.4. as may be approved by Developer, street and directional signs; and

4.37.5. typical "For Sale" or "For Rent" signs, limited to placement inside the Custom Nature Pointe sign frame on the affected Lot.

4.38. **Temporary Residence.** No trailer, tent, shack, garage or other vehicle or outbuilding shall be used as a residence, temporarily or permanently.

4.39. **Trails.** Most Lots have a 25 foot utility-walking-biking easement along the front Lot lines. Additionally there are also lots that have side lot line easements to connect one cul-de-sac, trail, or street to another. The trails will be maintained in a natural state by Association. Trails as currently constructed are allowed to extend up to 10 feet outside of a trail easement if a more desirable trail resulted. Owner shall keep aggressive dogs, visual detractors and any other nuisances from detracting from a trail user's enjoyment. Dog owners shall clean up all animal waste. Owner shall educate family members and all guests on rules concerning trail usage and safety. The Association reserves the right to add additional landscaping if it so desires, within any utility, trail or landscape easements. Owners, guests and trail users shall consider trail-driveway connections as stop signs. All Lots with a trail running along the Lot line shall consider them to be stopping points where trail touches driveway to ensure pedestrian safety on trails. No engine-powered or motorized devices shall be operated for transportation on the trails.

4.40. **Trees.** Without specific approval of the ACC, no living trees shall be cut or removed.

4.41. **Unused Vehicles.** No unused automobiles or vehicles of any kind shall be stored or parked on any lot except in a closed garage. An "unused vehicle" shall be defined as any vehicle which has not been driven under its own power of a period of thirty (30) consecutive days or longer. In the event any unused vehicle remains parked on any tract or lot within the property boundaries, the Developer or the Association shall have the right to remove the same after five (5) days notice to the owner thereof, the expenses to be charged against the owner thereof, and such charges shall become Individual Charges against the Owner.

4.42. **Utility Service.** No lines, wires, or other services for the communication or transmission of electric current or power or electromagnetic impulses, including telephone, television, and radio signals,



shall be erected, placed or maintained anywhere in or upon the Property unless they are contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the ACC. Notwithstanding the foregoing but subject to any applicable requirements of the County, the ACC may authorize the erection of television and microwave towers and similar structures on Association Land for centralized reception, transmission and retransmission of microwave and similar signals. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the ACC or satellite dishes in violation of FCC regulations.

4.43. **Violation of Law or Insurance.** No Owner shall permit anything to be done or kept in or upon his Lot or in or upon any Common Areas which will result in the cancellation, or increase in premium, or reduction in coverage of insurance maintained by the Association or which would be in violation of any law or other applicable requirement of governmental authorities.

4.44. **Water and Sewer; Solid Waste.**

4.44.1. **Water and Sewer.** Each Lot shall be required to purchase from the Developer a water share for *Entranosa Water Association*. The purchase price shall be that price being charged by *Entranosa Water Association* for the sale of shares to new residential water users. Owner must also pay approximately \$875.00 for a water meter installation at time of house construction. *Entranosa* charges more per gallon on a sliding scale as consumption increases. Liquid waste shall be through use of a septic system constructed by the Owner in accordance with plans approved by the County and the Developer. Each Lot owner shall install a Bernalillo County approved septic system. All liquid waste components must be permitted, approved and comply with the most current Bernalillo County Wastewater Ordinance prior to construction. Water conservation within the subdivision is a high priority and will be accomplished by requiring the following measures:

- All residences shall use water saving toilets rated at 1.6 gallons or less per flush, 1.3 gallons is preferred.
- All residences shall use water saving dishwashers rated at no more than 13 gallons per load (8 gallons preferred) and have a "reduced partial load" capability.
- All residences shall use water restricting showerheads (2.5 or less gallons is preferred) and faucet flows with aerators rated at 1.5 GPM. Showers should be equipped with a cutoff valve for lather/hair wash mode.
- Front loading clothes washers having a cycle use of 25 gallons per load or less are encouraged.
- The hot water heater should be located central to most plumbing appliances in house.
- Refrigerated air conditioners should be *considered* as an alternative to evaporative swamp coolers. All evaporative coolers must be the more efficient single side opening style and be thermostatically controlled. Evaporative coolers should be equipped with a dump pump in place of bleed-off valve to minimize the amount of water required to keep water fresh.
- Water softeners should be selected that regenerate automatically with a low regeneration water requirement. Water softener flush/brine must be drained to a simple French drain (not to pretreatment tank). Owner should consult with *Entranosa* and ACC for recommendations.



• All lots shall be limited to the irrigation of a total 1,000 square feet of lawn, garden and trees. Lawns may not exceed 400 square feet and are discouraged. Trees shall be low water use and approved by the ACC. Total watering shall not exceed 1,600 gallons per month, averaged over a nine-month period (equal to 0.044 acre-feet per lot). Drip irrigation is encouraged along with a mulch-fabric or mulch to conserve water. Any irrigation must occur at either early morning/late evening cycles. Roof drainage downspouts shall direct flows to a cistern or landscaped areas. Swales and catchment berms (bowls) are encouraged to collect natural precipitation around trees.

• All residences shall properly insulate all hot water pipes to prevent energy and water waste. Dielectric couplers are required at water heaters and at dissimilar materials connections. Consult with plumber for advantages of new generation plastic pipe. If copper is chosen, high quality copper piping (K-rated preferred) must be used. Copper pipes must be grounded properly. Water heater anodes must be checked annually. All current plumbing codes must be followed including water pressure bleed-off mechanisms.

• Energy Star rated appliances should be given first consideration for water and energy conservation.

4.44.2. Solid Waste. The Association shall contract with a waste hauling company for weekly garbage pickup. The cost of which shall be added to monthly association dues. Garbage and solid waste shall be kept in covered, waterproof containers (screened from neighbors and passers-by) and shall be stored and disposed of in a manner approved by the Bernalillo County Environmental Health Department. No garbage or trash shall be kept, maintained or contained in or upon the Property so as to be visible from a Lot or the Common Areas except temporarily, in containers approved by Association Rules, for pickup. No incinerators shall be kept or maintained on the Property and no trash or garbage shall be burned on the premises. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on the Property. Notwithstanding the foregoing, the ACC may (but shall not be obligated to) designate one or more locations within the Property to be centralized collection points for recycling of reusable materials.

4.45. Wildlife. Wildlife shall be respected within the subdivision and the wildlife wetland area. Association shall encourage wildlife corridors and enhance wildlife habitat areas. Hunting, trapping of wildlife and discharge of firearms or explosives within the Community are prohibited.

4.46. Restriction on Further Subdivision, Property Restrictions and Rezoning.

4.46.1. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the plat or other instrument creating the subdivision, easement or other interest. However, this restriction shall not apply where part of a Lot is transferred to an adjacent Owner for the purpose of increasing the size of the adjacent Lot. This provision shall not, in any way, limit Developer from (a) replatting, subdividing or separating into Lots any property at any time owned by Developer, or (b) Recording an instrument to fix the location of any easement reserved by Developer in this Declaration not previously depicted with certainty on a plat, map or other instrument of Record.

4.46.2. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner (except Developer) or other Person against any Lot without the provisions thereof having been first approved in writing by the Board and Developer (until the Transition Date occurs and Developer no longer owns any property subject to this Declaration) for consistency with this Declaration and the general plan of

development for the Community reflected by this Declaration and the Development Plan. Any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void.

4.46.3. No application for rezoning of any Lot or Parcel, and no application for any variance or use permit, shall be filed with any governmental authority by any Owner (except Developer) unless the proposed use of the Lot has been approved by the Board and the proposed use otherwise complies with this Declaration.

4.46.4. An Owner may own more than one Lot which if contiguous, may be combined into a single Lot with the consent of the County and the Board and Developer (until the Developer no longer owns any property subject to this Declaration). The ACC shall create and approve a new Building Envelope for the new Lot. However, any such combination of Lots, except as hereinafter provided, shall not reduce or alter the voting rights obtained by ownership of each Lot nor shall it reduce or otherwise alter the amount which would have been assessed against the Owner of such Lots pursuant to the terms hereof in the absence of combination. The Owner of such Lots will be entitled to two Memberships in the Association for each Lot that was combined (so long as Memberships may be held by Owners hereunder). The combined Assessments attributable to each of the former separate Lots shall be attributable to the entire combination of Lots and the entire combination shall be subject to the Assessment Lien.

5. ASSOCIATION

5.1. **Purpose of Association.** The Association has been, or will be, incorporated as a nonprofit corporation to serve as the governing body for all of the Community for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Property, the Homeowners Association Assessments, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, Bylaws, Association Rules and Design Guidelines. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the benefit of the Community in accordance with the provisions of this Declaration, the Articles and the Bylaws.

5.2. **Articles and Bylaws.** In addition to the rights and powers of the Association set forth in this Declaration, the Association and its directors, officers, employees, agents and Members shall have such rights and powers as are set forth in the Articles and Bylaws which are not inconsistent with law or this Declaration. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Developer, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided the Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient in furtherance of the purposes set forth in the Declaration. After incorporation of the Association, a copy of the Articles and Bylaws shall be available to the Owners for inspection at the office of the Association during reasonable business hours.

5.3. **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The initial Board shall be composed of five members appointed by Developer. The Board may also appoint various committees (which may consist, in whole or in part, of individuals who are not on the Board) and may appoint a manager or managing agent who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or managing agent. No members of the Board shall be personally liable to the Association or to any Owner, or to any other person, including Grantor, for any negligent act or omission of the Association, its representatives, other directors and employees, or the manager, or for any action taken as a director or for



any failure to take any actions as a director or for reach of fiduciary duty as a director, unless the member of the Board has breached or failed to perform the duties of the director's office and the breach or failure to perform constitutes willful misconduct or recklessness.

5.4. **Association Rules.** The Board shall be empowered to adopt, amend and repeal such rules and regulations as it deems reasonable and appropriate, effective upon adoption or at such later time as may be specified therein, and binding upon all Persons subject to this Declaration, to govern the use and/or occupancy of the Common Areas and any other part(s) of the Property. **The Association Rules may include the establishment of a system of fines and penalties enforceable as Individual Charges.** The Association Rules shall govern such matters in furtherance of the purposes of the Association including, but not limited to, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Owners, except as expressly provided or permitted herein, and shall not be inconsistent with this Declaration, the Articles, Bylaws or Design Guidelines. The Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and (subject to Section 16 hereof) shall be binding on Owners and all other Persons having any interest in, or making any use of, the Property, whether or not actually received by such individual. The Association Rules shall be available at the principal office of the Association to each Owner or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Association Rules and any provisions of the Declaration, or the Articles, Bylaws or Design Guidelines, the provisions of the Association Rules shall be deemed to be superseded by the provisions of (and in the following order of importance) this Declaration, the Articles, Bylaws or Design Guidelines to the extent of any such conflict.

5.5. **Indemnification.** To the fullest extent permitted by law, every director and officer of the Association, every member of the ACC, and Developer (to the extent a claim may be brought against Developer, by reason of any appointment, removal or control over members of the Board or the ACC) shall be indemnified by the Association, and every other Person serving as an employee or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association against all expenses and liabilities including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon him/her in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or in the case of Developer by reason of having appointed, removed or controlled or failed to control members of the Board or the ACC), or any settlement thereof, whether or not he is a director, officer or member of the ACC or serving in such other specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that the Person to be indemnified hereunder did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise.

5.6. **Non-Liability of Officials.** To the fullest extent permitted by law, neither Developer, the ACC or any other committees of the Association or any member thereof, nor any directors or officers of the Association, shall be liable to any Member, Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of drawings or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Developer, the President, the Board, or such committees or Persons reasonably believed to be within the scope of their respective duties. No member of the Board shall be personally liable to the Association or to any Owner, or to any other person, including Grantor, for any negligent act or omission of the Association, its representatives, other directors and employees, or the manager, or for any action taken as a director or for any failure to take any actions as a director, or for breach of fiduciary duty as a director, unless the member of the Board has breached or failed to perform the duties of the director's office and the breach or failure to perform constitutes willful misconduct or recklessness.



5.7. **Easements.** In addition to the blanket easements granted in Section 16.1, the Board is authorized and empowered to grant upon, across or under real property owned or controlled by the Association such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other similar public or private utility purposes, security lines, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

5.8. **Accounting.** The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise. Notwithstanding anything to the contrary herein, the Association's records of account may be kept on a cash accounting basis if the Board so elects, subject to the requirements of applicable law.

5.9. **Records.** Upon reasonable written request and pursuant to procedures established in the Bylaws, the Association shall make the books, records and financial statements of the Association available for inspection by each Member together with current copies, as amended from time to time, of this Declaration and the Articles, Bylaws, Association Rules and Design Guidelines. Notwithstanding the foregoing, until January 1, 2007, the Association shall not be required to make its books and records available for inspection except as required by law. Developer shall be under no obligation to make its own books and records available for inspection by any Owner, Member or other Person. The books and records of the Association may be audited or unaudited as the Board from time to time may determine. The Association shall not be obligated to make any private or proprietary records (including building plans) of Members available to other Members or to the public.

5.10. **Manager or Managing Agent.** All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a manager or managing agent; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for management, or any other contract providing for services to the Association, shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive one-year periods.

5.11. **Rights of Enforcement.** The Board shall have the first right, but not the obligation, to enforce the provisions of this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument relating to the Property which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced either by the Association or by Developer. If, however, the Board fails or refuses to enforce this Declaration or any provision thereof, then an Owner may enforce them for the Owner's benefit by any appropriate legal action, whether at law or in equity and Developer may pursue whatever rights and remedies might be available to it at law or in equity.

5.12. **Contracts with Others for Performance of Association's Duties.** Subject to the restrictions and limitations contained herein, the Board may enter into contracts and transactions with others, including Developer and any affiliated Persons, for the performance of the Association's duties and other purposes consistent with the Declaration, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more directors or officers of the Association or members of any committee may be employed by or otherwise connected with Developer or any affiliated Person, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or



transaction, and provided further that the transaction or contract is fair and reasonable. Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by Developer or other Person, and may vote there to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

5.13. **Change of Use of Association Land.** Prior to the Transition Date, without the approval or consent of any Member or other Person; and after the Transition Date, upon

5.13.1. adoption of a resolution by the Board stating that, in the Board's opinion, the then present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interest of the Owners and Occupants or no longer necessary or appropriate for the purposes intended; and

5.13.2. the approval of such resolution by a Majority of Members (excluding Developer) who are voting in person or by proxy at a meeting duly called for such purpose; and

5.13.3. the consent of Developer (so long as Developer owns any property subject to the Declaration);

the Board shall have the power and right to sell, exchange, convey or abandon such Association Land or interest or change the use thereof (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided that any such new use:

5.13.4. shall be for the benefit of the Owners and Occupants,

5.13.5 shall be consistent with any deed restrictions (and zoning regulations) restricting or limiting the use of the Association Land, and

5.13.6 shall be consistent with the then effective Development Plan. Anything foregoing to the contrary notwithstanding, if the Board determines, and the resolution of the Board recites, that any transaction involving the disposition or exchange of Association Land or the interest of the Association in Common Areas will not have an adverse effect on the Association and the Owners and Occupants of the Property, the Board may, in lieu of calling a meeting pursuant to 5.13.2. above, give notice to all Owners of the proposed transaction and of any right to object thereto which might be available hereunder and, if no more than 10% of the Members object in writing to the Association within thirty (30) days after the giving of such notice, the transaction shall be deemed approved by the Members and a meeting of the Members shall not be necessary.

5.14. **Purposes For Which Association's Funds May Be Used.** The Association, except as otherwise permitted in this Declaration, shall apply all funds and property collected and received by it (including Assessments, Individual Charges, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Property and the Owners and Occupants by devoting said funds and property, among other things, to the Common Expenses. Notwithstanding such requirements, all funds of the Association shall be deemed to be the sole property of the Association in its corporate capacity, and not trust funds, and the Association shall not be deemed to hold any such funds as trustee or in any fiduciary capacity, except as expressly provided herein. The Association also may expend its funds for any purposes which any municipality in the State of New Mexico may expend its funds under the laws of the State of New Mexico or such municipality's charter.



5.15. **Borrowing Power.** The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate.

5.16. **Association's Rights in Spending Funds From Year to Year.** The Association shall not be obligated to spend in any year all the sums received by it in such year, regardless of source, unless specifically provided to the contrary in the Declaration, and may carry forward as additional working capital or reserves any balances remaining. The Association shall not be obligated to reduce the amount of the Regular Assessments in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board, in its discretion, may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

5.17. **Special Use Fees.** Subject to the provisions hereof including, the Board is authorized to impose, bill for, sue for, collect, administer and disburse Special Use Fees, and the payment thereof shall be secured by the Assessment Lien. In establishing or adjusting the amounts of Special Use Fees from time to time, the Board, in its absolute discretion, may establish reasonable classifications as among Owners, Occupants and other Persons.

5.18. **Homeowners Association Assessments.** Monthly assessments ("Homeowners Association Assessments") will not be required for any Lot until a *Certificate of Occupancy* has been issued for the Clubhouse ("Start Date"). Beginning on the Start Date, Homeowners Association Assessments shall be set at \$135.00 per Lot. Lots that are vacant or do not have a completed house shall have a reduced Homeowners Association Assessment of \$75.00 per Lot for three years from the Start Date. Homeowners Association Assessments shall be fixed for a period of three years from the Start Date at which time a more accurate annual budget will have been established. On approximately October 1, 2009, the Board will vote on new Homeowners Association Assessments. Developer shall not be responsible to pay Homeowners Association Assessments on Developer-owned Lots, but shall be responsible for all Association expenses above the amount of Homeowners Association Assessments collected until October 1, 2009.

6. **MEMBERSHIPS AND VOTING**

6.1. **Membership and Voting.** By acceptance of a deed to a Lot, each Owner of a Lot shall be a Member of the Association and each Lot shall be entitled to two (2) votes. If there are two Owners, each Member shall have one vote in all Association matters for each Lot owned by that Member. If there is only one Owner, then such Member shall have two votes. No person other than the Owner of a Lot may be a Member of the Association. Notwithstanding the above provisions, the Developer shall have majority control over all matters until over 90% of the Lots in the Property are sold to entities not owned or controlled by Developer. This Declaration may be changed or amended by a two-thirds majority vote of the Members ("Majority").

6.2. **Developer's Voting Rights and Assignment Thereof.** Notwithstanding anything to the contrary herein, Developer shall be entitled to any Membership(s) and any votes for each Lot owned by Developer. If any lender to whom Developer has assigned, or hereafter assigns, all or substantially all of its rights under this Declaration as security succeeds to the interests of Developer by virtue of such an assignment, the voting rights of Developer shall not be terminated thereby, and the Lender shall hold Developer's memberships and voting rights on the same terms as they were held by Developer pursuant hereto.

6.3. **Membership Rights.** Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws.



6.4. **Transfer of Membership.** Except as provided in Section 6.2, the rights and obligations of a Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a Mortgage, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of New Mexico. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Memberships appurtenant to the Lot to the new Owner(s) thereof.

6.5. **Use of Membership; Designees.** The Board may provide in its rules for the use of designees and/or proxies by Members.

7. **CLUBHOUSE**

Nature Pointe will build a Clubhouse (herein referred to as "**Clubhouse**"). The Clubhouse shall be owned and maintained by the Association. Membership in the Association shall entitle each Member, subject to the rules and regulations adopted by the Board, to use the Clubhouse. The Clubhouse shall be maintained through the collection of the Homeowner Association Assessments. Developer will cover and pay for any cost shortfalls during the first three (3) years after the *Certificate of Occupancy* has been issued for the Clubhouse for its general maintenance and for the common areas in lieu of the Homeowners Association Assessments on Developer-owned Lots. After three (3) years of operation, a budget shall be prepared so as to establish a more accurate amount for the Homeowners Association Assessments. Developer, or the Board if it is after the Transition Date, may adopt a new Homeowners Association Assessments rate for Lots with completed houses or for Lots which are vacant. The Homeowners Association Assessments shall cover maintenance of any or all of the following: the Clubhouse building and pool, the manager's apartment, manager's costs, insurance, gate, roads, streetscapes, drainage structures, snow plowing of driveways and roads throughout the Community, outdoor courts, playing field, wildlife pond, landscaping, medians, trails, orchard, patio areas, and all common open space, perimeter fencing, etc.

8. **ASSESSMENT LIENS**

8.1. **Liens and Enforcement.** Owner agrees in advance that any Association Assessments not paid shall also be considered a primary lien on the property and shall follow the land. All unpaid liens shall bear 12% interest compounded annually until paid. All parties agree that the prevailing party in any action to collect any Assessment shall be entitled to collect attorney fees as a court may direct.

8.2. **Creation of Lien and Personal Obligation.** Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot and/or title thereto, is deemed to covenant and agrees to pay to the Association: Regular Assessments, Individual Charges, Capital Improvement Assessments, and Reconstruction Assessments, such Assessments and Charges to be established and collected from time to time as provided in this Declaration. The Assessments and Individual Charges, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien (the "**Assessment Lien**"), which Assessment Lien also secures payment of such other sums as provided in this Declaration, upon any Lot (or combined Lots as provided in Section 4.46) against which the Assessments or Individual Charges are made. Each Assessment and Individual Charge, together with such interest and other costs, shall also be the personal obligation of the Owner to whom such Assessment or Charge relates. The personal obligation for delinquent payments shall not pass to an Owner's successor in title unless expressly assumed by the successor, however, the Assessment Lien will continue.



8.3. **Purpose of Assessments.** The Assessments levied by the Association shall be used to promote the recreation, health, culture, safety and welfare of the Owners, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Association and all other Common Expenses, and otherwise to further the interests of the Association. If a Lot has separate security, propane, electrical, sewer, or other similar services, all costs related to them (including, but not limited to, service charges, repairs, and maintenance) shall be the personal obligation of each Owner and shall not be part of the Common Expenses to be paid through Assessments.

8.4. **Regular Assessments.**

8.4.1. **Obligation to Pay.** No Regular Assessments shall be levied or due prior to issuance of the Certificate of Occupancy for the Clubhouse. Subject to Section 7 hereof, each Owner shall pay Regular Assessments as provided in this Section, and as further provided in the Declarations. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Board for the purpose of paying and satisfying Common Expenses.

8.4.2. **Annual Calculation.** Not less than 45 days nor more than 60 days prior to the beginning of each fiscal year of the Association starting with the 2009 fiscal year, the Board shall make available for review by Members, in accordance with the provisions of the Bylaws, a proforma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for the fiscal year. The Board shall at that time determine the amount of the Regular Assessment to be paid by each Owner for each Membership and notify the Owner of such amount. The Regular Assessment to be paid by each Owner for each Membership subject to Assessments shall equal the estimated total Common Expenses (or any supplemental estimate under Section 8.4.3 below) multiplied by a fraction, the numerator of which is one and the denominator of which is the total number of Lots subject to this Declaration. It is expected that Lots without a completed home will be assessed at 76% of the rate of a completed residence. Each Owner shall thereafter pay the Regular Assessments to the Association at such regular intervals as may be fixed by the Board. Each such installment shall be due and payable on the date specified by the Board. The fiscal year of the Association shall be the calendar year, unless otherwise specified in the Articles or Bylaws.

8.4.3. **Adjustment During a Year.** Regular Assessments may be adjusted during any fiscal year as follows:

8.4.3.1. If the Board determines during any fiscal year that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Board shall then immediately determine the approximate amount of the inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid for the balance of the year by each Owner for each Membership subject to Assessments and the date or dates when due.

8.4.3.2. If the total Regular Assessments for any current year prove to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year, or abate collection of Regular Assessments for such period as it deems appropriate. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based.