

HYATT & STUBBLEFIELD, P. C.

Memorandum

Memorandum re: Governance Structure of Mariposa Community Association

Date: June 1, 2004

Part One: Introduction

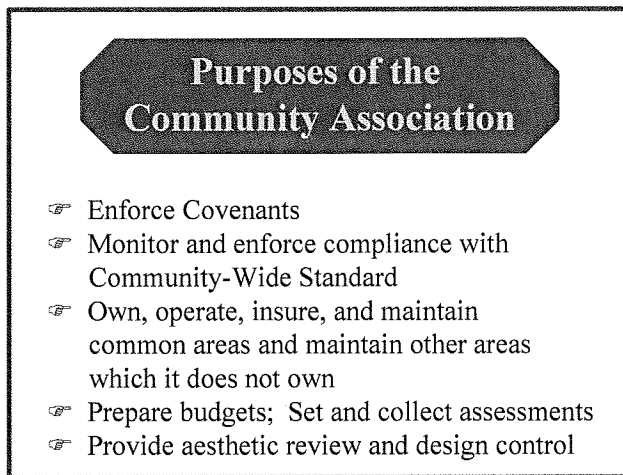
This memorandum discusses the governance structure of Mariposa. It is structured in a question and answer format designed to give an overview of the key governance issues. The answers include specific references to certain sections of the "Governing Documents" in which the concepts are contained. Defined terms are capitalized throughout and surrounded by quotation marks when used for the first time.

In our efforts to continually lead the way in community association innovation, we realized that the best thing we can do is make the governing documents approachable and make them tools that the owners will actually use. To this end, we threw out our previous conceptions of how governance documents should look and read. Over the past few years we have consciously attempted to revise the format and the tone of these documents. We have attempted to turn them from documents which are full of legalese which nobody wants to read into user-friendly, informative works which can be used to emphasize the benefits and obligations of living in a planned community like Mariposa. We purposefully chose to make the "Community Charter" look less like a contract or other legal document and more like a guidebook. We have added graphics. We also added "key boxes," which are similar to the helpful hints you see in the "For Dummies" type of books to help explain the more legalistic concepts in the documents, therefore making them easier for non-lawyers to understand. We also added space for "notes and thoughts" to heighten the perception that this document is a tool to be used.

You will also notice that the language in the governing documents is subtly different. The "Declaration of Covenants, Conditions and Restrictions" is now called a "Community Charter." We even changed the name of "Declarant" to "Founder," in an attempt to leave behind the baggage that goes along with the former concept. We also made a concerted effort to preserve developmental flexibility while further promoting a community feel. The Charter is divided into Parts, Chapters, and Sections. A page with a quotation on it separates the Parts. We have also inserted the Mariposa logo into the documents as a watermark.

Part Two: The Association

Essential to a discussion of what a community association may do or how it is to operate is a clear understanding of what a community association is. In describing the development of Mariposa, a description of the Mariposa Community Association, Inc. ("Association") is critical to understanding the development of the community.



The Association is the non-profit organization created to maintain and oversee the operation of the Mariposa Residential Property and empowered through the Community Charter for Mariposa Residential Property ("Charter") that will be recorded against the residential property within Mariposa. The Association serves as the central policy-making body and the corporate structure serving and representing the residents of Mariposa. The Association is responsible for the internal administration of the development, ownership, and operation of the commonly-owned property within Mariposa and the maintenance of property conveyed to or assigned to the Association by High Desert Investment Corporation as the developer of Mariposa. In addition, the Association may perform a wide variety of other obligations which High Desert Investment Corporation may delegate to it. Overall, the Association was founded to serve the common interests of the Mariposa community.

In a basic sense, the Association can be defined by three characteristics:

- Governance – The Association, through the recording of the Charter, has the power to control the use and construction of the common property used by all residents and owners within Mariposa as well as the lots or "Units" within Mariposa. This governance power is used to assure a harmonious, cohesive, and energetic development for all owners within Mariposa.
- Membership – Membership in the Association is mandatory, with each purchaser of property within Mariposa becoming a member of the Association by simply accepting a deed to property within the development. It is an automatic process.

- Assessments – A necessary power of the Association is the power to impose assessments or fees against the owners within Mariposa. Through the imposition and collection of assessments, the Association can collect the necessary funds to operate and maintain the parks and other common facilities and provide services to the owners within Mariposa.

To facilitate an understanding of the functioning and operation of the Association and the governance structure for Mariposa, the following question and answer summary is provided to assist you.

1. HOW IS THE ASSOCIATION CREATED?

The Governing Documents for Mariposa establish, essentially, a private constitution for the organization, development, and operation of the community. The "Governing Documents" include:

- the Community Charter for Mariposa Residential Property ("Charter");
- the By-Laws of the Mariposa Community Association, Inc. ("By-Laws");
- the Articles of Incorporation of the Mariposa Community Association, Inc. ("Articles");
- the Recorded Supplements;
- the Guidelines for Sustainability;
- the Rules; and
- the Board of Directors' resolutions.



2. HOW DO THE GOVERNING DOCUMENTS CREATE THE ASSOCIATION?

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 The Charter and any Supplements are recorded in the Sandoval County public land records and become a part of the chain of title to each parcel of property within Mariposa. The other Governing Documents are adopted through procedures set forth in the Charter or by virtue of the Association being incorporated as a nonprofit corporation under New Mexico law. Recording the Governing Documents creates and empowers the Association to operate and maintain the facilities and property within Mariposa.

3. WHO ARE THE MEMBERS OF THE ASSOCIATION?

Membership consists of two groups. The first membership group consists of all the owners of the residential property within Mariposa except High Desert Investment Corporation. Every owner within Mariposa automatically becomes a member of the Association. The second membership group consists of one member, High Desert Investment Corporation, as the "Founder" of the Association and as the developer of Mariposa; however, its membership is not perpetual. [Charter Ch. 4]

4. HOW LONG WILL HIGH DESERT INVESTMENT CORPORATION BE A MEMBER OF THE ASSOCIATION?

High Desert Investment Corporation's "Founder Control Period" begins on the date of the Association's incorporation and terminates upon the following events occurs: (a) 75% of the total number of Units permitted by the Master Plan for the property described in Exhibits "A" and "B" of Charter have certificates of occupancy issued thereon and have been conveyed to Owners other than Builders; (b) December 31, 2025; or (c) the Founder, in its discretion, so determines. The "Founder Membership" will terminate two years after the expiration of the Founder Control Period. [Charter §§ 2.1, 4.1(b)].

5. WHAT HAPPENS AFTER HIGH DESERT INVESTMENT CORPORATION'S MEMBERSHIP IN THE ASSOCIATION IS TERMINATED?

After the termination, High Desert Investment Corporation will be treated like any other owner within Mariposa. After Mariposa is up and running, the owners will become the driving force behind the Association. [Charter Ch. 4].

6. WHO GOVERNS THE ASSOCIATION?

The Association is governed by its Board of Directors, which is responsible for administering the Association's affairs and is given the power to make decisions and take action on behalf of the Association on most matters, including maintenance standards for the community, budgets for the Association, levying and collecting assessments, making and amending rules and regulations, and enforcing the covenants, conditions, and restrictions set forth in the Governing Documents. Generally, the Board will handle the Association's day-to-day operations. In addition, the Board has the authority to appoint committees to assist in the performance of the Board's duties. [Charter § 2.3, By-Laws §§ 3.15, 3.16].

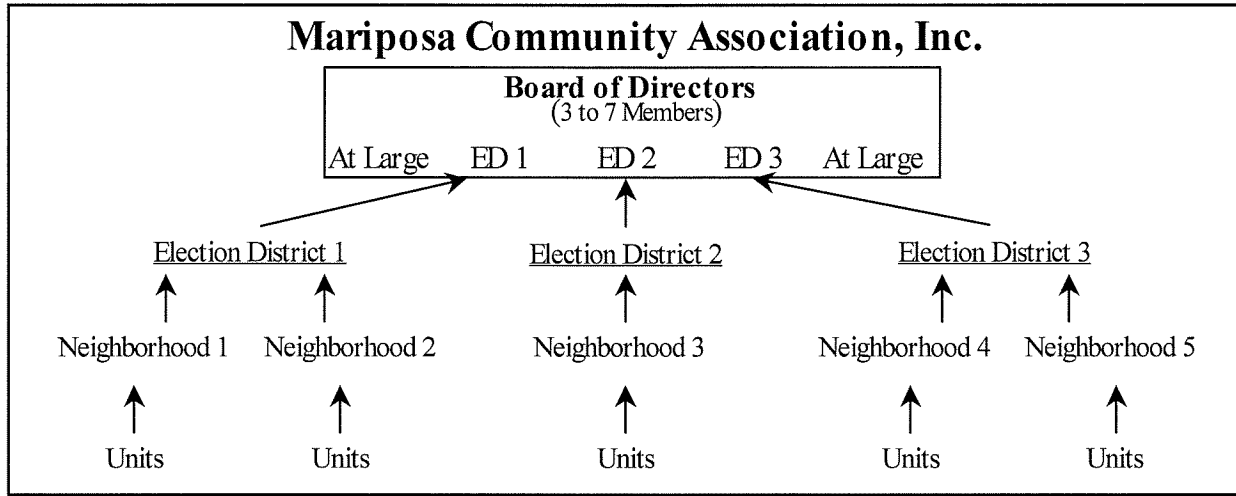
The initial directors will be appointed by the Founder and set forth in the Articles. The Founder may appoint, remove, and replace Board members until termination of the Founder Control Period. During such period, the Voting Delegates shall be entitled to elect a minority of the total number of directors, who shall be elected at large, according to the schedule set forth in the By-Laws. [By-Laws § 3.3].

The Board shall be increased to seven directors not later than the first annual meeting after termination of the Founder Control Period. The directors will be elected both by district and at-large, much like in a congressional election, for purposes of creating a balance of representation throughout the community. Voting Delegates will be entitled to elect six directors, with an equal number of Owner Directors elected by the Voting Delegates representing each "Election District" and any remaining Owner Director slots filled at large by the vote of all Voting Delegates. (See the diagram on page 5 of this memorandum). [By-Laws §3.3].

7. WHO ARE THE ASSOCIATION'S OFFICERS?

The officers of the Association are elected by the Board and include a president, a vice-president, a secretary, and a treasurer. The president and secretary are required to be elected from

among the Board members. The same person may hold more than one office, except the offices of president and secretary. [By-Laws §4.1].



The number of Neighborhoods and Election Districts shown is for illustrative purposes only; the actual number may vary. All Election Districts will vote for election of directors to fill any "at large" seats.

8. HOW ARE VOTES ALLOCATED TO MEMBERS OF THE ASSOCIATION?

Each Unit in Mariposa is assigned one equal vote for purposes of electing the Association's Board of Directors and voting on various matters that require a vote of the membership. [Charter § 4.2]. The Founder does not vote on a per-Unit basis. Instead, the Founder is given the right to appoint a majority of the members of the Board of Directors until its Founder membership expires, and the Founder's consent is required for various actions of the Board, the membership, and the committees. Although the Founder will appoint a majority of the Board members for a period of time while Mariposa is being developed, the entire Board will eventually be elected by and from the owners. [By-Laws § 3.3(c)].

9. HOW IS THE VOTING SYSTEM STRUCTURED?

In light of the large number of homes planned for Mariposa, the Governing Documents provide for a representative system of voting. Each residential area within Mariposa in which owners have common interests other than those common to all Owners, such as a common theme, entry feature, name, product type, or geographical distinction, may be designated as a separate "Neighborhood." [Charter § 3.2]. Generally, the Founder will establish Neighborhood boundaries as development progresses.

The Owners within each Neighborhood in Mariposa will elect a representative or "Voting Delegate" to cast all of the votes assigned to lots in their Neighborhood on any matter requiring a membership vote. The Voting Delegate will cast all votes attributable to the Units owned by Owners in that Neighborhood on all Association matters requiring a membership vote, except as the Governing Documents otherwise provide. [Charter § 4.2]. However, Owners are also encouraged to attend Association meetings and to share their thoughts and suggestions with board members and with their Voting Delegates. It is their Association.

10. WHAT DOES THE ASSOCIATION DO?

The Association was established to own, maintain, and operate various common areas and amenities for the use and benefit of the owners and residents of Mariposa. It is also responsible for enforcing community-wide standards of use, maintenance, and architecture that will help to preserve the appearance and desirability of Mariposa for years to come. The Association may sponsor various activities and events for our residents that give everyone opportunities to connect with their neighbors, make new friends, and enjoy the lifestyle that Mariposa has to offer. [Charter p. 1, § 9.2, By-Laws § 3.16].

11. WHO OWNS THE COMMON FACILITIES AND PROPERTY WITHIN MARIPOSA?

The Founder owns the common facilities and property until such time as it transfers ownership to the Association. Subject to the Governing Documents, the restrictions in the deed conveying the property to the Association, and the Board's rule-making authority, the Founder grants each Owner a nonexclusive right and easement to use, access, and enjoy the facilities. Each Owner may extend his or her right of use and enjoyment to family members, lessees, and social guests, subject to reasonable Board regulation. Additionally, the Board may permit use of all or a portion of the facilities or property by the public. [Charter § 9.1].

12. WHAT ARE THE MAINTENANCE RESPONSIBILITIES OF THE ASSOCIATION?

The Association is responsible for maintaining, in accordance with the Community-Wide Standard, the "Area of Common Responsibility." The Area of Common Responsibility includes the Common Area and such portions of any additional property for which the Association assumes or is assigned responsibility. These areas may include landscaping not located within the boundaries of any Unit, signage, and other features and improvements located on the Common Area. The Association is authorized to maintain property which it does not own, either by contract, agreement, or because it determines such maintenance is necessary to maintain the Community-Wide Standard established for Mariposa. Expenses for such maintenance that are the responsibility of the Association shall be a Common Expense allocated among all Units as part of the Base Assessment. [Charter §§ 9.2, 12.1].

13. WHAT ARE THE MAINTENANCE RESPONSIBILITIES OF THE OWNERS?

Owners are responsible for maintaining their own Units, including all improvements comprising the Units. All maintenance must be performed in accordance with the Community-Wide Standard as established by the Founder. If any Owner fails to perform its maintenance responsibilities, the Association may perform the maintenance on the Owner's behalf and charge the Owner all costs for the work. [Charter §§ 6.1, 12.4(b)].

14. HOW IS THE ASSOCIATION FUNDED?

The primary source of funding to cover the Association's ongoing expenses will come from assessments that the Association charges to each Owner. Every Owner is responsible for paying assessments.

15. WHAT TYPES OF ASSESSMENTS WILL OWNERS HAVE TO PAY?

To fund the expenses to upkeep the common facilities and property at Mariposa, each owner will pay "Base Assessments," which are determined annually based on a budget that the Board of Directors adopts to fund the common expenses. [Charter § 12.2(b)]. In addition, homes in some areas of Mariposa may receive additional services from the Association that are not provided to everyone. Those Owners will pay an additional "Service Area Assessment" to cover the cost of the additional services provided to them. [Charter § 12.2(c)].

Occasionally, the Association may need to levy a "Special Assessment" to cover unanticipated expenses or special items outside the regular budget. [Charter § 12.3]. However, any Special Assessment will require the prior approval of Voting Delegates representing more than 50% of the lots that will be asked to pay the Special Assessment.

If a particular Owner receives services or causes damage to the common areas, the Board of Directors may charge a "Specific Assessment" to cover those costs. A Specific Assessment is solely charged against a particular Owner. [Charter § 12.4].

16. ARE THERE ANY OTHER FEES TO BE PAID TO THE ASSOCIATION?

Each owner is responsible for paying its proportionate share of the annual expenses of Mariposa Assembly, Inc. (the "Assembly"). [Charter §§ 2.6, 12.1(c)].

17. WHAT IF AN OWNER FAILS TO PAY ASSESSMENTS?

All assessments are the personal obligation of the Owner and also constitute a lien against the Unit that has priority over all other liens except the lien of a first mortgage and certain tax liens. Assessments that remain unpaid will incur interest, late charges, costs, and reasonable attorneys' fees, all of which constitute a lien upon the Unit until paid in full. [Charter §§ 12.6, 12.7].

Owners cannot exempt themselves from liability for assessments by non-use of the common facilities, abandonment of their Units, or other means. An Owner's purchase of the Unit subjects himself/herself to these necessary remedies to ensure that each Owner pays his/her fair share of the Common Expenses.

18. WHAT IF AN OWNER HAS A PROBLEM WITH THE ASSOCIATION?

In order to encourage the amicable resolution of disputes involving Mariposa, all "Bound Parties," which include the Founder, the Association, and any individual or entity subject to the Charter, including each Owner, are required to submit their grievances to negotiation and mediation. Each Bound Party must first make a reasonable effort to negotiate its grievance in good faith. If within 30 days the parties cannot resolve the problem, they must submit the grievance to mediation. Mediation is a structured negotiation between the parties in the presence of, and with the participation of, an independent mediator. If mediation fails, the parties may then file suit or initiate administrative proceedings, as appropriate. [Charter Ch. 19].

Part Three: The Assembly

1. WHAT IS THE ASSEMBLY?

The Mariposa Assembly, Inc. is a New Mexico nonprofit corporation organized to generate, enhance, and pursue a genuine sense of community in Mariposa. Mariposa is a large community of residential property as well as business areas and community spaces and facilities. Mariposa is a participant in the greater Rio Rancho community and committed to working in cooperation with the City of Rio Rancho and with other public and private entities for community enrichment and success.

The Assembly has powers granted to it in the Covenant for Community at Mariposa ("Community Covenant"), the Articles of Incorporation of Mariposa Assembly, Inc., and the By-Laws of Mariposa Assembly. The Community Covenant will be recorded in the Sandoval County public land records and become a part of the chain of title to each parcel of property within Mariposa. The Assembly has the powers and various funding mechanisms to engage in a broad range of community activities. The Assembly's powers differ from the powers of the Association. The Assembly is not concerned with enforcement, but with empowerment.

2. WHAT WILL THE ASSEMBLY DO?

The Assembly will organize, fund, and administer activities, services, and programs including educational, cultural, volunteer, social, and environmental programs.

3. WHO WILL GOVERN THE ASSEMBLY?

The Assembly's affairs will be governed by its Board of Trustees. [Assembly By-Laws Chapter 4]. The Assembly will also have officers (President, Secretary, and Treasurer). [Assembly By-Laws Chapter 5]. The Assembly will appoint a "Community Extension Agent" to provide leadership for the overall planning, development, implementation, and continuing evaluation of programs, activities, and services to carry out the Assembly's mission. [Community Covenant § 3.1].

4. HOW IS THE ASSEMBLY FUNDED?

The Assembly will levy an annual assessment, which will be allocated among units in accordance with the assessment allocation formula set forth in the Community Covenant. In addition, the Founder may pay a subsidy to assist in funding the Assembly's activities. [Community Covenant § 2.3].

The Assembly may also charge use and consumption fees to any person who uses its services or facilities, and it may charge lower fees to Owners than non-Owners. [Community Covenant § 2.3(c)].

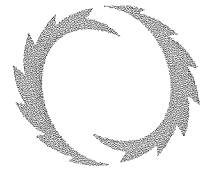
Upon each transfer of title to real property subject to the Community Covenant, the Assembly may collect a "Mariposa Enhancement Fee." This fee shall not exceed 1% of the gross

sales price of the real property transferred and will be used for purposes consistent with the Assembly's mission and with the purposes for which the Assembly was created. Certain transfers are exempt from paying the Mariposa Enhancement Fee. **[Community Covenant §2.3(f)]**

5. WHAT IF AN OWNER FAILS TO PAY ASSEMBLY ASSESSMENTS?

All assessments are the personal obligation of the Owner and also constitute a lien against the Owner's Unit that has priority over all other liens except Association liens, the lien of a first mortgage, and certain tax liens. Assessments that remain unpaid will incur interest, late charges, costs, and reasonable attorneys fees, all of which constitute a lien upon the Owner's Unit until paid in full. **[Community Covenant § 2.3(g) – (h)]**.

Owners cannot exempt themselves from liability for assessments because they do not use the services, programs, property, facilities, or for any other reason. The obligation to pay assessments is a separate and independent covenant.



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