### BETTLEMENT AGREEMENT

THE PLANT .

This Settlement Agreement is entered into, effective the 16th day of November, 1995, by and between CHARLES M. DIKER, a married man dealing in his sole and separate property ("Diker") and ESTANCIA PRIMERA COMMUNITY SERVICES ASSOCIATION, a New Mexico non-profit corporation ("EPCSA").

#### RECITALS

- A. DIKER as third party defendant, and EPCSA, as third party plaintiff, are parties to that certain civil litigation currently pending in the First Judicial District Court, County of Santa Fe, State of New Mexico, Cause No. 94-2006C (the "Action");
- B. DIKER is owner of the Los Altos Subdivision ("Los Altos"), originally Tracts N, O and P of Estancia Primera Subdivision as shown on plat of survey recorded in Plat Book 248 at page 017 of the Santa Fe County, New Mexico records, which subdivision is created by subdivision plat approved by the City of Santa Fe Planning Commission on May 4, 1995 and recorded in plat Book 345 planning Commission on May 4, 1995 and recorded in plat Book 345 of the Santa Fe at page 036-039 as Document No. 96062 of the Santa Fe County, New Mexico records (the "Subdivision Plat") [recording information to be inserted upon plat recordation.]
- C. The parties desire to fully settle the issues being litigated between them in the Action.
- NOW, THEREFORE, in consideration of the mutual promises contained in this Settlement Agreement, the parties agree as follows:
- Dismissal. The parties consent to the dismissal of the Third Party Complaint filed by EPCSA, in which DIKER was joined as third party defendant with prejudice, each party to bear their own attorneys' fees and costs. Upon the complete execution of this Agreement by the parties, the parties' respective counsel shall execute a Stipulation of Dismissal, a copy of which is attached hereto as Exhibit A, and an Agreed Order of Dismissal, a copy of The Stipulation of which is attached hereto as Exhibit B. Dismissal shall be submitted by counsel for DIKER and EPCSA to the court clerk for filing in the Action. Dismissal shall be submitted by counsel for DIKER and EPCSA to the District Judge in the Action, for execution and filing in the Action with the court clerk. Upon recordation of the Subdivision Plat, a completely executed original of this Settlement Agreement shall be recorded in the Santa Fe County, New Mexico miscellaneous real property records by counsel for DIKER and EPCSA, with DIKER to bear the costs for the recording.
  - 2. <u>Subdivision Plat</u>. EPSCA hereby acknowledges its approval of the Subdivision Plat, and that Los Altos Subdivision and the twenty-one (21) lots created therein by the Subdivision Plat constitute a Neighborhood, as defined in Article 1.34 of the Master

Declaration as hereinafter defined. The resubdivision-prohibition of in Article 6.12 of the Master Declaration shall apply to each of the twenty-one 21) lot of Los Altos Subdivision created by the Subdivision Plat.

3. <u>Declaration</u>. Immediately after the recording of an original of this Settlement Agreement in the miscellaneous real property records of Santa Fe County, New Mexico, DIKER shall cause a duly and completely executed original of a Declaration of Covenants, Conditions and Restrictions of Los Altos Subdivision "(Los Altos CC&R's"), attached hereto as Exhibit C (the "Declaration"), to also be recorded in the miscellaneous real property records of Santa Fe County, New Mexico.

The Declaration shall (i) consent to, ratify and confirm (a) the August 13, 1994, vote of in excess of seventy-five percent (75%) of a quorum of the owners of EPCSA to annex the Los Altos Subdivision, to that certain Declaration of Covenants and Restrictions for Estancia Primera Community Services Association, recorded in Book 433, pages 614-660 of the miscellaneous real property records of Santa Fe County, New Mexico, as amended from time to time (the "Master Declaration"), and (b) the resulting recordation by EPCSA of that certain Supplementary Declaration of Covenants and Restrictions, in Book 1089, pages 215-263 of the miscellaneous real property records of Santa Fe County, New Mexico, and cii) affirm that the Los Altos Subdivision is bound by, subject to, and benefitted by the terms and provisions of the Master Declaration as provided for in this Settlement Agreement.

- Upon the recordation of this Settlement Annexation. Agreement and the Amended and Restated Declaration in the miscellaneous real property records of Santa Fe County, New Mexico: (i) the provisions of the Master Declaration, as amended from time to time as therein provided, shall burden and benefit, and run with the title to, all or any portion of the Los Altos Subdivision: (ii) owners of property in the Los Altos Subdivision shall be subject to and benefitted by the Master Declaration, as amended from time to time as therein provided, and shall be entitled to use the Community Common Areas and facilities thereon (as defined in the Master Declaration), subject to and according to the provisions of the Master Declaration; and (iii) property and owners of property in the Los Altos Subdivision shall be subject to Community Assessments for a proportionate share of the Community Expenses (as defined in the Marter Declaration) on the same basis as other property then or thereafter subject to the Master Declaration, all subject to the following:
- A. Road Maintenance. The roadway(s) within the Los Altos Subdivision, namely "Camino Los Altos" and "Los Altos Way" will be maintained (including snow removal), repaired and replaced solely at the cost and expense of the owners of property within Los Altos Subdivision (through the Los Altos Homeowners\Association,

Inc.), until such roadway(s) is accepted, if at all, for maintenance by the City of Santa Fe. Even after such roadway(s) is accepted for maintenance by the City of Santa Fe, if the City of Santa Fe does not provide adequate maintenance, repair or replacement of such roadway(s), any unperformed maintenance, repair, replacement of such roadway(s) shall continue to be the sole responsibility, and at the sole cost and expense of, the owners of property within Los Altos Subdivision (through the Los Altos Homeowners' Association, Inc.). EPCSA shall have no liability or responsibility for such roadway(s). Property, and owners of property, within Los Altos Subdivision will not be ausessed by the EPCSA for any costs or expenses of maintenance, repair, or replacement of any other street(s) or roadway(s) in the Estancia Primera Community (as defined in the Master Declaration), except for a proportionate share, on the same basis as other property subject to the Master Declaration, of the expenses incurred by the EPCSA for the occasional plowing of snow on Avenida Primera South. Such snow removal costs shall be separately stated in any budgets and operating reports of EFCSA.

The owners of property in Los Altos <u>Drainage</u>. Subdivision shall be solely responsible for, and shall indemnify and hold EPCSA and other owners in the Estancia Primera Community harmless from and against, compliance with the Los Altos Subdivision--Special Maintenance District, to be established by the Santa Fe City Council by ordinance. Property, and owners of property, within Los Altos Subdivision will not be assessed, and will be indemnified and held harmless by EPCSA, for any costs or expenses of complying with that certain Master Drainage Contract Drainage Facilities Inspection and Maintenance Agreement at Estancia Primera, recorded in Book 620, pages 507-515 of the miscellaneous real property records of Santa Fe County, New Mexico, unless the City of Santa Fe should impose additional drainage and terrain management obligations upon EPCSA due to (i) the Los Altos Subdivision, or (ii) the construction of additional improvements (e.g. tennis court, parking lot, etc.) on the EPCSA Community Common Area on which the EPCSA clubhouse is located, which is more particularly shown and described on that certain plat entitled "Recreation Lot Within Estancia Primera Santa Fe, N.M." recorded in the Office of the Santa Fe County Clerk, in Book 160, page 003.

Pursuant to the assessments procedures of the Master Declaration, EPCSA shall be authorized to make assessments against property and owners of property within Los Altos Subdivision for the cost and expense of complying with any additional drainage and terrain management obligations imposed by the City of Santa Fe upon EPCSA due to (i) the Los Altos Subdivision, or (ii) the construction of additional improvements (e.g. tennis court, parking lot, etc.) on the EPCSA Community Common Area on which the EPCSA clubhouse is located, which is more particularly shown and described on that certain plat entitled "Recreation Lot Within Estancia Primera Santa Fe, N.M." recorded in the Office of the

Santa Fe County Clerk, in Book 160, page 003. Any drainage or terrain management costs and expenses shall be separately stated in any budgets and operating reports of EPCSA. 1526087

- Notwithstanding the Common Area and Trails. provisions of the Master Plan for Estancia Primera, the common areas and trails within Los Altos Subdivision, if any, as may be shown on the recorded subdivision plat for Los Altos Subdivision, shall be Tract Common Areas and not Community Common Areas, as defined under the Master Declaration. Accordingly, the owners of property in Los Altos Subdivision (by and through the Los Altos Homeowners Association, Inc.), will be solely responsible and liable for, and will indemnify and hold EPCSA and other owners in the Estancia Primera Community harmless from and against, costs and expenses of maintaining, repairing, improving, insuring, etc., and claims, demands, liabilities, etc. for injuries or damages incurred in connection with, such common areas and trails. Notwithstanding the foregoing, Members and Owners of EPCSA, and their quests, as members of the public, shall have the right to use that trails, if any, within Los Altos Subdivision, subject to the rules and regulations adopted from time to time by the Los Altos Homeowners Association, Inc. regarding the use of the trails. In return for the assumption of responsibility for trails within Los Altos Subdivision, property and owners of property in Los Altos Subdivision will not be assessed, and will be indemnified by EPCSA, and held harmless from and against, any costs and expenses of developing, maintaining, repairing, improving, insuring, etc., and claims, demands, liabilities, etc. for injuries or damages incurred in connection with, any other trails within the Estancia Primera Any trail related costs and expenses shall be separately stated in any budgets and operating reports of EPCSA.
  - D. Architectural Control. Owners of property within Los Altos Subdivision shall comply with the Estancia Primera Architectural Guidelines, ("Architectural Guidelines") duly amended and approved by the Board of Directors of EPCSA on March 30, 1995, September 13, 1995, and November \_\_\_\_, 1995 (two copies of which have been initialed by the representatives of DIKER and EPCSA). Notwithstanding any provision of the Master Declaration to the contrary the parties hereby agree that until after the earlier of either the date which is four (4) years after the date of the recording of this Settlement Agreement in the miscellaneous real property records of Santa Fe County, New Mexico, or the date that DIKER no longer owns record title to any lot in the Los Altos Subdivision, any amendment to the Estancia Primera Architectural Guidelines, as approved above, shall not apply to the Los Altos Subdivision without the written consent to such amendment by DIKER. Primera Estancia provisions of the the Notwithstanding \$1,000.00 the contrary, Guidelines the to Architectural construction deposit required by the Estancia Primera Architectural Guidelines shall be held one-half by the Estancia Primera Architectural Review Board and one-half by the Los Altos Homeowners

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Association, Inc.'s Architectural Control Committee ("ACC"). Diker agrees that one member of the Los Altos ACC shall be an EPCSA Board member or appointee.

- Review Board of EPCSA does not review or control the interior design of a residential structure.
- F. One-time Contribution. DIKER shall pay to EPCSA the sum of \$500.00 upon each sale or other transfer of title by DIKER to each of the twenty-one (21) lots within Los Altos Subdivision. Such per lot contributions by DIKER shall be placed by EPCSA into the reserve account for EPCSA, and shall be utilized for future capital expenditures of EPCSA and not for operating expenses.
- G. <u>Litigation</u>. EPCSA shall indemnify and hold harmless DIKER and owners of lots in Los Altos Subdivision from and against, and shall not assess any property or owners of property in Los Altos Subdivision, for any and all costs, expenses and damages Altos Subdivision, for any and all costs, expenses and damages arising out of, in connection with, or related to any and all current litigation involving EPCSA, or the settlement thereof, including the following matters:
- (i) The existing litigation by certain owners and residents in Alta Mira against EPCSA and its Board of Directors; and,
- (ii) The remaining litigation in the Action, or any other similar action brought by any of the owners or developers of Tracts Q or U concerning the annexation by EPCSA of Tracts Q and/or U, and EPCSA's claims that such Tracts are bound by the Master Declaration, including any slander of title claims relating thereto.
- H. Status of DIKER. Upon the recording of this Settlement Agreement in the miscellaneous real property records of Santa Fe County, New Mexico, DIKER shall be a "Merchant Builder," as defined in the Master Declaration, and shall be entitled to complete the construction and development of the infrastructure and other subdivision improvements for Los Altos Subdivision, including but not limited to, utilities, roadways, sidewalks, trails, terrain management structures, landscaping and related improvements.
- represents and warrants that at a duly called and noticed annual meeting of its members on August 12, 1995, Article 6. Section 6.19 of the Master Declaration was duly amended by a majority vote of the membership eligible to vote (the "Amendment"). so that it now reads: "Guest Houses. There shall be no guest houses within the property, except, where the Lot is in excess of .75 acres in size or where the Lot is contiguous to Fort Marcy Park, guest houses

will be permitted subject to all other provisions of this Declaration."

Immediately after the recording of an original of this Settlement Agreement in the miscellaneous real property records of Santa Fe County, New Mexico, counsel for EPCSA shall cause a duly and completely executed original of the above-recited Amendment to the Master Declaration to also be so recorded, with EPCSA to bear the costs for this recording.

- J. <u>Limitations on Los Altos Guest Houses/Studios.</u>
  Notwithstanding the terms of the Amendment set forth in subparagraph I. immediately preceding, guest houses and studios in Los Altos shall be limited as follows. Guest houses will be permitted on lots in excess of .75 acres or contiguous to Fort Marcy Park, except Lots 5, 6, 7, 10, 11, and 12. On Lots 10, 11, and 12, only one structure, the main residence, will be permitted. On Lots 5, 6, and 7, being in excess of 1.5 acres, the main residence and a studio is permitted.
- K. Amendments to Estancia Primera Architectural Guidelines. EPCSA hereby acknowledges that under the terms and conditions of this Settlement Agreement, rertain of the provisions of the Architectural Guidelines either have been or shall be amended by the EPCSA Board.
- (1) EPCSA hereby represents and warrants that on September 13, 1995, the EPCSA Board duly and properly approved an amendment to the Architectural Guidelines which inserted the following new language at the end of the first partial sentence on page 26 thereof:
  - ...": otherwise, upon written request by the Board will approve applicant, the the application at its disapprove regularly scheduled monthly Board meeting following receipt of such request. approval or disapproval of plans specifications shall be in writing. Any shall state approval conditional Any disapproval conditions for approval. state the reasons therefor. shall supmittal requires the disapproval additional or revised information to the ARB, the ARB shall approve or disapprove such or revised plans supplemental specifications within (30) days after receipt thereof."
- L. Los Altos Architectural Guidelines. The parties acknowledge that as of the date of execution of this Settlement Agreement a set of Los Altos Architectural Guidelines will not have

been completed. Diker represents and warrants that any and all architectural guidelines for Los Altos shall be in conformity with the Master Declaration and the Architectural Guidelines of EPCSA and the Los Altos CC&R's. Any and all such architectural guidelines shall be presented to the EPCSA Board for its review and approval prior to their effective date.

5. Release. DIKER, on behalf of himself and his agents, representatives, successors, heirs, assigns and insurers, hereby releases and forever discharges EPCSA, and its members, officers, directors, agents, representatives, successors, heirs, assigns and insurers from any and all past, present, or future claims for damages which DIKER may have, or claim to have, whether known or unknown at this time, anticipated or unanticipated, direct or unknown at this time, anticipated or unanticipated, direct or indirect, fixed or contingent, which may presently exist or which may hereafter arise or become known, arising out of or concerning the Action, excluding any claims relating to the enforcement or breach of this Settlement Agreement.

EPCSA, on behalf of itself and its members, officers, directors, agents, representatives, successors, heirs, assigns and insurers hereby releases and forever discharges DIKER, and its agents, representatives, successors, heirs, assigns and insurers, from any representatives, successors, heirs, assigns and insurers, from any and all past, present, or future claims for damages which EPCSA may have, or claim to have, whether known or unknown at this time, anticipated or unanticipated, direct or indirect, fixed or anticipated or unanticipated, direct or indirect, fixed or contingent, which may presently exist or which may hereafter arise or become known, arising out of or concerning the Action, excluding any claims relating to the enforcement or breach of this Settlement Agreement.

- 6. Terms of Settlement Agreement to Control. In the event of any conflict or inconsistency of the terms and conditions of this Settlement Agreement with the terms and conditions of the Master Declaration, the Architectural Guidelines and/or the Los Altos CC&R's, the terms and conditions of this Settlement Agreement shall control.
- 7. Entire Agreement. This Settlement Agreement contains the entire agreement between the parties with regard to the matters set forth herein and will supersede and replace any and all prior and contemporaneous written and oral agreements, promises, representations, or conditions with respect thereto.
- 8. <u>Binding Effect</u>. The covenants contained in this Settlement Agreement are real and not personal in nature, and shall be binding upon and inure to the benefit of the parties and their respective representatives, successors, heirs and assigns, and shall run with the title to the Los Altos Subdivision.

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- 9. <u>Counsel</u>. The parties acknowledge that they have freely entered into this Settlement Agreement, after discussion and advice of their respective legal counsel.
- 10. Law. This Settlement Agreement shall be governed by the laws of the State of New Mexico.
- 11. Breach. If there is a breach of this Settlement Agreement by either party, the other party may bring an action for specific performance and/or damages. The party substantially prevailing in any action brought to enforce, interpret or obtain prevailing in any action brought to enforce, interpret or obtain damages for the breach of this Settlement Agreement shall be entitled to reasonable attorneys' fees including gross receipts entitled to reasonable attorneys' fees including gross receipts taxes, if any and costs incurred in bringing or defending such action, as the case may be.
- 12. Modification. This Settlement Agreement may be modified only by a writing duly executed by the parties.
- 13. Authority. EPCSA hereby represents and warrants to DIKER that (i) EPCSA is a duly organized and validly existing New Mexico non-profit corporation, and is in good standing under the laws of the state of New Mexico, (ii) that it has full corporate power and authority to execute and agree to this Settlement Agreement and to perform its obligations hereunder, (iii) all actions necessary for the due authorization, execution, delivery, and performance of this the due authorization, execution, delivery, and performance of settlement Agreement by EPCSA have been duly taken by the board of Settlement Agreement, and/or owners, (iv) the undersigned officers and directors of EPCSA have duly executed and delivered this Settlement Agreement.

DIKER hereby represents and warrants to EPCSA that (i) that he has full power and authority to execute and agree to this Settlement Agreement and to perform his obligations hereunder, (ii) all actions necessary for the due authorization, execution, delivery, and performance of this Settlement Agreement by DIKER have been duly taken by him, (iii) DIKER has duly executed and have been duly taken by him, (iii) DIKER has duly executed and delivered this Settlement Agreement, and (iv) as of the date of the execution and recordation of this Settlement Agreement, he holds legal and equitable title to the Los Altos Subdivision.

STATE OF NEW MEXICO

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Witness try Ford and Santa of Office County

County Clerk, Santa Fe County Nick

County Clerk, Santa Fe County Nick

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IN WITNESS WHEFFOF, the parties have executed the formation of the day and year first written above
Club Oph
Charles M. Diker
Estancia Primora Community Services Association, A New Mexico Non-Profit Corporation
By:
It.s:
ACKNOWLEDGEMENTS  STAR DEW MEXICO )
SEWING SS
1640 d., of November , 197), by Charles M. Diker.
(Catheen M Cd) NO' 14 Public
My Commission Expires:
5/3,/5-
KATHLEEN M. RODE Notary Public, State of New York No. 43-4819454
Ouslified in Richmond County / C Commission Expires

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IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the day and year first written above."

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Charles M. Diker

Estancia Primera Community Services Association, A New Mexico Non-Profit Corporation

Ву:

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ACKNOWLEDGEMENTS

STATE OF NEW MEXICO )	SS	
COUNTY OF SANTA FE )		
This Settlement day of	Agreement was acknowledged before me t	ihis
	Notary Public	
My Commission Expires	:	
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STATE OF NEW MEXICO )

COUNTY OF SANTA FE

SS

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This Settlement Agreement was acknowledged before me this 27th day of Novernou, 1995, by PFTER Y. STANTON, PRESIDENT, of Estancia Primera Community Services Association, a New Mexico Non-Profit Corporation, on behalf of such Corporation.

Notary Public

My Commission Expires:

3/24/96



FIRST JUDICIAL DISTRICT COURT STATE OF NEW MEXICO COUNTY OF SANTA FE



# **ENDORSED**

JAN 0 5 1995

FIRST JUDICIAL DISTRICT COURT SANTA FE, RIO ARRIRA &

LOS ALAMOS COUNTIES

1526095

CAUSE NO. SF 94-2006(C)

KACHINA HILLS PARTNERS, A New Mexico general partnership,

Plaintiffs,

-vs-

ESTANCIA PRIMERA COMMUNITY SERVICES ASSOCIATION a New Mexico non-profit corporation,

Defendant/Third-Party Plaintiff.

-VS-

CHARLES M. DIKER. et al.,

Third Party Defendants.

### STIPULATION OF DISMISSAL WITH PREJUDICE

Third-Party Plaintiff, Estancia Primera Community Services Association ("EPCSA"), and Third-Party Defendant, Charles M. Diker, hereby stipulate to the dismissal of the Third Party Complaint filed by EPCSA against Third-Party Defendant, Charles M. Diker with prejudice, each party to bear its own costs.

WHITE, KOCH, KELLY & MCCARTHY, P.A.

1526096

By:

MARY E. WALTA, Esq.

433 Pasco de Peralta
Santa Fe, New Mexico 87504-0787

(505) 982-4374

Attorneys for Third Party Plaintiff Estancia Primera Community Services Association

SIMONS, CUDDY & FRIEDMAN

By:

CHARLOTTE HETHERINGTON, Esq. P.O. Box 4160
Santa Fe, New Mexico 87502
1 (505) 988-4476

Counsel for Third Party Defendant Charles M. Diker.

POTTER, MILLS, HAYS, P.A.

By: - Claphon (ally approved 1/4/96)
THOMAS C. MILLS. Edg.
P.O. Drawer 1208
Sania Fe. NM 87504-1208
1 (505) 988-8019

Charles N. Dik

Charles N. Dik

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COUNT

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No. SF 94-2006(c)

## ENDORSED



KACHINA HILLS PARTNERS, a New Mexico general partnership,

JAN 05 1996

1526097

Plaintiffs,

SANTA FE, RIC ARRIBA & LOS ALAMOS COUNTIES

YS.

ESTANCIA PRIMERA COMMUNITY SERVICES ASSOCIATION, a New Mexico non-profit corporation,

Defendant/Third-Party Plaintiff

YS.

CHARLES M. DIKER, et al.

Third Party Defendants.

#### AGREED ORDER FOR DISMISSAL

THIS MATTER having come before the Court upon Third Party Plaintiff. Estancia Primera Community Services Association ("EPCSA"), and Third Party Defendant, Charles M. Diker, Stipulation of Dismissal With Prejudice and the Court noting that the parties are in concurrence with the Court's dismissal, does hereby order dismissal of the Third Party Complaint filed by EPCSA against Third Party Defendant, Charles M. Diker, with prejudice, each party to be the third own costs.

Done this 5 3 day of January, 1996.

medical party and surplied in the book and in

day of Jan 10 11/1

MARTHA A. FRANK

Describe

James A. Hall

District Court Judge

EXHIBIT B

Approved by:

WHITE, KOCH, KELLY & McCARTHY, P.A.

1526098

kn

Mary E. Walta, Esq.

Post Office Box 787

Santa Fe. New Mexico 87504-0787

(505) 982-4374

Counsel for Third Party Plaintiff
Estancia Primera Community Services
Association

SIMONS, CUDDY & FRIEDMAN

Ву:

CHARLOTTE HETHERINGTON, Esq.

P.O. Box 4160

Santa Fe, New Mexico 87502

1 (505) 988-4476

Counsel for Third Party Defendant Charles M. Diker.

POTTER, MILLS, HAYS, P.A.

By:

THOMAS C. MILLS. Edg. PRINTED 14 96

P.O. Drawer 1208

Santa Fc. NM 87504-1208

¥...

Counsel for Third-Party Defendant Charles M. Diker



COUNTY OF SANTA FE STATE OF NEW MEXICO

i hereby certify that this instrument was filled for record on the day of Arg AD.

19 40 at 1:04 o'clock medium was dily recorded in book 152

and was dilly recorded in book 532

page 5 5 6 county.

Winess my Hend and Seal of Office Rebecca Bustamento County Clark, Santa Fe County, N.M.

Deputy

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