



HIGH DESERT  
New Construction Committee  
10555 Montgomery NE  
Building 1 Suite 100  
Albuquerque, NM 87111  
(505) 314-5862

## CONSTRUCTION REGULATIONS FOR PREMIER AND ESTATE HOMES

Owner \_\_\_\_\_

Address – Village \_\_\_\_\_

To assure that the intent of the Sustainability Guidelines for Premier and Estate (Guidelines) construction is incorporated into the building process and that the natural landscape of High Desert is not unduly damaged during construction, the following Construction Rules are a part of the New Construction Committee (NCC) requirements for building in High Desert. The NCC will monitor construction to assure that building is proceeding in accordance with the Guidelines. Owners will be notified of any inconsistencies.

### **Responsibility**

*Lot owners* at High Desert have the ultimate responsibility for the actions and activities of builders, contractors, subcontractors and suppliers as they relate to these Guidelines. If the NCC encounters problems of compliance with these Guidelines during the course of construction the NCC will notify the owner. It is the owner that is responsible for compliance with the Guidelines.

### **Typical Construction Sequence**

- 1) Provide Cash Deposit
- 2) Pre-Construction Conference
- 3) Sign Construction Regulations
- 4) Receive Approved Final Plan from NCC
- 5) Commence Construction
- 6) Fence Transition Area

- 7) Restore Transition Area
- 8) Complete Construction
- 9) Final Inspection
- 10) Drainage Certification
- 11) Return Cash Deposit

### **Pre-Construction Conference**

A meeting with the NCC prior to any construction activity is required to review procedures and clarify logistics. The NCC requests that both the owner and builder attend this conference and that the owner and builder sign a copy of the Construction Regulations agreeing to comply with them.

When the Final Plans have been approved by the NCC, Cash Deposit received, Pre-construction Conference held and Construction Regulations signed by the owner, builder, and the NCC, the construction may start. Construction may not proceed before the Construction Regulations are signed.

### **Work in Progress-Inspection**

The NCC may and will inspect work in progress. Any evidence of non-compliance with the Guidelines will be communicated to the owner and builder. Lot owners at High Desert have the final responsibility for compliance with the terms and conditions of these Guidelines and the Declaration. During construction, the Transition Area must be fenced. Prior to the start of construction, the right-of-way must be protected.

### **Commencement of Construction**

Once plans have been approved by the NCC, the owner must begin construction within one year (the date construction is deemed to have started is the date on which the Construction Regulations are signed by the NCC) and substantially complete construction one year thereafter.

### **Non-Waiver**

Any approval by the NCC of drawings, specifications, work done or proposed, or in connection with other matters requiring approval under these Guidelines or the Declaration, including a waiver by the NCC, shall not be deemed to constitute a waiver of the right to withhold subsequent approval. For example, the NCC may disapprove an item shown on the Final Plan Submittal even though it may have been evident and could have been, but was not disapproved at the Sketch Plan Review. An oversight by the NCC of non-compliance at any time during the review process, construction process or during its final inspection, does not relieve the owner from compliance with these Guidelines and all other applicable codes, ordinances and laws.

### **Construction Trailers, Etc.**

Any owner or builder who desires to bring a construction trailer, field office, or the like to High

Desert shall obtain written approval from the NCC by submitting a copy of the site plan with proposed locations of the construction trailer or field office, the portable toilet, and the trash receptacle. Temporary structures must be removed before the Final Inspection.

## **Fencing**

To protect the Natural Area of a lot from damage during construction, the NCC requires a fence, at least six feet high, to be installed completely enclosing the construction area and the Transition Area.

- The fence shall follow the alignment of the Transition Area, shall have a single entrance located at the driveway entrance, and shall be maintained intact until the completion of construction. The distance between the fence and the planned improvement can be no greater than seven feet but may encroach into the Natural Area. If greater than seven feet is required, NCC approval is required.
- The construction trailer, (if any), portable toilet, construction material storage and dumpsters must all be contained within the chain link fence.
- In special cases, the NCC may allow materials to be stored outside the fence when approved in advance by the NCC.
- The fence must be installed no later than the time footings are completed; however, the NCC may require that the fence be installed earlier.
- The right-of-way (next to the curb where applicable) must be flagged or fenced with a wind fence, separate from the Transition Area, before the start of construction to prevent disturbance to this area. The NCC may require both sides of a street and adjacent property be protected.

## **The Transition Area**

Transition Areas: The Transition Area is that part of the Building Envelope and or Natural Area between the construction fence and any improvement or walls of the residence, which is visible from adjacent properties, streets or public spaces. For more complete definition refer to the Site Planning section of these Guidelines.

- The Transition Area boundary within the Natural Area is a maximum of seven feet from the improvement being constructed.
- Upon completion of construction, this area must be replanted with native vegetation to match the adjacent Natural Area in appearance.

## **The Natural Area**

The Natural Area of the lot is that area outside the Transition Area and generally must remain in

an undisturbed condition. However, landscaping (with an approved plan from the NCC) and certain other construction activities or improvements may take place in this area. For more complete definition of the Natural Area refer to the Site Planning Section of the Guidelines.

### **Encroachment and Construction in the Natural Area**

If it is necessary to conduct construction activities outside of the Transition Area (in the Natural Area) in order to complete an improvement falling within the Building Envelope, the owner of the lot, or the owner's representative, must submit to the NCC a description and plan (if applicable) of the proposed encroachment. If approved, this encroachment into the Natural Area must be returned, as closely as possible, to its original condition. The NCC will only permit such encroachment where the proposed improvement within the Building Envelope is located so close to the Building Envelope line that construction is unreasonably difficult without the construction activity encroachment.

Encroachment into the Natural Area may be allowed, if shown on the Final Plan which was approved by the NCC, for construction of water lines, sanitary sewer lines and facilities, electric lines, gas lines, cable TV lines, water harvesting facilities, storm water drainage facilities or natural retaining structures. Any disruption of the Natural Area must be minimized and disruption limits indicated on the Final Plan approved by the NCC. The Natural Area that is disturbed during construction must be restored prior to Final Inspection. Encroachment into a AMAFCA easement requires a Encroachment License from AMAFCA (which must be obtained by the owner at their expense) and approved by the NCC, prior to any encroachment.

### **Debris and Trash Removal**

Trash and debris shall be removed from each construction site frequently and not be allowed to accumulate. During construction, each construction site or the route to and from the construction site, shall be kept neat and clean, and shall be properly policed to prevent it from becoming a public eyesore.

- Builders shall clean up all trash and debris on the construction site as needed. However, the site must be cleaned each Friday.
- Builders must clean up blowing trash and debris from their job site that is on adjacent lots or Open Space.
- Temporary concrete or other material "wash pits" must be in approved locations and removed and remediated by the contractor after completion of construction.
- Lightweight materials, packaging, and other items shall be covered or weighted down to prevent their being blown off the construction site.
- Builders are prohibited from dumping, burying, or burning trash anywhere on High Desert except as expressly permitted by the NCC.
- Unsightly dirt, mud, or debris from activity on each construction site and on the adjacent

public street must be promptly removed and the general area cleaned.

### **Sanitary Facilities**

Portable toilets or similar temporary toilet facilities shall be located only within the fenced Transition Area or in an area approved by the NCC.

### **Vehicles and Parking Areas**

- Construction crews shall not park on, or otherwise use, other lots or any open space.
- When parked on the lot, private and construction vehicles and machinery shall be parked only within the Building Envelope or in areas designated by the NCC.
- When parked on the street, all vehicles shall be parked consistent with City ordinances.
- Construction vehicles must be on the paved surface unless they are parked on the owner's property.

### **Conservation of Landscape Materials**

Builders are advised that the lots and open spaces of High Desert contain valuable native plant and other natural features, such as top soils, that should be absolutely protected during construction.

### **Excavation Materials**

Excess excavation materials must be hauled away from High Desert at the time of excavation and not stored on the site.

- Concrete cleanup must be done so as not to affect the Natural Areas of a lot or allow runoff to flow into Natural Areas, streets, drainage easements, or other lots.

### **Blasting**

If any blasting is to occur, the NCC must be informed far enough in advance to make sure that the applicant has obtained the advice of expert consultants that blasting may be accomplished safely. These consultants must advise the NCC in writing.

- No blasting or impact digging causing seismic vibrations may be undertaken without the approval of the NCC based upon such advice from a qualified consultant.
- Applicable governmental regulations concerning blasting must be observed and all required permits obtained.
- The NCC's only responsibility is to require evidence of such consultant's expertise and shall have no liability for the blasting.

## **Restoration or Repair of Other Property Damages**

Damage to any property, open space or other lot, including, but not limited to roads, driveways, concrete curbs, gutters, utilities, vegetation and/or other improvements, resulting from construction operations, will not be permitted. If any such damage occurs, it must be repaired and/or restored promptly and any expenses are those of the owner causing the damage.

## **Dust and Noise Control**

The High Desert community must be protected from dust and noise arising from construction activities.

- Contractor shall maintain a program of dust and erosion control at all times during construction and until cut and fill areas are stabilized and planted areas established.
- The Builder shall be responsible for controlling dust and noise, including (without limitation) music from the construction site in accordance with the City of Albuquerque Environmental Health Regulations.

## **Construction Access**

The only access, during the time a residence or other improvement is under construction, will be over the approved driveway for the lot, unless the NCC approves an alternative access point. Only one construction access shall be permitted onto any lot, except with the written approval of the NCC. If an additional construction access is approved, the NCC may limit the location use and duration of the access.

## **Construction Signage**

All signs at High Desert will conform to a unified standard prescribed by the NCC.

- Only one construction sign will be allowed per lot.
- Construction signs will convey only the general contractors and/or architects identification - name, logo, telephone number.
- Construction signs shall be removed by the contractor at the completion of construction.
- No other construction signs (i.e. subcontractors, material suppliers) are permitted on the lot.
- No banners, flags, etc., are permitted, except for special events and those must be approved in advance by the NCC.

## **Miscellaneous and General Practices**

All owners will be responsible for the conduct and behavior of their agents, representative,

builders, contractors, and subcontractors while on the premises of High Desert. The following practices are prohibited:

- Fuels, lubricants and other petrochemicals must be handled in accordance with government regulations. Protect against construction equipment leaks or discharges of fuels or lubricants. Contain petrochemical spills including contaminated soil and dispose of it at approved sites.
- Changing oil on any vehicle or equipment on the site itself or at any other location within High Desert other than at a location (if any) designated for that purpose by the NCC.
- Allowing concrete suppliers, plasterers, painters, or any other subcontractors to clean their equipment anywhere but the location specifically designated (if any) for that purpose by the NCC.
- Disturbing or removing any rocks, plant material, topsoil, or similar items from any property of others within High Desert including adjacent property and other construction sites.
- Disposing carelessly of cigarettes and other flammable material.
- Fires of any type including campfires and the burning of waste material or trash.
- Carelessly treating or removing protected plant materials or plants not previously approved for removal by the NCC.
- Disposing of trash or any other material on any lot or property in High Desert.

### **Preservation of Archaeological Sites**

A detailed archaeological survey has been conducted for High Desert. While there are no known archaeological sites on any of the building lots, artifacts may be encountered during the construction process. If artifacts are encountered during construction, follow appropriate governmental regulations.

### **Daily Operation**

Daily working hours for each construction site shall be from 30 minutes before sunrise to 30 minutes after sunset unless other hours are designated in writing by the NCC. Construction on Saturday and Sunday shall not start before 7:30 AM and must end by 5:30 PM.

### **Final Inspection**

The owner of any residence or other improvement under construction shall give written notice to the NCC when the structures are complete. Within 20 days of such notice the NCC will inspect the residence and/or improvements. If it is found that any work was not done in compliance with the approved Final Plan Submittal and these Guidelines, it shall notify the owner in writing, specifying in reasonable detail the particulars of non-compliance, and shall require the Owner to

remedy the same. If within 30 days of the NCC's notification, the owner has not corrected the items of noncompliance, the NCC may take such action to remedy this non-compliance as is provided for in these Guidelines or the Declaration including, but without limitation, injunctive relief or the imposition of a fine.

All construction must be completed and in compliance with the Final Plan approved by the NCC, including restoration of disturbed Transition and Natural Areas and the grading and drainage improvements complete and certified in substantial compliance, by the owner's engineer, before the Final Inspection will be approved by the NCC.

- The engineer, for the owner, must certify that grading and drainage construction was completed in substantial compliance with plans approved by the NCC, less any amounts withheld or applied pursuant to these Guidelines.
- All construction must be completed and in compliance with the Final Plan approved by the NCC.
- Any Transition and Natural Areas that have been disturbed must be restored.
- The Construction Deposit will be returned after the Final Inspection has been satisfactorily completed and the grading and drainage certification received from the Owner's engineer and approved by the NCC.

## **Enforcement**

In addition to such other rights which are specifically granted in these Guidelines, in the Declaration and in the By-Laws of the Association, the High Desert Residential Owners Board of Directors has the power to impose reasonable fines, which shall constitute a lien upon the Unit of the violator.

Any structure or improvement placed or made in violation of the Declaration and the Guidelines shall be deemed to be nonconforming. Upon written request from the NCC, owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the previously existing condition.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions and decisions of the NCC.

## **SECTION IV: NEW CONSTRUCTION COMMITTEE DIRECTIVE VIOLATIONS POLICY**

1. Purpose. The purpose of this New Construction Committee Directive Violations Policy is to provide a consistent and orderly procedure for addressing violations of the directives of the New Construction Committee (the NCC). The Board of Directors of the Association is vested with the power and responsibility to enforce the governing documents of the Association, the Guidelines for Sustainability, and the decisions of the NCC. The purpose of this New Construction Committee Directive Violations Policy is to provide a consistent and orderly procedure for addressing violations of the governing documents of the Association, the Association Guidelines for Sustainability, and the directives of the NCC.
2. Determination of a New Construction Committee Directive Violation. The NCC's interpretation and determination as to the Guidelines for Sustainability and matters of aesthetic judgment in individual cases is absolute, final, and binding. The Board of Directors shall make a final determination as to all fines and other matters concerning the existence of a violation of the governing documents of the Association and/or the directives of the NCC.
3. Types of Violations. Generally, violations of the governing documents of the Association, the Guidelines for Sustainability, and/or the directives of the NCC fall into the following categories:
  - a. Site Operation & Maintenance Violations. Site operation and maintenance violations comprise acts or omissions of the contractor to correct issues and/or repeated reoccurrence of the same acts or omissions. Site operations and maintenance violations include but are not limited to the following:
    - i. Failure to maintain the construction site in a clean and orderly manner;
    - ii. Failure to promptly dispose of debris and litter;
    - iii. Failure to have an on-site dumpster or other trash container sufficient for the construction project;
    - iv. Failure to install, maintain, and repair any required construction fence on site;
    - v. Failure to have a port-a-potty accessible to the site;
    - vi. Engaging in construction activities during hours that are not appropriate;
    - vii. Engaging in construction activities in a manner that results in excessive noise; and
    - viii. Engaging in construction activities in a manner that constitutes a nuisance

b. Construction Violations. Construction violations comprise acts and omissions that cause the project to be out of compliance with applicable plans as approved by the NCC or any governmental agency; that fail to comply with the governing documents of the Association; or that violate any applicable local, county, state, or federal code, law, ordinance, regulation, or rule. Construction violations include but are not limited to the following:

- i. Violation of building height and wall height limitations;
- ii. Violation of grading plans and limitations;
- iii. Violation of drainage plans and limitations; and
- iv. Commencement of construction without approved building plans.
- v. Failure to complete required building height surveys;
- vi. Failure to remove non-approved plants and trees when requested.

c. Completion Violations. Completion violations comprise acts and omissions that prevent the project from achieving final completion following commencement of construction. Completion violations include but are not limited to the following:

- i. Failure to submit a schedule providing for the timely completion of the project;
- ii. Failure to secure all required governmental inspections;
- iii. Failure to secure a certificate of occupancy; and
- iv. Failure to provide an engineer's certification that the grading and drainage is in accordance with the approved Grading and Drainage Plan.

4. Penalties for New Construction Committee Directive Violations. Upon a determination that an Owner is in violation of the governing documents of the Association, the Guidelines for Sustainability and/or the directives of the NCC, the Association will invoke the following system of penalties for the purpose of securing compliance by the Owner in violation:

Timing of Notice	Description of Notice	Amount Charged to Owner's Account
Upon discovery of violation	Courtesy Notice	\$0.00
10 days after Courtesy Notice	First Notice	\$100.00
10 days after First and Subsequent Notices	Second and Subsequent Notices	\$250.00

The Association shall by first-class mail or e-mail where the Owner has opted into receiving communications from the Association by e-mail provide the Owner all notices of violation issued by the Association. The Owner shall be responsible for the payment of all fines imposed pursuant to this new construction committee directive violations policy.

5. Notification of Violation. The notice of violation shall be in writing and shall describe the violation, the applicable provisions of the governing documents violated, and the requirement

that the violation be cured by a stated deadline. The Owner is encouraged to contact the Association if additional information is needed, to discuss special circumstances, or to request additional time to correct a violation. The following provisions are applicable to notices sent to Owners by the Association:

a. **Courtesy Notices.** The Owner will have ten (10) days from the date of a courtesy notice to cure a violation. The Association will not assess any fine in connection with a courtesy notice.

b. **First Notice.** The Owner will have ten (10) days from the date of a first notice to cure a violation. The Association shall assess a fine in the amount of ONE HUNDRED AND 00/100 DOLLARS (\$100.00) to the Owner's account upon issuance of the first notice. Any first notice sent shall provide instructions to the Owner of his/her/their right to a hearing. A written request for hearing which is properly signed by the Owner and dated must be postmarked within fourteen (14) days after the fourth notice is mailed. Failure of the Owner to request a hearing in writing within the required time period shall constitute a waiver of the right to a hearing.

c. **Second and Subsequent Notices.** The Owner shall have ten (10) days from the date of a second and subsequent notice to cure a violation. The Association shall assess a fine in the amount of TWO HUNDRED FIFTY AND 00/100 DOLLARS (\$250.00) to the Owner's account upon issuance of the second and each subsequent notice.

6. **Hearing.** Upon a timely request by an Owner receiving a first notice of violation, the Board will conduct a hearing at which any of the following actions may be imposed:

a. Waive the fine.

b. Deny request to waive fine. However, if the violation is not cured within ten (10) days or a longer period as may be established by the Board, the violation shall be deemed a continuing violation and the Board may impose additional fines without notice and any opportunity to be heard.

c. **Cure of the violation through self-help.** The Association may take any action it deems necessary to bring the Unit in compliance with the governing documents of the Association, the Guidelines for Sustainability, and/or directives of the NCC and charge the costs of doing so to the account of the Owner at any time after the issuance of a first notice by the Association.

d. **Injunctive relief against the continuance of such violations through the filing of an action with the courts.**

7. **Attorney Demand.** The Association may cause counsel for the Association to issue a demand letter to any Owner who fails to cure a violation of the governing documents, the Guidelines for Sustainability, and/or directives of the NCC at any time after the issuance of a first notice by the Association. The costs and attorney fees associated with the issuance of a demand letter by counsel for the Association shall be charged to and the responsibility of the Owner.

8. Action for Injunctive Relief. The Association may file suit to seeking injunctive relief requiring the Owner to bring the Unit into compliance with the governing documents of the Association, the Guidelines for Sustainability, and/or directives of the NCC or to recover monetary damages at any time after the issuance of a first notice by the Association. All costs (including each and every cost whether permitted or excluded under the applicable rules of procedure) and attorney fees associated with the filing of the action and the exercise of post-judgment enforcement of any judgment arising out of the action shall be charged to and the responsibility of the Owner. Collection of any money judgment awarded as part of an action for injunctive relief will be vigorously pursued in the manner described in the Assessment Delinquency Policy.

9. Non-Exclusive Remedies. The rights and remedies of the Association stated in herein are non-exclusive and the Association may exercise any additional rights and remedies available to the Association pursuant to the Articles of Incorporation, By-Laws, CC&Rs, the Guidelines for Sustainability, the directives of the NCC, and/or rules and regulations of the Association in addition to or in lieu of the rights and remedies stated herein.

The above policies are effective upon adoption hereof and will remain in full force and effect until revoked.

**SIGNATURE PAGE**

\_\_\_\_\_  
Owner's Name (Print)

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Builder's Name (Print)

\_\_\_\_\_  
Builder's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
NCC Chairman Name (Print)

\_\_\_\_\_  
NCC Chairman Signature

\_\_\_\_\_  
Date