

**DECLARATION OF PROTECTIVE COVENANTS
FOR
LOS ENAMORADOS ESTATES**

TIERRA NEGRA, INC., a New Mexico corporation ("**Declarant**"), is the owner of the following described real estate situated in the City of Las Cruces, County of Doña Ana, State of New Mexico (the "**Subdivision**"):

Lots 1 through 66 in Block A, Lots 67 through 121 in Block B, Lots 122 through 143 in Block C, Lots 144 through 164 in Block D, of Los Enamorados Estates, as shown and designated on the plat (the "**Plat**") of said subdivision that was recorded in the office of the County Clerk of Doña Ana County, New Mexico on December 2, 2005 (reception number 0542075), as Plat No. 4276, in Plat Book No. 21 at pages 438-442 (said lots are sometimes referred to in this Declaration individually as a "**Lot**" and collectively as the "**Lots**"). Notwithstanding any provision of the Declaration to the contrary, this Declaration does not apply to Commercial Lots C1 and C2.

Declarant has established a general plan for the improvement and development of the Subdivision and desires to impose certain protective covenants and restrictions on the Subdivision in accordance with that plan:

1. **Term.** The Subdivision is hereby made subject to this Declaration, which shall run with the land and shall be binding upon all persons owning the Lots or claiming under them until January 1, 2036, after which time this Declaration shall be extended automatically for successive periods of ten (10) years unless an instrument signed by the then Owners of a majority of the Lots has been recorded, agreeing to change, alter, amend or remove this Declaration in whole or in part.
2. **Enforcement.** If any Owner of a Lot shall violate any provision of this Declaration, it shall be lawful for any other Owner of a Lot or Declarant to maintain an action at law or in equity against the person or persons violating any provision of this Declaration, and either to prevent such person or persons from doing so, or to recover damages for such violation, or both, or require removal of the offending structure or improvement.
3. **Purpose.** The purpose of this Declaration is to insure the use of the Lots for attractive residential purposes only; to prevent nuisances; to prevent any impairment of the attractiveness of the Subdivision; to maintain the desired tone of the Subdivision and thereby to secure for each Owner the full benefit and enjoyment of such Owner's Lot, with no greater restriction on free and undisturbed use of such Lot than is necessary to insure the same advantage to the other Owners; and to allow only that use which is consistent with this Declaration. A deed of a Lot may contain this Declaration, by reference to this Declaration, but whether or not such reference is made in such deed, each and all of the provisions of this Declaration shall be binding upon the grantee and its heirs, successors and assigns.

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4. **Applicability.** The conditions and restrictions imposed by this Declaration shall apply to all of the Lots, unless variations or variances therefrom are granted by the Design Review Committee as provided herein.

5. **Land Use and Building Types.**

(a) All Lots are declared to be residential lots, and no Lot shall be used for other than residential purposes. There shall not be allowed on any Lot any structure that allows more than one (1) family to reside therein or thereon. No trailer, tent, shack, barn, or similar temporary building may be maintained on any Lot for the long-term habitation of persons therein.

(b) No dwelling shall be erected, altered, placed or permitted to remain on any Lot with fully enclosed living/heated area of less than 1,200 square feet, exclusive of garages and porches. No mobile home, pre-fabricated or manufactured dwelling may be maintained on any Lot. No carport shall be maintained on any Lot. Each Lot with a dwelling shall have a minimum of a two-car garage thereon.

(c) The City approved Grading Plan shall be referred to in determining the location of a dwelling on a particular Lot.

(d) All buildings constructed in the Subdivision shall be in conformance with the development standards of the City of Las Cruces, as developed and enforced by the same, and said standards are incorporated herein by reference. All structures shall be constructed of frame and stucco, adobe and stucco, or other such surface and material as may be authorized by the Design Review Committee. No siding shall be permitted. All stucco on structures in the Subdivision must be synthetic stucco. Garages and permitted accessory buildings shall conform in material and design to the dwelling to which they pertain. No storage building that is not an Improvement (because it is not permanently affixed to a Lot) shall be allowed on any Lot unless fully shielded and screened from view from any street and any other Lot, either abutting or otherwise. Only earth tone colors and white exterior surface materials shall be used for any dwelling, accessory structure, wall or fence. The only types of architecture that shall be permitted within the Subdivision are:

New Mexico Traditional
New Mexico Contemporary
California Mediterranean
Spanish Colonial/Mission
Las Cruces Traditional, Pueblo, Territorial

(e) The roof of each dwelling in the Subdivision may be constructed with or without a pitched roof or combinations of pitch, hip and flat roof designs. Barrel tile-like materials, dimensional shingles or twenty-year shingles in earth tone colors shall be required as the finished surface material on any pitched or sloping roof on any portion of the structure that is sloping. Any

roof-mounted equipment shall be screened and hidden from view from the line of sight from any public place, or street, or adjoining Lot, as determined by the Design Review Committee.

(f) The grading plan for the Subdivision (the "**Grading Plan**") showing finished elevations of areas to be graded, paved areas, building sites, water retention or detention areas, retaining walls and other structures has been approved by the City of Las Cruces.

(g) No grading, land filling, excavating, or other alteration shall be done except pursuant to the Grading Plan or revision thereof approved by the City of Las Cruces and by the Design Review Committee. The approved grade level of any ponding area may not be altered without the prior written consent of the City of Las Cruces and the Design Review Committee.

(h) Single-story structures are encouraged. Two-story structures may be built on the Lots in Block A of the Subdivision. Two-story structures may not be constructed or maintained on any other Lot without the prior written consent of the Design Review Committee, which may be withheld in its sole and absolute discretion. Maximum number of stories of any dwelling located within the Subdivision shall be two stories.

6. Approval of Plans.

(a) **Architectural Approval.** Complete plans and specifications for all "Improvements" (defined below), with exterior elevations and a site plan showing the location of the Improvements, all drawn to scale of 1"=20' or larger, shall be approved in writing prior to the commencement of any construction or development activities for such Improvements within the Subdivision. Two sets of the plans and specifications and the following described documents that are applicable to the type of Improvements proposed to be made shall be submitted, one to be retained by the Design Review Committee and one to be returned to the Owner of the Lot:

(1) **Site Plan.** Indicate proposed building footprint, set backs, property boundaries and easements, utility locations, areas of cut and fill, drainage, driveways, sidewalks, decks, and other proposed improvements. Drawn at 1" = 20' or larger;

(2) **Floor Plan.**

(3) **Elevations.** Indicate the exterior appearance of all views, labeled in accordance with the site plan. Height of chimneys as compared with the ridge of the roof. Natural and finished grades for all elevations of all views. Describe all proposed exterior materials, color and finishes (walls, roofs, trim, chimney, windows, doors, etc.).

(4) **Building Section.**

(5) **Landscape Plan.** A plan for front landscaping should be included with the site plan drawing. Include plant materials with size and condition, rock outcroppings, decks

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or patios, service yards, driveways, all existing trees, proposed fences or walls with detailed description of the construction, exterior lighting locations and coverage areas.

(b) **"Improvements"** shall mean, collectively, the following items and activities within the Subdivision:

- (1) staking, clearing, landscaping, excavation, grading or other site work;
- (2) buildings, including storage and accessory buildings, structures and other improvements of any kind;
- (3) exterior additions, changes or alterations of any nature to the Lots, buildings or other existing improvements, including, without limitation, changes in color, changes or additions to driveway or walkway surfaces and landscaping modifications.

(c) **Construction.** No Owner or any other person or entity shall commence, erect or maintain any Improvements within the Subdivision until complete plans and specifications for such Improvements have been approved, in writing, by the Design Review Committee. To the extent that Declarant has entered into any written agreement with the Owner of a Lot or others regarding architectural review, approval or control for the construction of initial Improvements, the provisions of such agreement shall control and supercede any conflicting provisions of this Declaration. The Design Review Committee may, in its sole discretion, disapprove any plans and specifications, in whole or in part, and approval of any plan or specification does not constitute a waiver of the right to disapprove the same or similar plans and specifications subsequently submitted.

(d) **Criteria.** The criteria used in determining whether or not to approve any proposed Improvement include, but are not limited to, the harmony of external design with existing or proposed structures, exterior surfacing materials and colors, and the dwelling location with respect to topography and finish grade elevation. The Design Review Committee, may, but shall not be required to, establish design guidelines to provide guidance to Owners regarding matters deemed to be of relevance or importance to the Design Review Committee in considering applications for design approval. The design guidelines shall not be the exclusive basis for decisions hereunder and compliance with the design guidelines shall not guarantee approval of an application. The design guidelines may contain general provisions applicable to all of the Subdivision, as well as specific provisions which vary from one portion of the Subdivision to another, depending upon the location, type of construction or use, and unique characteristics of the property.

(e) **Procedure.** All requests for approval shall be in writing and personally delivered to a member of the Design Review Committee, or a Design Review Committee-designated representative. There shall be no fee for the review. If no Design Review Committee exists, or if the Design Review Committee shall fail to approve or disapprove the plans and specifications within thirty (30) days after submission of the information required hereby, then such approval shall be

deemed to have been received as to the matters set out in this Section 6, provided that no building or other structure shall be erected which violates any of the remaining covenants herein contained.

(f) **Grading.** After building pads are located with respect to topography, and finish grade elevation has been approved and permitted by the City of Las Cruces and the finish grade of the Lot has been completed, such finish grade shall not be altered, changed or disturbed, except with the prior written consent of the City of Las Cruces.

(g) **Covenants.** Each Owner of a Lot shall be deemed to covenant and agree that (a) neither initial construction of Improvements nor any exterior addition, change or alteration to existing Improvements shall be commenced within the Owner's Lot until approval for such construction, addition, change or alteration is approved in accordance with this Declaration, and (b) as the developer and initial owner of the Subdivision, Declarant has a significant and substantial interest in ensuring that all Improvements are consistent with the Subdivision plan and that the Improvements do not have an adverse impact upon Declarant's ongoing ability to market, sell, and/or lease all or any portion of the Subdivision. Accordingly, in its exercise of the rights and powers of the Design Review Committee under this Declaration, Declarant shall have the right to approve or disapprove any plans and specifications for Improvements in Declarant's sole discretion, and all Owners acknowledge that in reviewing and acting upon any such plans and specifications, Declarant shall be acting in its own interest and shall owe no duty whatsoever to any other individual or entity, including, without limitation, the Owners.

7. **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done therein which may be or may become an annoyance or nuisance to the neighborhood. Such typical neighborhood annoyances and nuisances not allowed include, but are not limited to, (a) long-term parking of a recreational vehicle, boat, motor home, trailer, or camper on any street in the Subdivision or on any part of any Lot, unless it is inside a garage or enclosure which occludes it from visual observation of neighbors and passersby; (b) ham radio towers and antennae; (c) storage of salvage materials or any other tangible property not directly essential to the use of the Improvements on the Lot; (d) inadequate maintenance of landscaping; and (e) long-term parking of an inoperative vehicle or any vehicle in poor condition. No signs or other advertising shall be displayed on any Lot unless the size, form and number of same are first approved in writing by the Design Review Committee and the same are in compliance with the applicable ordinance of the City of Las Cruces. Provided, however, that any Owner may, without such prior approval, erect one (1) sign of not more than two feet (2') by three feet (3') advertising that Owner's Lot for sale or rent, either before, during or after the construction period. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept within or on any Lot, provided that they are not kept, bred or maintained for any commercial purpose. When allowed to be kept, all pets must be kept within a fenced or bounded area upon the Owner's Lot and must be on a leash accompanied by the Owner or within the direct control of a responsible person when outside the fenced or bounded area. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept on any Lot, except in sanitary containers, screened from view from all streets and other Lots. Refuse placed on the curb

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or sidewalk for pickup shall not be placed in open view more than twenty-four (24) hours before the scheduled pickup time. Television reception dishes or large antennae taller than three feet (3') must be approved by the Design Review Committee and will not be allowed unless properly screened from view and not an imposition to adjoining or nearby property owners.

8. Walls and Fences.

(a) **Perimeter Walls.** By no later than the issuance of a certificate of occupancy for the first dwelling constructed on a Lot, the Owner of such Lot must build, in accordance with the provisions of this Declaration, a wall on each property line of such Lot, except for any property line that is adjacent to the right-of-way of any public street (said walls are sometimes referred to in this Declaration individually as a "Perimeter Wall" and collectively as the "Perimeter Walls"). The Committee may waive or modify the foregoing requirement if the shape or orientation of a Lot makes compliance with such requirement impractical. Perimeter Walls that are required to be built on the rear property line of a Lot must be built on the entire length of such property line. Perimeter Walls that are required to be built on a side property line must extend from the rear property line of such Lot to a point twenty-five feet (25') from the front property line of such Lot. Except for Party Walls (defined below), the Owner of a Lot shall be responsible for the cost of building and maintaining all Perimeter Walls on that Lot. In all respects, all Perimeter Walls shall be constructed in accordance with the standards set forth in Division 3, Article III, Chapter 32, of the Las Cruces Municipal Code as it may be amended from time to time and as set forth in this Declaration. Each Owner shall ensure that each contractor who constructs a Perimeter Wall on such Owner's Lot knows of the requirement that such wall be constructed in accordance with said standards. Except for Perimeter Walls that are not Party Walls, each Perimeter Wall shall be centered on the lot line with roughly half the width of the footers required for such wall on either side of the lot line. All Perimeter Walls must be constructed of rock or stone in conformance with what is commonly known as "Las Cruces Rock Wall" standards, materials and styles and using only golden/tan/reddish rock. In no case shall broken glass or any other sharp object be embedded in a Perimeter Wall. Except as provided in the next sentence, all Perimeter Walls must be a minimum of forty-two inches (42"), and a maximum of seventy-two inches (72"), above grade. The part of a Perimeter Wall on the side property line of a Lot that is more than five (5) feet farther from the rear property line than the part of the rear wall of the dwelling that is farthest from the rear property line may be as low as twelve inches (12") above grade. Except for Party Walls, if it becomes necessary or desirable to repair or rebuild the whole or any part of a Perimeter Wall, the cost thereof shall be borne by the Owner of such Lot. Provided, however, that if all or any part of the Perimeter Wall on a Lot is damaged by the act or omission of any other Owner, or agent of any other Owner, such Perimeter Wall shall be repaired or rebuilt at that latter Owner's expense. Any repairing or rebuilding of a Perimeter Wall on a Lot shall be on the same location, and of the same size, as the original Perimeter Wall or portion thereof and of the same type of material as that used in the original Perimeter Wall or portion thereof. If the Owner of a Lot does not agree with any other Owner that it is reasonably necessary or desirable to repair or rebuild the whole or any part of a Perimeter Wall on such Lot, the Committee shall make the determination and its determination shall be binding on the Owner of such Lot. No Owner shall make or provide openings in a Perimeter Wall on such Owner's Lot

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of any nature whatsoever without the consent of the Design Review Committee. Each Owner of a Lot is hereby placed on notice that if the user of an easement tears down all or a portion of a Perimeter Wall on such Lot that interferes with such easement in order to exercise its rights with respect to such easement, such Owner shall be responsible for the cost of repairing or rebuilding such Perimeter Wall.

(b) Party Walls. The provisions of this Section 8.(b) shall govern the building, maintenance, repairing and rebuilding of Perimeter Walls on the property line between two Lots (said Walls are sometimes referred to in this Declaration individually as a "**Party Wall**" and collectively as the "**Party Walls**") to the extent that said provisions are inconsistent with Section 8.(a) of this Declaration. The Owner of a Lot shall not be required to build a Perimeter Wall on the part of the property line between such Lot and an adjoining Lot if an owner of the adjoining Lot has previously built a Perimeter Wall on such line. The first Owner of a Lot other than Declarant (the "**Paying Owner**") on which a Party Wall has been built by the owner of an adjoining Lot (the "**Constructing Owner**") shall reimburse the Constructing Owner (or its successor-in-interest) one-half ($\frac{1}{2}$) of the cost of constructing the portion of such wall that is (or should be) on the Paying Owner's property line within ten (10) days after the Constructing Owner (or its successor-in-interest) submits to the Paying Owner a written request therefor with copies of documents that substantiate such cost (the "**Due Date**"). If the Paying Owner fails to reimburse the Constructing Owner for one-half ($\frac{1}{2}$) of such cost by the Due Date, then the Paying Owner shall pay the Constructing Owner interest on such amount at the rate of 10% per annum from the Due Date. The Constructing Owner shall also have a lien against the Paying Owner's Lot for payment of such amount, interest thereon and reasonable attorneys' fees and costs incurred in conjunction with collecting said debt. The lien shall be effective from the date notice thereof is filed in the real property records of Doña Ana County, New Mexico. No Owner shall allow water to pond or pool on his, her, or its Lot against any portion of a Party Wall. If it becomes necessary or desirable to repair or rebuild the whole or any part of a Party Wall, the cost thereof shall be borne in equal shares by the Owners of the Lots on which such wall is or was located. Provided, however, that if the Party Wall is damaged by the act or omission of any Owner, or agent of any Owner, the Party Wall shall be repaired or rebuilt at that Owner's expense. Similarly, where repair or maintenance is required on the side of a Party Wall for only cosmetic reasons, then the Owner of the Lot to which such side faces shall be solely responsible for the cost of the repair or maintenance, and no right of contribution shall arise in favor of such Owner for such repair or maintenance. If the Owners of a Party Wall cannot agree whether it is reasonably necessary or desirable to repair or rebuild the whole or any part of the Party Wall, the Committee shall make the determination and its determination shall be binding on both of the Owners of such wall. No Owner shall make or provide openings in a Party Wall of any nature whatsoever without the consent of the other Owner of such Wall and the Design Review Committee. In the event such consent is given and such openings are made, the openings shall be subject to the right of the consenting Owner to close up such openings at any time that he or she may desire to use any portion of the Party Wall, and no easement shall be created by reason of such openings either for access, or for light and air. Each Owner of a Lot is hereby placed on notice that if the user of an easement tears down all or a portion of a Party Wall on such Lot that

interferes with such easement in order to exercise its rights with respect to such easement, the Owners of such wall shall be responsible for the cost of repairing or rebuilding it.

(c) **Other Walls.** All walls constructed on a Lot that form the "return" from a Perimeter Wall to the dwelling or courtyard thereon and internal patio walls tied to the dwelling may be of the same or compatible material used in the dwelling construction, subject to approval of the Design Review Committee. Decorative wrought iron and wood may be used for wall accents (other than for Perimeter Walls), gates and such, subject to Design Review Committee approval. No part of a wall on a Lot shall be less than twenty-five feet (25') from the front property line of such Lot. The use of chain link, wood, tin, sheet metal, corrugated metal, wire, chicken wire, wire mesh, and barbed wire gates and fences are specifically prohibited. Except as otherwise specifically approved by the Committee, all gates shall be made of wrought iron or iron tubing overlaid with wood slats.

(d) **Easements.** Declarant hereby reserves for its benefit and the benefit of its successors and assigns a non-exclusive, perpetual right of ingress and egress over each Lot for the purpose of constructing, maintaining, and repairing Perimeter Walls on such Lot. The Owner of each Lot is hereby granted a non-exclusive, perpetual right of ingress and egress over each Lot adjoining such Owner's Lot for the purpose of constructing, maintaining, and repairing Party Walls on a property line between such Owner's Lot and an adjoining Lot. Use of the easements reserved and granted in this paragraph shall at all times be reasonable, and shall occur only after reasonable written notice to the Owner of the servient Lot.

9. **Landscaping.** Each Owner shall be responsible for having a minimum of six (6) plants planted in the ground in the front yard of such Owner's Lot no later than the issuance of a certificate of occupancy for the first dwelling constructed on such Lot, unless the Committee consents in writing to deferring such obligation for not more than four (4) months on such terms and conditions as the Committee deems appropriate, including, without limitation, requiring such Owner to deposit funds with the Committee to secure such Owner's performance of such obligation. At least one (1) of such plants must be a tree with a minimum trunk diameter of 2" and each of the remainder of such plants must each be at least a five-gallon shrub or tree. The front yard is that portion of the Lot that lies between the street and the front façade of the dwelling and outside any courtyard wall. The Owner of a Lot shall maintain such plants in good condition and shall promptly replace any such plant that has been removed or died or been substantially damaged by disease, pests or another cause. Ground cover of some type of material is mandatory. It is expressly not required that grass or vegetation ground cover be placed. However, natural ground is not acceptable. The Committee has the authority to make the determination that a certain application of ground cover is or is not adequate. Landscaping design and plant material selection shall conform to City of Las Cruces guidelines.

10. Easements.

(a) Easements for installation and maintenance of utilities and other uses are reserved and are hereby expressly acknowledged and granted as shown on the Plat. Upon the described easements, no permanent structure, ground cover, planting or other material shall be placed or permitted to remain, except as may be authorized in writing by the Committee. The easement area of each Lot and all improvements thereon shall be maintained by the Owner of such Lot, except those improvements for which the easement owner may be responsible, as determined by the Committee. Access without trespass shall be provided for maintenance personnel for the installation, upkeep, repair, removal and replacement of facilities contained within the easements.

(b) The Owner of each Lot shall also be responsible for maintaining the strip of land between his property line and the back of the curb on the near side of any street adjacent to or in front of the Owner's lot line.

(c) All Lots must conform to the requirements as shown on the Plat and to the City of Las Cruces drainage and ponding requirements.

(d) Sale of any Lot shall include all rights of Declarant in and to the street, road or highway adjoining the same, subject to the rights of all others to use the same as public or private thoroughfares. Declarant reserves the right to dedicate to the public all streets within or abutting the Subdivision without the consent of any Owner.

(e) All public and private rights-of-way, including streets and roads dedicated to the City of Las Cruces, shall also be considered utility easements.

11. Completion of Construction. The construction of all Improvements shall proceed and be completed in accordance with the plans and specifications approved by the Design Review Committee. For all purposes such construction shall be undertaken with diligence continuously from time of commencement until fully completed, and no building shall be occupied for dwelling purposes until construction has been completed and a certificate of occupancy issued by the City of Las Cruces. Permissible accessory buildings may not be constructed prior to the construction of the main residential structure. Once construction commences, whether of the new structure or any subsequent additions, alterations or modifications, such construction shall be completed within six (6) months. In any event, unless an extension is granted in writing by Declarant, construction of a dwelling on each Lot must commence within eighteen (18) months after such Lot is first owned by a person other than Declarant. Should construction on any Lot not be commenced within said period, Declarant at its sole option has the right to repurchase that Lot for the same consideration received by Declarant for the sale of such Lot.

12. Declarant's Option to Repurchase Unimproved Lots. If the Owner of any Lot that does not have a concrete slab for a dwelling on it desires to sell or exchange that Lot within eighteen (18) months after such Lot is first owned by a person other than Declarant, then prior to offering that

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Lot for sale or exchange, the Owner of that Lot shall submit a written offer to sell that Lot to Declarant for the same consideration received by Declarant for the sale of that Lot and on the same other terms and conditions that Declarant sold that Lot. Declarant may, within ten (10) days after receipt of such notice, accept that offer by written notice to the Owner of that Lot.

13. Oil and Mineral Operations. No oil drilling, oil development operation, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.

14. Design Review Committee. There is hereby established the Design Review Committee, referred to herein sometimes as "**Committee.**" The Committee shall be composed initially of Declarant, or its designee. All design review rights of Declarant may be exercised on behalf of Declarant by such members, officers, directors, employees, agents, representatives, or other designees of Declarant as Declarant may designate from time to time. In the event of the death or resignation of any member(s) of the Committee, the remaining members, whether or not constituting a majority, shall have full authority to designate a successor to fill such vacancy. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed in connection with their activities as members or representatives of the Committee. Upon completion of construction of a dwelling on each Lot, or ten (10) years from the date this Declaration is recorded in the office of the County Clerk of Doña Ana County, New Mexico, whichever occurs first, Declarant shall be deemed to have resigned without further notice. After such date, all privileges, powers, right and authority of the Committee shall be exercised by and be vested in a Committee to be selected by the Owners of a majority of the Lots.

15. Powers of the Committee. The Committee shall have the power to authorize, on a case by case basis, variances from the requirements herein contained, in cases where strict adherence to those requirements would operate to work a hardship on an Owner or Owners of one or more Lots, or where the requirements can not be reasonably met due to the topography, location or shape of a particular Lot. The Committee's approval or disapproval as required in this Declaration must be in writing.

16. Limitation on Liability of the Committee. Members of the Committee or their representatives shall not incur any liability of whatever nature to any person or entity, their assigns, purchasers or personal representatives submitting plans or specifications as hereinbefore provided for, or to any Owner of a Lot or Lots, by reason of a mistake in judgment or discretion, of nonfeasance, or negligence arising out of or in connection with the approval, disapproval or the failure to approve any plans or specifications submitted.

17. General Provisions.

(a) **Variance.** Variances for any distance and height requirements imposed by this Declaration or any other dispensation to an Owner of a Lot may only be granted by Declarant or the Committee.

(b) **Amendments.** This Declaration may be modified, changed, altered or revoked by Declarant at any time within two (2) years after this Declaration is recorded in the office of the County Clerk of Doña Ana County, New Mexico, by an instrument that is duly recorded with the County Clerk of Doña Ana County, New Mexico. This Declaration may be modified, changed, altered or revoked at any time thereafter by an instrument duly signed, acknowledged and recorded by a majority of the then Owners (each Lot shall be entitled to one vote).

(c) **Severability.** If any clause, provision or term of this Declaration is declared illegal, invalid or unenforceable under applicable present or future laws, then the remainder of this Declaration shall not be affected and, in lieu of any such clause, provision, or term, there shall be added as a part thereof a substitute clause, provision or term as similar in substance to such illegal, invalid or unenforceable clause, provision or term as may be possible.

(d) **Enforcement.** In the event suit is brought or an attorney is retained by Declarant or any Owner of a Lot to enforce this Declaration or to collect money damages for a breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation, witness fees, and other related expenses incurred in conjunction therewith, as determined by the court and not a jury

(e) **Construction.** Words in any gender shall be deemed to include the other genders. The singular shall be deemed to include the plural and vice versa. The headings are for guidance only and shall have no significance in the interpretation of this Declaration. For purposes of this Declaration, the term "**Owner**" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to a Lot, including the purchaser under a recorded real estate contract wherein the purchaser is entitled to possession, but excluding those having such interest merely as security for the payment or performance of an obligation, including the holder of an owner's interest in a recorded real estate contract wherein the purchaser is entitled to possession.

18. Miscellaneous Provisions.

(a) Each Owner of a Lot accepts the same subject to all restrictions, conditions, covenants, reservations, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights and benefits hereby granted, created, reserved or declared, and all obligations hereby imposed shall be covenants running with the land and shall bind any person having at any time any interest or estate in the land, and shall inure to the benefit of such Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

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(b) Each Owner of a Lot is hereby placed on notice of the plans of Declarant, and affiliated entities, to develop adjacent and nearby lands. Each Owner of a Lot hereby consents to such development and covenants not to oppose such development, provided such development is not in violation of the law.

Effective February 10th, 2006

TIERRA NEGRA, INC., a New Mexico corporation

By: [Signature]
Philippos T. Philippou, President

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA

This instrument was acknowledged before me on February 10th, 2006, by Philippos T. Philippou as president of Tierra Negra, Inc., a New Mexico corporation.



OFFICIAL SEAL
LADONNA F. LOPEZ
NOTARY PUBLIC - STATE OF NEW MEXICO
My commission expires: 11-18-07

[Signature]
Notary Public
My commission expires: 11-18-07

State of New Mexico
County of Dona Ana
RECEPTION NO. 4967
I hereby certify that this
instrument was filed for
recording and duly recorded on
FEB 10 2006
at 4:42 o'clock P M
Book 1084 Page 1004-1015
of the Records of said County.
Rita Torres, County Clerk
[Signature]



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