

# HIGH DESERT RESIDENTIAL OWNERS ASSOCIATION, INC

## **New Construction Committee Policy**

Approved

October 28, 2016

### **Authority**

Article XI, Section 11.2 (a) of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for High Desert Residential Properties, recorded on August 18, 2011 (the "CC&Rs") empowers the Board of Directors of the High Desert Residential Owners Association, Inc. ("HDROA" or the "Association") to appoint a New Construction Committee (the "NCC") to exercise "exclusive jurisdiction over all original construction" in the High Desert communities. This New Construction Committee Policy ("Policy"), adopted pursuant to Article III, Section 3.16 of the second Amended and Restated By-Laws of the High Desert Residential Owners Association, Inc. adopted August 15, 2011, sets forth the policy of the Board with respect to the appointment of members of the NCC, governance, and operations of the NCC. However, nothing herein is intended to supersede the provisions of the CC&Rs, Guidelines for Sustainability (as revised and supplemented), or other governing documents, and in the event of any conflicts, the terms of the official governing documents will prevail.

### **Purpose**

High Desert was conceived and developed as a master planned community with initial construction in each of its Villages approved by the New Construction Committee under control of the Declarant in accordance with the land development, architectural, and design guidelines set forth in Article XI of the CC&Rs. To preserve and maintain the aesthetic character and values of High Desert properties, subsequent new construction taking place in existing Villages must be compatible with the overall design, style, and theme of each Village as originally approved. The maintenance of an effective process for regulating such new construction will help assure adherence to established architectural standards, promote the continuity of community character, and assist in protecting the property values of all Owners.

To ensure all new development meets High Desert architectural and design standards, the NCC may consider the following with reviewing proposed plans:

- visual and environmental impact,
- ecological compatibility,
- natural platforms and finish grade elevation,
- harmony of external design with surrounding structures and environment, and
- location in the relation to surrounding structures and plant life.

### **Background**

The High Desert Residential Owners Association Board of Directors assumed responsibility for appointing the NCC and managing its operations from the Declarant in March of 2010.

There are two separate Guidelines for Sustainability: (1) Estate and Premier Homes (revised August 15, 2013 and September 23, 2014), and (2) Builder Homes (revised January 20, 2014 and September 23, 2014). Also, there are 14 Supplemental Guidelines which apply to the various villages within High Desert. All of these documents may be found on the High Desert website ([www.highdesertliving.net](http://www.highdesertliving.net)).

### **Terminology**

Unless otherwise indicated by the context, the words "Guidelines for Sustainability" used in this Policy include both the Guidelines for Sustainability for Estate and Premier Homes and the Guidelines for Sustainability for Builder Homes, as well as the 14 Supplemental Guidelines.

### **Committee Composition**

In accordance with Article 11.2 of the CC&Rs, the NCC shall consist of a Chairperson and two to four additional Members, appointed by the Board of Directors. Members need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. Preference shall be given to Owners who are also current residents of the community, who shall serve without compensation. Members appointed shall serve at the pleasure of the Board of Directors, which reserves the right in its discretion to remove or replace a Member of the NCC at any time, with or without cause.

### **Authority and Responsibility**

The primary responsibilities of the NCC are to:

- Receive, review and approve or disapprove all plans and applications for new home construction in High Desert in accordance with the applicable Guidelines for Sustainability.
- Administer the Guidelines for Sustainability to include full authority to interpret them and to determine matters of aesthetic judgment with respect to new construction.
- Amend the Guidelines for Sustainability, subject to the review and approval of the Board.
- Authorize variances from compliance with any of its guidelines and procedures under the circumstances described in Section 11.7 of the CC&Rs and in accordance with the procedures set forth in the Guidelines for Sustainability.
- Monitor and oversee the construction phase of projects per the sections on Construction Regulations in the Guidelines for Sustainability.
- Enforce the Construction Regulations and implement the Procedures for Approval Process/Processing contained in the Guidelines for Sustainability.

### **Accountability**

The NCC is subject to the general oversight of the HDROA Board of Directors which is responsible for its appointment and periodic reviews of performance. However, the NCC's interpretation and

determination as to the Guidelines for Sustainability and matters of aesthetic judgment in individual cases shall be regarded as absolute, final, and binding, and shall not be subject to Board review.

### **Operating Procedures**

The NCC shall operate under the standards and procedures set forth in the Guidelines for Sustainability. As needs dictate, the NCC may adopt forms, records and/or procedures to guide its internal operations.

### **Recordkeeping**

The management company for the Association shall be responsible for the retention and maintenance of all records pertaining to the activities and decisions of the NCC.

### **Professional Services**

The NCC may, from time to time, employ consultants in professional areas (architects, engineers, surveyors, landscape designers, etc.) to assist in its evaluation of requests and/or may engage legal counsel to represent it and/or consult with during and/or in connection with hearings. Fees for such services, however, must be approved in advance in accordance with standard HDROA expenditure control policies.

### **Timeliness**

In accordance with the Guidelines for Sustainability for Estate and Premier Homes, the NCC shall make reasonable efforts to promptly complete First Plan Reviews and Final Plan Approvals and provide Owners with written responses within fifteen (15) business days of submittal. Similarly, in accordance with the Guidelines for Sustainability for Builder Homes, the NCC shall make reasonable efforts to promptly complete Sketch Plan Reviews and Final Plan Approvals and provide Owners with written responses within ten (10) business days of submittal.

At a minimum the NCC shall not exceed the 45-business day limit for responding to requests set forth in Section 11.4 of the CC&Rs. In all cases the NCC shall strive, consistent with performing a thorough and competent review, to provide a timely and prompt response to each party that submits a new construction request.

### **Application Review Fee and Construction Deposit**

The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

After the Pre-Design Meeting with the Owner/Developer and/or Architect, and prior to any review and approval action, the Owner/Developer shall be required to pay the Association an application review fee and construction deposit for each lot in the amount of \$8,000 for Estate and Premiere Homes lots, \$4,000 for semi-custom Builder Homes lots ("Application Review Fee/Construction Deposit"). Part of each Fee will be used to cover the usual and customary amounts for professional services required to properly evaluate requests and part will be used as assurance of applicant's intent to comply with the

provisions of the Guidelines for Sustainability and adhere to the submitted plans as approved. The expenses for professional services may vary with the size and complexity of the project and the completeness of each submission.

The deposit may be used by the NCC to cure problems of noncompliance with the Guidelines for Sustainability if they are not corrected by the Owner/Developer/Builder upon ten (10) business days' written notice to do so. In such cases, both the Owner/Developer/Builder and the Board shall be notified of the estimated amount of the charges not less than five (5) business days in advance of any work being scheduled by the NCC. The Owner/Developer/Builder shall be asked to acknowledge in writing that such charges are required and agree to accept the charges before proceeding with consideration or continuation of the project. However, any refusal or failure of the Owner/Developer/Builder to acknowledge or agree shall not bar the NCC from using the Owner's/Developer's/Builder's Construction Deposit/Bond to cure the subject problem of noncompliance with the Guidelines for Sustainability.

During construction, if the cost of Reviews and Approvals or NCC corrective actions reduces the deposited funds to 50% percent of the initial amount, the owner shall be required to restore the deposited funds to the original amount before further construction or NCC actions are taken.

Within a reasonable time of NCC final approval (usually 10 – 15 business days), the owner/builder shall receive an accounting of all funds spent on the Review and Approval Process and any corrective actions taken. At that time the balance of the deposited funds shall be refunded without interest to the owner in accordance with the Guidelines for Sustainability.

#### **Duration of Approvals**

In accordance with the CC&Rs, all approvals granted by the NCC automatically expire after 12 months if construction has not commenced unless a waiver of the requirement is specifically requested and granted by the NCC. Construction must be substantially complete within one year of commencement of construction.

#### **Denied Requests**

Any person requesting a review of an NCC decision by the Board of Directors shall bear in mind the provisions of CC&Rs Article XI, Section 11.2(c), which states, in part, that the NCC shall have sole and full authority to interpret the Guidelines for Sustainability and to determine matters of aesthetic judgment. Their interpretation and determination as to the Guidelines for Sustainability and matters of aesthetic judgment shall be final, conclusive and binding ..." Thus, any review by the Board of Directors shall be limited to determining that all applicable administrative procedures, rules, and standards have been properly followed, and shall not include a "de novo" review of any decisions of the NCC interpreting the Guidelines for Sustainability and/or determining matters of aesthetic judgment.

Any Owner who has a request denied by the NCC may within ten (10) business days from the date of the denial, ask for a review of the decision of the NCC by the Board of Directors, but only for alleged procedural errors. The Board's decision shall be final. All requests for hearings and/or reviews must be in writing and state the reason(s) for the request.

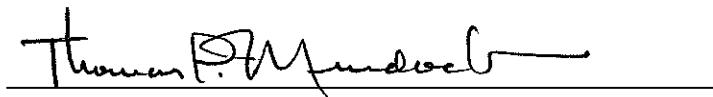
## No Precedents

Each proposed site plan and building design will be evaluated for appropriateness to their compliance with the objectives of the Guidelines for Sustainability. Each decision of the NCC shall pertain only to the specific request at hand, and does not establish a precedent to be applied, either retroactively or prospectively, to any other similar or related request. However, the NCC shall keep in mind Section 12.5 (a) of the CC&Rs, which provides that similarly situated Owners and occupants shall be treated similarly.

## Enforcement

Other than as provided in the Procedures for Approval Processing and in the Construction Regulations in the Guidelines for Sustainability, the NCC shall have no authority to enforce its decisions or to impose sanctions for noncompliance. That authority is reserved to the HDROA Board of Directors pursuant to Article III, Section 3.21 of the Bylaws and Article XI, Section 11.9 of the CC&Rs.

Adopted by the Board of Directors on October 28, 2016.



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Approved

Adopted: December 15, 2010

Revised: April 20, 2011

Revised/Approved: April 19, 2016

Revised and Approved October 28, 2016