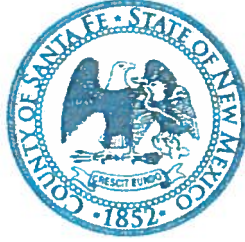


Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

**CDRC CASE # APP 15-5190
PUESTA DEL SOL APPEAL
PUESTA DEL SOL PROPERTY OWNERS ASSOCIATION INC, APPLICANTS**

ORDER

THIS MATTER came before the County Development Review Committee (CDRC) for hearing on September 17, 2015, on an Appeal from Puesta Del Sol Property Owners Association (Appellant), Matthew McQueen and Christopher Graeser, (Agent) appealing the Land Use Administrator's decision to approve a Summary Review Subdivision (Case #14-3080 Two Bens LLC.) of 11.32 acres into four lots. The CDRC, having reviewed the Application, supplemental materials, staff report, and having conducted a public hearing on the request, finds that the Appeal is not well-taken and should be denied and makes the following findings of fact and conclusions of law:

1. The Land Use Administrator approved Case # 14-3080, Two Bens LLC., Application for a Summary Review Subdivision of 11.32 acres into four lots and met requirements of Article V, Section 5.5 Summary Review Procedure and Article III, Section 2.4.2b.3 Road Requirements which states, all lots created under this section shall be provided with adequate access for ingress and egress, utility service, fire protection, and emergency services weather by a road meeting County requirements constructed within an easement and utility easement or by direct access to a public right-of-way.

2. The property approved for the Summary Review Subdivision is located at 17 Camino Terra Bella, within Section 30, Township 17 North, Range 9 East. The Applicant, Two Bens, LLC, acquired the property by special warranty deed on the 24th day of September, 2014, recorded as Instrument # 1746943, in the records of the Santa Fe County Clerk.

3. Appellant through its Agent submitted a letter appealing the Land Administrator's Decision on June 7, 2015, within the time-frame allowed for appealing the decision.

4. Appellant authorized Chris Graeser and Matthew McQueen, Graeser and McQueen, LLC (Agent) to pursue the request for an Appeal of the Land Use Administrator's decision as evidenced by a copy of the written authorization contained in the record.

5. The applicable requirements under the Santa Fe County Land Development Code, Santa Fe County Ordinance No. 1996-10, (Code) which govern this appeal are:

a. Article II, Section 2.3.4b of the Code:

Appeal of Code Administrator Decision under Section 2.3.1 to the County Development Review Committee

- i. Any person aggrieved by a decision of the Code Administrator under Section 2.3.1 may file an appeal to the County Development Review Committee within five (5) working days of the date of the Code Administrator's decision. The County Development Review Committee shall hear the appeal within sixty (60) calendar days of the date the appeal is filed. The County Development Review Committee shall make and file its decision approving or disapproving the Application or approving the Application with conditions or modifications.
- ii. A decision of the County Development Review Committee on an appeal shall become final thirty (30) calendar days after the decision is filed, unless within that month an appeal of the decision has been filed by an interested person including the Code Administrator, pursuant to Section 2.3.4c of this Article or the Board on its own initiative has decided to review the decision.

6. Appellant complied with all noticing requirements of Article II, Section 2.4.2 of the Code. Article II, Section 2.4.2 of the Code states, all zoning cases, master plans, development plans, variances, preliminary and final subdivision plats, Type V subdivisions containing six (6) or more parcels and appeals of these matters, the following public notice requirements shall be

completed by the Applicant at least twenty one (21) calendar days prior to the public Meeting. In advance of a hearing on the Appeal, the Appellant provided a certification of posting of notice of the hearing; by, sending certified letter to all adjoining property owners, posting notice boards on the property, and legal posting in the Santa Fe New Mexican on August 27, 2015, as evidenced by a copy of that legal notice contained in the record.

7. The Application submitted by Two Bens LLC proposed access to the four lots by the lot off of Camino Peralta, an existing County maintained road that is 18' in width, and is the only access road that services the proposed lots. Appellant objects to the proposed access because the community has engaged in extensive planning efforts focused on all new development using a future road, referred to as Los Suenos Trail (Hagar Road), as the main access. In 1999, the Arterial Roads Task Force, along with the County created a final report recommending the construction of Hagar Road.

8. Los Suenos Trail (Hager Road) has not been constructed and there is no timeframe when Los Suenos Trail (Hager Road) build out will occur. Hager road was developer driven and the proposed access for Suerte Del Sur and 7 other lots. Suerte Del Sur's Master Plan has expired and is no longer in place. Camino Peralta (which is the proposed access), a County owned and maintained road, is 18' in width, and is the only access road that services the proposed lots.

9. Appellant also seeks enforcement of private covenants on the subject property which require that all lots and tracts use Hagar Road as the primary access for purposes of ingress, egress, and utility placement.

10. Appellant objects to approval of the Application which proposes access via Camino Peralta because Article III, Section 2.4.2b3 of the Code requires that all lots created under this section shall be provided with adequate access for ingress and egress, utility service, fire

protection, and emergency services by a road meeting County requirements and design standards for local roads set forth in Appendix 5.B.3 which requires a 24' driving surface. Camino Peralta does not meet this standard.

11. The Land Use Administrator in deciding to administratively approve the Two Bens Subdivision, found that Camino Peralta, a County maintained road, met the criteria under Article III, Section 2.4.2b.3.a.1 which only requires direct access to a public right-of-way, rather than direct access onto a public right-of-way meeting County road standards.

Article III, Section 2.4.2b.3.a.1, Required Improvements and Standards- Roads and Access, On-Site and Off-site: "...all lots created under this Section shall be provided with adequate access for ingress and egress, utility service, fire protection, and emergency services whether by a road meeting county requirements constructed within an easement and utility easement or by direct access to a public right-of-way."

Both the County Public Works Division and the Santa Fe County Fire Department, after reviewing the Application for the summary review subdivision, approved the Application with conditions.

12. Camino Peralta is an existing 18' foot road with no shoulders or center strip, although the road narrows at points, the majority of the road is 18' feet with a chip seal driving surface and posted 25 MPH speed limit. This is a Santa Fe County maintained road. The Applicant was required to construct on-site roads to local road standards. In response to opponents supporting the Application only if it utilizes Hagar Road as its point of ingress and egress, it is critical to note that Hagar Road has not been constructed yet and there is no timeframe when Hagar Road will be built. Hagar Road would be a private road rather than a Santa Fe County road.

13. Regarding the private covenants, Santa Fe County does not enforce private restrictive covenants. Consideration of covenants is not part of the County's review or approval process when determining approval of an Application. Additionally, although the covenants designate Hagar Road as the primary access to the properties, they do not prohibit other points of access if Hagar road is not constructed.

14. At the public hearing before the CDRC on September 17, 2015, staff recommended the CDRC uphold the Land Use Administrator's decision to approve the Application for a summary review subdivision of Two Bens LLC, 11.32 acres into four lots, and deny the Appeal.

15. In support of the Appeal, the Appellants' Agent, Matthew McQueen, spoke at the public hearing, and Christopher Graeser wrote a letter in support of the Appeal memorializing the arguments made by Agent at the public hearing.

16. At public hearing, Susan McMurray, Dave Munger, Ann Noble, Elizabeth Cook-Romero, and Daniel Edgerton spoke in support of the Appeal. They addressed concern regarding the fear of future small subdivisions occurring using this exact process, and how the use of Camino Peralta would be detrimental to the community without the building of Hagar Road. Both the Land Use Administrator and the CDRC can only determine the Application and Appeal that are before them and cannot consider potential future applications.

17. In opposition to the Appeal, John Hays, Attorney for Two Bens, LLC, wrote a letter memorializing arguments in opposition to Appellants arguments. At the public hearing, Jennifer Jenkins, Agent for Applicant, spoke in opposition to the Appeal, and Ben Mossa, Two Bens LLC partner, spoke in opposition to the Appeal.

WHEREFORE the CDRC hereby upholds the Land Use Administrator's decision to approve the Two Bens Application for a Summary Review Subdivision, and denies the Appeal.

The motion to deny the Appeal passed by a unanimous 4-0 vote, with Chair Katz recusing himself.

IT IS SO ORDERED

This Order was approved by the Santa Fe County Development Review Committee on this ____ day of _____, 2015

THE SANTA FE COUNTY DEVELOPMENT REVIEW COMMITTEE

By: _____
Frank Katz, Chairperson

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

- D. **CDRC CASE # APP 15-5190 Puesta del Sol Owners Association Appeal.** Puesta del Sol Property Owners Association, Appellants, Chris Graeser, Agent, (Graeser and McQueen LLC.) request an appeal of the Land Use Administrator's decision to approve a Summary Review Subdivision (Case #14-3080 Two Bens LLC) of 11.32 acres into four lots, one lot consisting of 2.78 acres, one lot consisting of 2.66 acres, one lot consisting of 2.91 acres, and one lot consisting of 2.97 acres. The subject property is located at 17 Camino Terra Bella, within Section 30, Township 17 North, Range 9 East, (Commission District 2)
[Exhibit 4: Letters (43) in opposition to the Land Use Administrator's decision to approve a summary review subdivision; Exhibit 5: Preliminary survey of the 4-lot subdivision; Exhibit 6: Photos depicting the width of Camino Peralta, Terra Bella, Camino Espejo, Engrada, and Las Trampas]

Chair Katz recused himself from this case and excused himself from the remainder of the meeting. Member Gonzales assumed the duties of Chairman.

Mr. Dalton presented staff's report as follows:

"The Appellants state they are very concerned about the access to the proposed Summary Review Subdivision. The community has done extensive planning efforts focused on new development access via Los Sueños Trail/Hager Road. The 1999 Arterial Roads Task Force final report recommended construction of Los Sueños Trail.

"The Appellants further state; 'the residents rightly view these detailed and intentional planning prescriptive as a commitment by the County that the new development will be required to use appropriate access, not to increase significant new traffic onto their internal, already inadequate community roads which narrow to thirteen feet wide at points.'

"Staff Response: Los Sueños Trail/Hager Road has not been constructed and there is no timeframe when Los Sueños Trail/Hager Road build-out will occur. Hager Road was developer driven. Suerte del Sur's Master Plan has expired and is no longer in place. Camino Peralta (which is the proposed access) is a County owned and maintained road, is 18 feet in width, and is the only access road that services the proposed lots.

"The Appellants state Article III, Section 2.4.2b3 requires that all lots created under this section shall be provided with adequate access for ingress and egress, utility service, fire protection, and emergency services weather by a road meeting County requirements constructed within an easement and utility easement or by direct access to a public right-of-way. All on- and off-site roads shall meet the design standards for local roads as set forth in Appendix 5.B.3 which requires a 24-foot driving surface with 6 inches of compacted subgrade and 6 inches of

that adds 500 additional cars along Rabbit Road. Ms. Williams said the issue of water availability has not been dealt with and it is just too dense.

Duly sworn, Tom Wood, 40 Calle Cantando, said he has been living in the area of the application for over 30 years and the traffic volumes are unacceptable; now adding 250 units will increase that unacceptability further. Traffic control is difficult; stop signs and/or signals will merely back up traffic onto the frontage road. "It'll be a nightmare." Safety of lives is an issue. The proposed density is too high and he noted that most people live out there for the rural experience.

Under oath, Glory Brenner, 196 Rabbit Road, said her home is directly across from the building site. Ms. Brenner said motor vehicles crash through the fencing at her property a few times a year. The orange barrels were erected in response to her concerns. She said she opposes the urbanization of the existing rural life in the area. She agreed with the previous comments regarding traffic and density.

Ms. Brenner said she was speaking on behalf of Kathy O'Day who vehemently opposes this request.

The applicant was invited to respond to the residents' comments. Ms. Jenkins said the project will be served by the Santa Fe County water system. The property received approval as a large-scale mixed-use because of its uniqueness in that it is bordered by an interstate, a major and a minor arterial. The developer worked closely with staff, the CDRC and BCC to come up with this plan appropriate for this parcel. Ms. Jenkins said they have been particularly transparent throughout the planning process that potentially an apartment-type development would occur.

In regard to traffic, Ms. Jenkins they will continue to update their traffic analysis as they move through the development as well as work with DOT and Santa Fe County Public Works. Ms. Jenkins said the developer is making significant improvements to Rabbit Road along the frontage. At the western-most access point there will be a signal or a roundabout. She identified the accesses and exits into the project.

This concluded the public hearing.

Member Gonzales commented on the complications for the applicant and public to be dealing with the old code and the new code simultaneously.

Member Gonzales moved to approve the variance and master plan amendment for CDRC Case #Z/V/S 10-5363 subject to staff conditions. His motion was seconded by Member Anaya. The motion passed without opposition.

crushed gravel base course. Camino Peralta is an existing 18 foot road with no shoulders or center stripe. Although the road narrows at points, the majority of the road is 18 feet with a chip seal driving surface and posted 25 MPH Speed Limit and is owned and maintained by Santa Fe County.

“The Appellants state restrictive covenants exist on the subject property that require all tracts and lots shall use Hager Road as the primary access for purposes of ingress, egress, and utility placement. These covenants were created to insure proper access would be created for the subdivision.

“Staff Response: Private restrictive covenants are not enforced by Santa Fe County. The provisions of the covenants are not part of the County’s review and approval of any Application. Although the covenants designate Hager Road as the primary access to the properties, they do not prohibit additional points of access and Hager Road is not constructed.”

Mr. Dalton said staff recommends that the CDRC uphold the Land Use Administrator’s decision to approve the Application and deny the requested appeal.

Those wishing to speak regarding this case were placed under oath.

Matthew McQueen, counsel for the appellants, Puesta del Sol Property Owners Association, Inc. (PDS) stated the subject property is within a relatively rural area that has been subject to gradual creeping serial subdivisions. The intent of area community at-large has always been that Hager Road/Los Sueños Trail should be built. This is reflected in the Extraterritorial Area Arterial Road Plan, the Tres Arroyos del Poniente Community Plan, restrictive covenants and numerous other plans and correspondence. It was his understanding a construction agreement existed and there is \$700,000 in escrow for the purpose of constructing Hager Road.

Mr. McQueen assured the CDRC that they were not asking for enforcement of private covenants which were provided to illustrate an accommodation made for the benefit of the community by the Archdiocese, but were instead requesting that the CDRC enforce the Land Use Code.

Referring to the staff report, Mr. McQueen said County staff cites the code in the requirement for a 24-foot driving surface. Camino Peralta is 18 feet wide and narrows to 13 feet in one spot.

Mr. McQueen noted that if the appeal is granted, the applicant can build a house on the 11-acre lot which would be consistent with surrounding land use. Without being able to meet the Land Use Code the Applicant lacks a legal right to divide the property. If the applicant waits until Hager Road is built the lot division would be appropriate.

Mr. Dalton said the SLDC designates the subject area as Residential Estate which is a 2.5-acre minimum.

Mr. McQueen pointed out that the Puesta del Sol Property Owners Association does not oppose the subdivision. What they oppose is accessing the subdivision via

Camino Peralta. If this subdivision is permitted there are other 10 and 20 acre tracts that will follow.

Responding to Member Gonzales' question regarding the escrowed monies, Mr. McQueen said he understood \$700,000 was not sufficient to build out the entire road. He understood the escrow funds were subject to a private construction agreement.

Susan McMurray, under oath, president of PDS property owners association, said the association completely understands the County does not enforce covenants. However, the County is charged with abiding by the standards set forth in numerous County ordinances, many of which the residents of PDS, Agua Fria, Pinon Hills have worked on. The purpose of those standards is to ensure the residents of the area will have safe, adequate and sufficient infrastructure including roads, trails, biking and riding paths to maintain the rural character of the neighborhood.

Ms. McMurray said PDS is extremely concerned that a precedent will be set in allowing 2 Bens to have unrestricted access to Camino Peralta. Counsel for 2 Bens has said that this four-lot subdivision is unable to make a financial commitment to the Las Sueños Trail. However, 2 Bens is part of four 10-acre development formerly known as Tierra Bella. She said the four lots will soon be eight, then 16.

Ms. McMurray said the small serial-type subdivision builders will assert unrestricted access to Camino Peralta because the County has granted access to 2 Bens.

Ms. Murray asked that at the very least the County place restrictions on accessing Camino Peralta and work to ensure that the land adjacent to and affecting Puesta del Sol and Pinon Hills work in concert to assure the building of Las Sueños Trail as soon as possible.

Duly sworn, Dave Munger, 69 Camino Peralta, expressed concern about the road development commitments made by the County over the last 20 years. In the past the County has shown a commitment to public safety and lifestyle. He said the alignment of the Las Sueños Trail was critical to managing impact on the surrounding neighborhoods. The alignment has been platted and appears on County plans. The BCC-approved TAP plan clearly states a principal objective is to have a thoughtfully placed and constructed road and trail system. He cautioned against piecemeal serial subdivision driven road development.

Duly sworn, Ann Noble, Calle Verada in Puesta del Sol, distributed photos of the roads [*Exhibit 6*] and noted that Hager Road has been platted on County maps. She talked about walking her dogs in the area and serving on the PDS board for 14 years. Nine years ago when the Archdiocese began splitting and selling their property into ten 40-acre lots the PDS worked with them and prospective buyers regarding Hager Road. At the time, the County said they had every intent to build the road. Later the property was further split via administrative approval into four 10-acre lots which are now being sold into four separate LLCs divided down to 2.5 acre lots.

Ms. Noble said the LLCs have no intention of building out the Hager Road to access their serial subdivision. Instead, they are requesting County approval to access through Camino Peralta a road that narrows to 13 feet. She said this is far below the

County standards and should not be permitted. The line of sight from the proposed driveways is also dangerous.

As a point of information, Ms. Noble said the cost to build out Hager Road is \$1.5 million.

Allowing this subdivision to use access through alternate established subdivisions rather than requiring the planned road be built puts extreme pressure on the residents' quality of life and the roads.

Ms. Noble said the County is sending the message that if "you follow the County planning process you will be penalized. But if you circumvent the County ordinances and planning processes you will be rewarded."

Duly sworn, Elizabeth Cook-Romero, 35 Calle el Gancho in PDS said she and 30 other area residents met with Commissioner Chavez and he appeared relieved that the residents were not opposing the land division. However, the access being piggybacked through existing subdivisions was the protest. Commissioner Chavez made it very clear that subdivision would not be approved without bringing in infrastructure. She said two messages were coming through, from Land Use and the elected Commissioner. This is the first wave of cars coming through Puesta del Sol, stated Ms. Cook-Romero.

Daniel Edgerton, 4 Calle Verada, said these subdivisions (2 Bens) are directly across from his home. He stated he was not opposing subdivision but the access is of great concern. The road has a great deal of vegetation on the road side, limited visibility, narrowing in width and no curbs or shoulders. Adding traffic will be detrimental.

Mr. Edgerton said he had understood the issue of the road was settled with the construction plans for Los Sueños Trail/Hager Road.

The applicant was invited to speak.

Jennifer Jenkins, previously sworn, was present for the land developments who she identified as the original applicants for the 2 Bens four-lot subdivision. Ms. Jenkins said the subdivision has access to a County public road. It is not a private road. The application was done lawfully and all the rules and requirements were met. The developer, she said, has invested significantly in developing the plans. The plans were approved by the County's Land Use, Public Works and Fire departments.

Ms. Jenkins recognized that Hager Road/Los Sueños Trail appears on all the aforementioned plans and she imagined it would someday be built. She said Hager Road was intended to serve Suerte del Sur a 300-home subdivision with a now expired master plan.

Ms. Jenkins said holding a four-lot subdivision hostage to building out Hager Road is neither realistic nor appropriate. She said the developer understands their obligation to connect to Hager Road when it is built out. She referred to a subdivision plat [*Exhibit 5*] showing an easement through the subdivision to accommodate the further connection to Hager Road.

Ms. Jenkins asked the CDRC to deny the appeal and uphold the Land Use Administrator's decision.

Duly sworn, 2 Ben LLC partner, Ben Mossa of Derby, Vermont, stated he lived in Santa Fe for 30 years, moved back to Vermont to care for elderly parents and is now ready to move come back to Santa Fe. He said the subdivision is part of their plan in moving back to Santa Fe and requested the CDRC's approval of the subdivision.

Mr. McQueen was invited back to the podium. He offered that it is correct the subdivision will access a public road; however, the road does not meet the County standard of a 24-foot roadway surface. If anyone is being held "hostage" it is the existing neighborhood, he stated.

Mr. McQueen cited local author Bill Du Buys' phrase "consequences collect" as what will occur as additional four lot subdivisions are approved and this existing quiet neighborhood will "die a death of 1,000 cuts."

Mr. McQueen urged the CDRC to enforce the Land Use Code and live up to the commitments that have been made by Santa Fe County.

The public hearing was closed.

Member Anaya moved to uphold the decision of the Land Use Administrator, thus denying the appeal. Mr. Lopez seconded and the motion passed by unanimous [4-0] voice vote.

E. CDRC Case #Z/PD 15-5210 28 Main Street – TABLED

F. **PETITIONS FROM THE FLOOR**

None were offered.

G. **COMMUNICATIONS FROM THE COMMITTEE**

Member Anaya thanked staff for their work.

H. **COMMUNICATIONS FROM THE ATTORNEY**

None were presented.

I. **MATTERS FROM LAND USE STAFF**

An update on the disposition of CDRC cases by the BCC was distributed.


J. **NEXT MEETING**

The next meeting was scheduled for October 15, 2015.

K. ADJOURNMENT

Having completed the agenda, this meeting was declared adjourned at approximately 6:05 p.m.

Approved by:

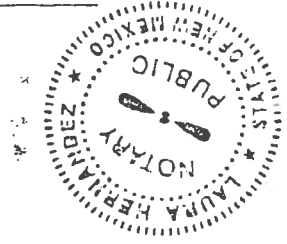

ATTEST TO
Geraldine Salazar
COUNTY CLERK

Frank Katz
Frank Katz, CDRC Chair

Before me, this 15th day of October, 2015.

My Commission Expires: February 11, 2019 | *Laura Hernandez*
Notary Public

Submitted by:
Karen Farrell
Karen Farrell, Wordswork



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
I Hereby Certify That This Instrument Was Filed for
Record On The 16TH Day Of October, 2015 at 08:52:53 AM
and Was Duly Recorded as Instrument # 1777231
of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy *Geraldine Salazar* County Clerk, Santa Fe, NM



SFC CLERK RECORDED 10/16/2015



Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Elizabeth Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

TO: Jose Larranaga, Development Review Team Leader
FROM: Jerry Schoeppner, SFC Utilities *JS*
THROUGH: Claudia I. Borchert, Utilities Director *CB*
SUBJECT: Master Plan Zoning, Preliminary and Final Development Plan, for the Spotlight RV Park
DATE: 9/15/2015

This revised memorandum provides review of the water supply plan portion of the Master Plan, Preliminary and Final Development Plan for Spotlight RV Park (Spotlight). The proposed project is located at 16 Ella Dora Road, 3 miles north of I-40, adjacent to State Road 41 and approximately 7 miles south of Stanley in Township 10N, Range 9E, Section 31, falls under large scale residential development, and lies within the Basin Hydrologic Zone.

The applicant proposes to develop an RV Park consisting of 54 RV spaces, 20 horse stalls, and public bathroom and shower facilities on 11.57 acres. Water and electrical service is proposed to be provided at each RV space and an existing home located on the premises is proposed to be used as living quarters and an office for the RV Park.

Pursuant to the Santa Fe County Land Development Code (Code), Article VII, Section 6 (Water Supply), an applicant must provide a water supply plan and pursuant to Table 7.4, Spotlight RV Park is also required to submit a water availability assessment in accordance with Section 6.4.1d.

Pursuant to the Santa Fe County Land Development Code (Code), Article VII, Section 6 (Water Supply) and Article V, Section 5.2 (Master Plan Procedures), as amended by Ordinance 2005-2, an applicant is required to submit a preliminary water supply plan and liquid waste disposal plan which identifies the source of water, water budget by phase, total demand at full build out, and a water conservation plan. Pursuant to Article VII, Section 6, Table 7.4, Spotlight is also required to submit a water availability assessment in accordance with Section 6.4.2.

SFC CLERK RECORDED 10/16/2015