

RESTRICTIVE COVENANTS OF
PICACHO HILLS DEVELOPMENT

SUBDIVISIONS
VILLA CHIQUITA AND VISTA DEL MONTE
DONA ANA COUNTY, NEW MEXICO

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A. PREAMBLE

A. 1. Property Covered. The undersigned hereby make the following declarations as to the limitations, restrictions and uses of lots in Picacho Hills Development in the Subdivisions of Villa Chiquita and Vista Del Monte in Dona Ana County, New Mexico. The property is sometimes referred to as the "Property" and the "Land."

A. 2. Term. This document and its provisions shall be in full force and effect upon all of the described property from the date of recording hereof for a period of fifty (50) years, at which time it shall be automatically renewed for an additional term of fifty (50) years, unless amended or replaced by an affirmative vote of seventy-five per cent (75%) of the then lot owners, and this document and its provisions shall run with the described land and shall be binding upon all parties and all persons claiming under the undersigned, for the benefit and limitation upon all future owners of the property.

A. 3. Purposes. The purposes of these covenants are to insure the use of the property for attractive residential purposes only; to prevent nuisances; to prevent the impairment of the attractiveness of the property; to maintain the desired tone of the community and thereby to secure each site owner of the full benefit and enjoyment of his property, with no greater restriction on free and undisturbed use of his site than is necessary to insure the same advantages to the other site owner; and to allow only that use which is consistent with these covenants, whether or not the same are embodied in the conveyance or other instrument affecting title to the property.

B. COVENANTS

B. 1. Land Use and Building Types. The land shall be used for single-family residential dwelling purposes only. No building or structure of any kind shall be erected or permitted to remain on any building site other than one singlefamily dwelling unit of no more than two stories in height where allowed together with an attached or detached private garage, and attached or detached servants quarters. Plans for all such buildings must have been approved as hereinafter specified. As used herein, a "building site" means that area consisting of one or more lots of any portion hereof designated by an owner as the location upon which a single family residential dwelling, along with all permissible outbuildings will be constructed.

The regular practice of any business in a residential area, including professional businesses such as engineering, medicine, law, etc, is prohibited. However, nothing shall keep a person from having a private office where he might work at home as long as it does not involve more than an occasional use of an employee and does not involve regular visits by clients or customers.

Picacho Hills Development Company, Inc. reserves the right to erect structures on their property without approval from the Architectural Review Committee nor a change in the Restrictive Covenants of the Picacho Hills Development. It should be noted however that the Picacho Hills Developers hold the interest and welfare of the Subdivision uppermost in its priorities.

B. 2. Approval of Architecture. No construction, remodeling, or improvements of any structure of any kind, including buildings, walls, fences, sidewalks, and driveways, shall be erected or allowed to remain on any building site unless the plot, house, floor, and construction plans and elevation, and all other building plans, shall have first been reviewed and approved by the Architectural Review Committee as hereinafter provided. Such plans shall be reviewed and approved to accomplish the purposes of these covenants and to consider the harmony of exterior design with existing or proposed structures, location with respect to topography, finish grade elevation, siteing, and water drainage.

The Architectural Review Committee may require that the construction of fences or other structures be of specified design so as to maintain harmony of design and to facilitate water drainage. Notwithstanding anything herein to the contrary, approval of the Architectural Review Committee shall not waive or otherwise amend the responsibility of any owner or contractor to satisfy all federal, state, and local building requirements, including building codes

B. 3. Dwelling Quality and Size. A dwelling with less than 1150 square feet, exclusive of open porches and garages will not be permitted on lots located within Villa Chiquita Subdivision of Picacho Hills Development. The ground floor of the main structures, exclusive of one-story porches and garages, shall be no less than 800 square feet for a dwelling of two stories. Lots 17-24 are limited to single story structures.

A dwelling with less than 1500 square feet, exclusive of open porches and garages will not be permitted on lots located within Vista Del Monte Subdivision of Picacho Hills Development. The ground floor of the main structure, exclusive of one-story porches and garages, shall be no less than 1000 square feet for a dwelling of more than one story. Lots 1-11 are limited to single story main residence structures. Garages may be allowed split level from the living area of the home, however.

The Architectural Review Committee has the authority to grant variances from the provisions requiring a specified number of square feet in area for single and two-story dwellings. This variance power is granted in recognition of the difficulty in accurately defining and calculating the total square footage of the qualifying floor area in some forms of residential architecture. Therefore, where in the unanimous opinion of the Committee, the residential structure is of such excellent architecture or the materials are of such superior quality that the resultant structure would be of unquestioned value enhancement to all structures in its area, then the actual calculation of qualifying square foot floor area may be waived.

B. 4. Location of Structures.

B. 4.a. Setback Lines. Setback lines in Villa Chiquita are as follows: 25 feet from the front of the lot, a 5 foot setback on all side yards, except on lots 1-8 and 21-36 where a 5 foot set back on side yards is required only on one side with zero lot line or common walls allowed on the other side; and a 25 foot setback from the back property line on all lots. Where a structure is planned on the building site closer than the 5 foot set back on the side lot line no openings, either windows or doors, will be allowed. If zero lot line is used, the exterior wall must be finished to conform with the remaining exterior of the home. If a common wall structure is planned to connect with the adjoining lot, both structures must be built at the same time. No unfinished exposed common walls will be allowed. Corner lots 3 and 4 require a 30 foot setback on side yards which border the street to allow for an uncongested area. (See filed plat for specific information concerning set back lines on individual lots.)

Setback lines in Vista Del Monte require a minimum of 25 feet along the front lot line, 15 feet along the back line and 5 feet on each side. No building shall be located on any building site nearer to the front lot line or side street lot line than is indicated on the recorded plat.

B. 4.b. Building Parts. For purposes of location of structures, porches, eaves, and all other parts of a building shall be considered part of the structure.

B. 4.c. Yard Walls and Fences.

B. 4.c. (1) Retaining Walls. The Architectural Review Committee may require that retaining walls be erected, in which event the location and design shall be approved by the Committee.
B. 4.c. (2) Walls and Fences. No fence or wall shall be erected or allowed to remain on any building site without prior written approval of the Architectural Review Committee. The location and design shall be approved by the Committee.

B. 4.d. Party Walls and Fences. A party wall or fence is a wall or fence constructed on a property line with a resulting encroachment on an adjoining lot by agreement of the adjoining lot owners. The duty to maintain a party wall or fence shall be shared equally.

B. 4.d. (1) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the properties and placed on the dividing line between the lots shall constitute a party wall (common wall), and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls (common walls)

and the liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. 4.d. (2) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

B. 4.d. (3) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

B. 4.d. (4) Weatherproofing. Notwithstanding any other provision of this article, an owner who by his negligent or willful act causes the part wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

B. 4.d. (5) Right to Contribution Runs With Land. The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.

B. 4.d. (6) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

B. 4.e. Multiple Lot Ownership. Should any building be constructed on more than one lot, the lines of lot ownership shall be used for determining the front, rear, and side lot lines.

B. 5. Easements and Their Upkeep.

B. 5.a. Easements. Easements for installation and maintenance of utilities and other uses are reserved, and are hereby expressly acknowledged and granted, as shown on the recorded plat. Upon the described easements, no structure, ground cover, planting, or other material shall be placed or permitted to remain except as may be authorized in writing by the Architectural Review Committee.

B. 5.b. Upkeep. The easement area of each lot and all improvements thereon shall be maintained by the owner of the land, except for those improvements for which the easement owner may be responsible, as determined by the Architectural Review Committee. The owner of each lot shall also be responsible for maintaining the strip of land between his property line and the edge of the street easement on the near side of any street adjacent to or in front of the owner's lot.

B. 6. Nuisances. No noxious or offensive activity shall be carried on upon the property, nor shall any activity be carried on which may be or may become an annoyance, nuisance or offensive activity. The listings contained herein are intended to be examples of such activities and are not inclusive.

B. 6.a. Parking of Vehicles. No vehicle, conveyance, trailer, trailerhouse, boat or recreational vehicle, except personal automobiles, shall be parked on the streets in front of, behind or beside any building site. All such vehicles, if parked within Picacho Hills Development, shall be parked in the areas designated for such use by the Architectural Review Committee except for the limited time used for cleaning or servicing by owner.

B. 6.b. Storage of Objects. Inoperable, dilapidated or abandoned vehicles, conveyances, trailers, boats, equipment, structures, machinery or similar objects, whether operable or inoperable, shall be deemed unsightly nuisances and shall not be permitted to remain on the property.

B. 6.c. Motorcycles and Other Recreational Vehicles. All two- and three-wheeled motorized vehicles, cycles, and dune buggies are restricted to operation for the purposes of entering and leaving the residential areas of the subdivision only. No excessive travel within the boundaries of the subdivision will be allowed and cycles and dune buggies are expressly prohibited off the paved areas. Repeated complaints regarding excessive noise will result in action taken by the Architectural Review Committee to correct the situation (See C.2.b.). Parking for these vehicles will be limited to inside individual garages or in the area designated for recreation vehicles by the Architectural Review Committee.

B. 7. Temporary Structures. No structures of a temporary character, trailer, mobile home, shed, shack, tent, garage, barn, swimming pool cover, recreational vehicle or other structure or vehicle shall be located upon any lot and be used as a residence, or otherwise, temporarily or permanently, except as may be authorized by the Architectural Review Committee.

B. 8. Signs. No sign of any kind shall be displayed to the public view on any lot, except as may be authorized in writing by the Architectural Review Committee.

B. 9. Exploration or Mining Operations. No exploration, drilling, development operations, or refining or quarrying of any kind shall be permitted upon the property. No derrick or other structure designed for use in boring for oil, natural gas, water or any other substance shall be erected or permitted to remain upon any lot.

B. 10. Individual Water and Sewage Systems. No individual water system or individual sewage disposal system shall be constructed or permitted to remain on any lot, except as may be approved by the Architectural Review Committee.

B. 11. Animal Control.

B. 11.a. Animals. No animal, livestock, or poultry of any kind may be raised, bred or kept on any lot, except dogs, cats, or other household pets, provided that such household pets are not kept, bred or maintained for any commercial purpose or in quantities determined to be excessive by the Architectural Review Committee.

B. 11.b. Control of Animals. When allowed to be kept, all pets must be kept within a fence or bounded area upon the owner's property and must be accompanied by the owner and on a leash when outside the fenced or bounded area.

B. 12. Garbage. No garbage, refuse, junk, trash, rubbish or other waste or obnoxious or offensive material shall be permitted to accumulate upon the property. All such materials shall be kept in sanitary containers and shall be disposed of in accordance with accepted sanitary practices as interpreted by the appropriate governmental agency and the Architectural Review Committee. The Architectural Review Committee may, where it deems such to be architecturally or aesthetically desirable, require that a suitable alcove, walled-in container or other structure to serve as a garbage container be constructed. No incinerator shall be kept or operated upon the property. Every dwelling shall install and maintain a kitchen trash compactor. All garbage, trash, and other refuse shall be placed in sealed, plastic containers and deposited in designated areas for pickup on designated days.

B. 13. Building Construction.

B. 13.a. Materials Used. All buildings constructed on the property shall be of mission stone, brick, rock, frame and stucco, adobe, or such other surfaces as may be authorized by the Architectural Review Committee. Garages, carports and permitted accessory buildings shall conform in material and design to the dwelling to which it pertains.

B. 13.b. Completion of Construction. The construction of all buildings shall be prosecuted and completed in accordance with the terms of the approval obtained from the Picacho Hills Architectural Review Committee. All such construction shall be prosecuted with diligence

continuously from the time of commencement until fully completed, and no building shall be occupied for dwelling purposes until construction has been completed. Permissible accessory buildings may not be constructed prior to the construction of the main residential structure. The Architectural Review Committee may, when it deems such necessary, require the posting of a performance bond in the form approved by the Committee prior to the beginning of the initial construction or the beginning of any remodeling or improvement to the property.

B. 14. Sidewalks. All sidewalks, where constructed, shall meet the specifications of the Architectural Review Committee. All such sidewalks shall be maintained by the property owner.

B. 15. Yard Lights. Prior to the occupancy of any residence, an outside yard light shall be installed and maintained at a location prescribed by the Architectural Review Committee, which light shall be of a design and illumination power approved by the Committee. All such lights shall be equipped with photo-electric turn-on and off devices.

B. 16. Maintenance of Property. Each owner of property shall maintain continuously all portions of all structures, including the residence, walls, fences, retaining walls, sidewalks, patios and porches, and any other portion of the property which is exposed to public view, including yards and courtyards. The area to be so maintained shall extend from and include the exterior of the residence or any wall open to public view to the street on the front of the lot, and to the rear and side lot lines.

B. 17. Maintenance of Common and Green Areas. (See B. 19. Special Services.)

B. 18. Cut and Fill. The Architectural Review Committee will require the owner, or his representative, to submit for approval any variation of the drainage plans. This will include, but is not limited to, any cut or fill over 12 inches. Any cut or fill of over 12 inches will have to be approved by a registered professional engineer before being submitted to the Architectural Review Committee for their approval.

Building slabs, footings, and foundations on any fill of over 12 inches will also require review and approval by a registered professional engineer.

Any cutting and filling of lot grades, other than natural terrains will be performed by the lot owner and not by the Developer.

B. 19. Special Services.

B. 19.a. Collection of Garbage. Garbage collection will be provided on a weekly basis.

B. 19.b. Maintenance of Common and Green Areas. A regular maintenance service will maintain areas not included in ownership of lot or the country club.

B. 19.c. Security Patrol. A regular security patrol service will be provided until such time as the Development is incorporated into a village, city or town or other entity in accordance with the laws of the State of New Mexico.

The cost of these services will be allotted proportionately to all homeowners with a monthly assessment equal to the total cost divided by the total number of homeowners. During the period from filing hereof until 50 or more homeowners are involved the total cost will be divided by 50 and each homeowner will be charged 1/50th of the cost.

B. 20. Grasses for Lawns. Only lawn grass varieties which do not produce seed heads will be permitted in the Development.

C. ARCHITECTURAL REVIEW COMMITTEE

C. 1. Creation and Composition of Committee. The Architectural Review Committee (the "Committee") is hereby created. The Committee shall consist of a minimum of three members, having one vote each, who shall be appointed by Picacho Hills Development Company, Inc., and may consist of representatives of the Picacho Hills Development (and the subdivisions located therein), various home owners associations, or other persons deemed appropriate by Picacho Hills Development Company. The Committee may have such advisory membership as may be deemed appropriate by majority vote of the members of the Committee. During the first calendar year following the filing of these covenants the Committee shall be made up of three members, Carlos Blanco, Michael Clute, and Lynn Mulholland-Heck.

C. 2. Authority. The Committee may adopt resolutions or policies, or both, not inconsistent with the laws of New Mexico, any of its subdivisions, or these Restrictive Covenants for the purposes of:

C. 2.a. Providing for the clarifications, interpretation, supplementation and construction of these Restrictive Covenants.

C. 2.b. If, after due notice has been given by the Architectural Review Committee, violation is not remedied within thirty days or whatever time limit is agreed upon, the owner of the property gives Picacho Hills Development the right to remedy the violation and agrees to be responsible for any expense incurred in that remedy. If this expense is not paid within a reasonable length of time the property owner gives Picacho Hills Development Company permission to attach a lien to his property to cover these damages.

C. 2.c. Controlling and otherwise managing Picacho Hills Development, by providing for administrative procedures, air pollution control, building requirements, fire prevention, sanitation control, traffic control, and such other procedures as may be necessary, all with minimum requirements at least equal to and not in conflict with the requirements of the State of New Mexico on the same subject.

C. 2.d. Such other purposes as may hereafter become apparent for the continued assurance of the welfare and benefit of the residents of Picacho Hills Development.

All such resolutions or policies shall be available for review in the offices of Picacho Hills Development Company, Inc., or such other location as may be designated by the Committee, and shall have the same force and effect as these Restrictive Covenants.

C. 3. Lien. To correct any violation of these Restrictive Covenants, or the resolutions and policies published by the Committee, the Committee is granted, in addition to the rights herein granted, the authority to take any action that an owner of property in these units could take. Each owner of land affected by any such action or against whom an assessment has been imposed under provisions of these covenants hereby grants to the Committee or its assigns a lien against his property and all improvements thereon for the payment of all expenses thereby incurred by the Committee and any such assessment. The lien may be foreclosed in accordance with the statutory provisions of the Mechanic's and Materialman's Lien Law of the State of New Mexico.

C. 4. Committee Procedures. The Committee shall meet at times and places to be determined by the Committee. Any party wishing to submit a matter to the Committee for consideration shall submit such matters in writing delivered to the offices of Picacho Hills Development Company, Inc., all upon such forms and in accordance with such procedures as may be hereinafter prescribed by the Committee. The Committee shall respond to such requests in writing within thirty days after the submission thereof. Should the Committee fail to so respond, any such request shall be deemed to have been denied. All plans, specifications, plot plans, requests for variances or other requests for action pursuant to these Restrictive Covenants shall be submitted in accordance with the above described procedures.

C. 5. Variances. The Committee is hereby authorized to grant variances from the provisions of these Restrictive Covenants when, in the discretion of the Committee, such variances are justified from the standpoint of aesthetics, architectural design, variety, harmony, value enhancement, or other reasons deemed by the Committee to justify a variance.

C. 6. Disclaimer. Nothing herein shall be construed to require the Committee to take any actions herein authorized. The taking of any such action by the Committee shall not constitute a waiver of this provision. The Committee shall at all times have the option to disregard its authority, regardless of prior publication of resolutions or policies.

Picacho Hills Development Company, Inc., is complying with the Department of Housing and Urban Development's Interstate Land Sales Full Disclosure Act by meeting the criteria of the self determining exemption of the Sparkman-Tower Amendment. Picacho Hills Development has met the Dona Ana County and Las Cruces City requirements and regulations governing subdivision development.

D. SAVINGS CLAUSE

In the event any part of these Restrictive Covenants shall be held to be ineffective or be otherwise invalidated by a court of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall not thereby be affected.

In WITNESS of the foregoing Restrictive Covenants of Picacho Hills Development, Subdivisions of Villa Chiquita and Vista Del Valle located in Dona Ana County, New Mexico, we have hereunto set our hands this ____ day of _____, _____.

Picacho Hills Development Co., Inc.

The foregoing instrument was acknowledged before me this ____ day of _____, _____.

My commission expires

Notary Public