

DECLARATION OF COVENANTS FOR

LA TIERRA ESCONDIDA SUBDIVISION (PHASE I)

GRANTOR: JAKES DEVELOPMENT, INC.

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ARTICLE I: DEFINITIONS

Unless the context otherwise specifies or requires, for the purposes of this Declaration the terms defined in this Article shall have the meanings set forth herein. Any terms not defined herein shall have the meaning as defined in the applicable zoning ordinance in effect.

Section 1.01. Annexation/Annexed. The term "Annexation" shall mean the addition of real property not described in Exhibit A into La Tierra Escondida Subdivision and made subject to this Declaration, and thereby made subject to the jurisdiction of the Association. The term "Annexed" shall mean added by Annexation as herein defined.

Section 1.02. Architectural Review Committee. The term "Architectural Review Committee" shall mean the committee created pursuant to the Article entitled "Architectural Review Committee".

Section 1.03. Architectural Review Committee Rules. The term "Architectural Review Committee Rules" (also herein the "Committee") shall mean rules adopted by the Committee pursuant to authority given to them by this Declaration, including written supplements from the Committee.

Section 1.04. Assessments. The term "Assessments" shall mean any assessments that may be levied upon any Lots within the Subdivision as provided in this Declaration.

Section 1.05. Association. The term "Association" shall mean "La Tierra

Escondida Community Association, Inc.”, a non-profit New Mexico corporation formed by Grantor, and any predecessor or successor incorporated or unincorporated association, as set forth in the Article entitled "La Tierra Escondida Owners Association”.

Section 1.06. Board. The term "Board" shall mean the Board of Directors of the Association.

Section 1.07. Building Envelope & Setback Requirements. The term “Building Envelope” shall mean the area on which the dwelling unit and appurtenant structures may be constructed, as established by the Grantor for each Lot. The term "Setback Requirements" shall mean the site setback requirements as established by the zoning authority with jurisdiction from a the front, rear and side Lot lines. Building envelopes established by Grantor shall control over zoning regulations so long as the Building envelopes are more restrictive.

Section 1.08. Code. The term “the Code” shall mean any statute or ordinance or other form of law legally enacted by the State of New Mexico or a local governing authority with jurisdiction over the Subdivision under State or federal law.

Section 1.09. Common Area. The term "Common Area" shall mean any real property owned or controlled by the Association intended for the common use and enjoyment of the Association Members. In addition, the Common Area

includes for the purposes only of requiring the Association's upkeep and maintenance of such area, any berm, planter area, and green strip within the Subdivision or any drainage or maintenance easement adjacent to or within any street or public right of way and any designated Open Space. Common Areas in La Tierra Escondida include Community Streets, a community center and park, and equestrian and fitness paths throughout the Subdivision.

Section 1.10. Community Street. The term "Community Street" shall mean any area owned by the Association over which there is granted the right of vehicular access to the Owners and their invitees.

Section 1.11. Declaration of Covenants for La Tierra Escondida. The terms "The Declaration of Covenants for La Tierra Escondida " or "this Declaration" shall mean the limitations, restrictions, covenants and conditions set forth in this Declaration, as such Declaration may from time to time be amended, and as may from time to time be supplemented or modified by the provisions of a Declaration Recorded with respect to Annexed property.

Section 1.12. Design Guidelines. The term "Design Guidelines" shall mean the Design Guidelines attached to this Declaration as Exhibit B and incorporated herein by this reference, which shall be the guidelines for Improvements in the Subdivision, except to the extent that different Design Guidelines may be adopted in connection with Annexation of subsequent phases of the Subdivision, in which case such Design Guidelines shall be

controlling as to such subsequent phases. The Architectural Review Committee shall have the authority to clarify and refine the Design Guidelines by issuing supplemental written Design Guidelines, which shall be encompassed within the term Design Guidelines as used in this Declaration.

Section 1.13. Drainage Areas. The term "Drainage Areas" shall mean those areas so designated on La Tierra Escondida Subdivision Plats where water is expected to flow naturally or where the design of the Subdivision creates or directs flow. Said drainage areas may be owned by an Owner subject to an easement for maintenance and drainage by the Association or a governmental agency.

Section 1.14. Equestrian Lot. The term "Equestrian Lot" shall mean each Lot designated by Grantor or on the Subdivision plat as an Equestrian Lot, or as a Lot on which the keeping of horses is allowed.

Section 1.15. Grantor. The term "Grantor" shall mean Jakes Development, Inc., a New Mexico Corporation, and its successors and assigns. Only Jakes Development, Inc. and its successors or assigns shall have the rights of Grantor under this Declaration. Jakes Development, Inc. may assign Grantor rights to a successor or assign or may reserve the right of Grantor.

Section 1.16. Improvements. The term "Improvements" shall include, but not be limited to, buildings, sheds, animal enclosures, roads, driveways, air conditioners, parking areas, fences, garden walls, stairs, decks,

windbreaks, poles, antennas, lighting, signs, utility or communication installations (whether above or underground), solar panels, retaining structures, waterways, landscaping, play equipment, and any other structures, and grading and excavations of any type, whether located on a Lot or in a Common Area.

Section 1.17. Lot. The term "Lot" shall mean any numbered or lettered Lot shown on any Plat of property situated within the Subdivision except those areas owned by the Association. Upon the consolidation or merger of any Lots, "Lot" shall mean the parcel consisting of the Lots so consolidated or merged.

Section 1.18. Membership; Member. The term "Membership" shall mean the Membership in the Association by Owners of Lots within the Subdivision as set forth herein. The term "Member" shall mean the person or persons holding such Membership.

Section 1.19. Mortgage; Mortgagee. The term "Mortgage" shall mean a deed of trust, an assignment of a leasehold interest for security purposes and the seller's interest under a contract of sale of real property, as well as a mortgage. The term "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust, an assignee of a leasehold interest assigned for security purposes, or the seller under a contract of sale of real property within the Subdivision, as well as a mortgagee.

Section 1.20. Open Space. The term "Open Space" shall mean those

areas owned by Grantor, or its successors, or any Owner of property within the Subdivision, over which an easement has been granted to the Association, or those areas granted to the Doña Ana County or other governmental entities in order to preserve the natural view, vegetation, and habitat.

Section 1.21. Operating Fund. The term "Operating Fund" shall mean the fund created pursuant to this Declaration and the Articles of Incorporation and By-laws of the Association to pay for the operation of the Association to fulfill the Association's functions.

Section 1.22. Owner. The term "Owner" shall mean the person or entity, including Grantor, holding the beneficial Ownership of the fee of any Lot (including the purchaser under a contract of sale of real property within the Subdivision) and shall not include persons holding only a security interest or a seller under a contract of sale; provided, however, that for the purposes of the Article entitled "Property Classification and Use", unless the context otherwise requires, "Owner" shall include the family, invitees, licensees, tenants, subtenant and lessees of any Owner.

Section 1.23. Plat. The term "Plat" shall mean a Recorded final subdivision or parcel map.

Section 1.24. Ponding Area. The term "Ponding Area" shall mean any area designated on the Plat for the Subdivision in the Common Area, or on the Drainage Plan for any Lot as approved the local governing authority or by the

Architectural Review Committee, for storage of water flow associated with Improvements to the Lot.

Section 1.25. Record or Recorded. The term "Record" or "Recorded" shall mean, with respect to any document, that the document shall have been recorded in the real estate records of Doña Ana County, New Mexico.

Section 1.26. Single Family Dwelling Unit. The term "Single Family Dwelling Unit" shall mean a housing unit designed for the use of one (1) family, to include persons related by blood, marriage, or adoption, or a congregate of six (6) persons or less who are not so related.

Section 1.27. Subdivision. The term "the Subdivision" shall mean the real property described in Exhibit "A" and designated as a phase of La Tierra Escondida Subdivision on a Recorded Plat, plus all Annexations of real property as may be made as provided in this Declaration.

Section 1.28. Subdivision Rules. The term "Subdivision Rules" shall mean the rules made by the Board pursuant to the authority granted by this Declaration or the Articles of Incorporation or By-laws of the Association as they are from time to time in effect.

Section 1.29. (La) Tierra Escondida Subdivision. The term "La Tierra Escondida Subdivision" shall mean all the property described in Exhibit A and thereby subject to the Declaration of Covenants for La Tierra Escondida Subdivision. Additional property may be annexed into La Tierra Escondida

Subdivision pursuant to Section 2.02. La Tierra Escondida Subdivision, may from time to time be referred to simply as "the Subdivision" or "La Tierra Escondida".

ARTICLE 2: PROPERTY SUBJECT TO RESTRICTIONS

Section 2.01. Initial Development. All that certain real property located in Doña Ana County, New Mexico, described in Exhibit "A" attached hereto and incorporated herein, shall constitute the initial La Tierra Escondida Subdivision (Phase I), and shall be held, conveyed, encumbered, leased, developed, improved, and used subject to the covenants, conditions, restrictions, and equitable servitudes imposed in this Declaration.

Section 2.02. Subsequent Developments. Grantor may from time to time and in its sole discretion add real property owned by Grantor or other persons or entities to La Tierra Escondida Subdivision through Annexation. The Annexation of any such property shall be effective when Grantor Records a declaration describing the real property to be annexed, and declaring that such property shall be held, conveyed, used, occupied and improved, subject to this Declaration of Covenants for La Tierra Escondida, as modified therein. Upon any Annexation becoming effective, the property covered by such Annexation shall be within the jurisdiction of the Association.

The Declaration may provide for new land classifications not herein designated, restrictions, covenants and conditions, or additional or different

limitations, restrictions, covenants and conditions than in this Declaration, all as Grantor deems appropriate for the development of such property; provided, however, that such additional or different limitations, restrictions, covenants and conditions applicable to Common Area lying within such annexed property shall not discriminate between Owners.

Section 2.03. Disclosures Regarding Nearby Uses. La Tierra Escondida Subdivision is a family community, located near a planned extension of Sonoma Ranch Road as a major arterial, according to the Las Cruces Metropolitan Planning Organization. La Tierra Escondida is planned to allow for the keeping of horses on certain lots, consistent with the Subdivision Plat, applicable zoning regulations, and this Declaration. Currently vacant land, even land owned by the Federal Bureau of Land Management or other government agencies, may be developed in the future, for residential, commercial, industrial, or mixed uses. Existing and possible future uses in the area generate noise, bright light, vehicle and pedestrian traffic, and other similar secondary effects, including within the Subdivision. By purchasing a Lot, each Owner acknowledges that existing uses, including their secondary effects, are not a nuisance, and that additional mixed use development in the area by the Grantor or others, which may increase such secondary effects, shall not constitute a nuisance based on the provisions of this Declaration or any representations by Grantor or Grantor's agents or other representatives.

ARTICLE 3: PROPERTY CLASSIFICATION AND USE

Section 3.01. Nature and Character of the Subdivision. The Disclosure Statement for the Subdivision includes detailed information about the Subdivision. The information provided in this Declaration is intended to inform prospective Owners about the nature and character of the Subdivision and surrounding community as relevant to the purposes of this Declaration, and to the best knowledge of Grantor, and is not intended to meet disclosure requirements under applicable subdivision regulations.

The Initial Development of La Tierra Escondida Subdivision is intended for Single Family Dwelling Units. However, subsequent phases of the Subdivision may include other classifications of uses, including but not limited commercial uses. This Declaration shall not be deemed to provide an Owner any basis for objecting to any classifications and uses of subsequent development to become part of La Tierra Escondida Subdivision, or to be developed adjacent to or in the vicinity of La Tierra Escondida by Grantor or others. Some Common Areas shall be located within gated areas of the Subdivision, and Owners of Lots outside gated areas shall have the right to access these gated Common Area facilities.

Section 3.02. Emergency Access. There is an “Emergency Access Only” entrance to the Subdivision, as identified on the Plat for the Subdivision. Use of this Emergency Access road for entrance to or exit from the Subdivision

other than by emergency vehicles during an emergency is prohibited.

Section 3.03. Lot Use By Owner. Each Lot shall be for the exclusive use and benefit of its Owner, subject however, to all of the rights, conditions, standards, limitations and restrictions in this Declaration, including the Design Guidelines in Exhibit B, hereby incorporated herein by this reference as though fully set forth.

(a) Each Lot and any and all Improvements thereon, including Drainage Areas and Ponding Areas, shall be maintained by the Owner thereof in good condition and repair, all at such Owner's sole cost and expense.

(b) In the event that any Improvement is destroyed, wholly or partially by fire, flood, accident, or any casualty, such Improvement shall be rebuilt, repaired, or replaced to conform to this Declaration, or removed from the Lot if not an Improvement required by this Declaration, within twelve (12) months from loss.

(c) No Lot may be landscaped or regraded in such a manner as to cause the drainage characteristics of the Lot to differ materially from the grading plan approved by the local governing authority and the Architectural Review Committee, and in no case shall the drainage characteristics be modified in such a way as to cause damage to adjacent properties. An Owner shall promptly clean up any soil or debris from an Owner's Lot that runs onto any part of the Common areas or public or Community Street.

(d) Improvements shall be limited to one Single Family Dwelling Unit, allowed accessory living quarters as provided for below, out-buildings allowed under the Design Guidelines, and associated residential Improvements, Common Areas, and public or quasi-public service and utility facilities related to such uses, including but not limited to, sewer, gas, water, electric and communication facilities.

(e) An Owner may build accessory living quarters so long as allowed by Code, to be used for guests, or to house family, friends, or domestic help, but such quarters may not be used as a rental separate from the primary Single Family Dwelling Unit.

(f) All automobiles, vans, pick-up trucks, motorcycles, boats, motor homes, trailers, campers, and commercial vehicles except those of temporary guests shall be parked overnight and otherwise stored in a garage or motor court enclosed by walls a minimum of four feet (4') and a maximum of six feet (6') in height. No vehicle of any type shall be kept, placed, maintained, constructed, reconstructed or repaired on the Lot if visible from Common Areas, streets, or an adjacent Lot, except that operable vehicles may be temporarily parked on the approved driveway for the Lot.

(g) Each Owner shall be responsible for removing trash and weeds from the Lot into a trash receptacle. Trash, including yard waste, shall not be burned within La Tierra Escondida Subdivision.

(h) All trash receptacles are to be removed from the street within eight (8) hours after trash pickup and stored in the garage or behind a wall and not visible from any neighboring Lot or from the curb or street.

(i) All outdoor lighting shall comply with the New Mexico Night Sky Protection Act, NMSA 1978, §§ 74-12-1 et seq. (2000), hereby incorporated by this reference, or as that Act is subsequently amended, except that if the Act is repealed in full, the provisions of the Act as enacted in 2000 shall continue to be enforceable as provisions of this Declaration.

Section 3.04. Prohibited Uses.

(a) In no event shall any Lot be used for the purpose of mining, quarrying, or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth, or be used in any other way inconsistent with this Declaration, except as required for development, construction and maintenance of Improvements.

(b) Use of any Lot for any other than residential purposes is prohibited, except that this provision shall not be construed to prevent the rental or lease of a residence by the Owner, or to prohibit home occupations allowed by Code.

(c) In addition to design styles of on-site construction prohibited by the Design Guidelines, mobile homes, manufactured homes, modular homes, or other forms of dwelling units not constructed on the Lot, whether or not attached to a permanent foundation on the Lot, are prohibited in La Tierra

Escondida Subdivision.

(d) Use of a trailer or motor home is prohibited except for a guest for a period of no more than twenty-one (21) consecutive days, and use of a tent, shack, garage or accessory building as a residence is prohibited; no garage required by this Declaration may be converted for use as part of the living quarters of the residence, or shall be used or maintained in such a way to prevent its use for parking vehicles, unless a replacement garage is constructed on the Lot consistent with the Design Guidelines.

(e) There shall be no overhauling or rebuilding of any vehicle or machine in any driveway or street, or on any Lot, except in a garage or enclosed motor court.

(f) No clotheslines or other paraphernalia for outside drying of clothes, bedding, or other household furnishings are permitted unless completely screened from view from other Lots by a wall built in compliance with the Design Guidelines.

(g) Other than horses on Equestrian Lots kept consistent with the provisions of this Declaration, no animals, other than household pets (including exotic animals with regular access to the Single Family Dwelling Unit), shall be kept in the Subdivision.

(h) Lighted signs are prohibited, except for temporary use related to a religious or national holiday.

(i) No firearms shall be discharged from within the Subdivision, including property Annexed into the Subdivision, or on surrounding lands owned by Grantor.

(j) Hunting is prohibited within La Tierra Escondida.

(k) Use of motorized dirt bikes, quads, or other motorized alternative terrain vehicles is prohibited in the Subdivision, other than as allowed by the Code on publicly maintained rights of way, and along a Community Street to the limited extent necessary for the user to reach the publicly maintained right of way. The Association may allow use of electric golf carts or similar motorized vehicles that generate minimal noise within the Subdivision, including but not limited to in Common Areas, subject to the restrictions for recreational paths provided for below.

(l) Use of motorized vehicles, including but not limited to golf carts, is prohibited on recreational paths within the Common Areas of La Tierra, other than the use of wheelchairs, and minimally powered electric scooters or similar recreational equipment, that do not present a hazard or nuisance for pedestrian, cycling, and equestrian use of such paths, as determined by the Association.

(m) Any violation of any provision of the Code by an Owner in using or maintaining the Owner's Lot or any Common Area shall also be deemed a violation of this Declaration, and any other Owner of any Lot within La Tierra

Escondida Subdivision, Grantor, the Committee, or the Association shall have the right to enforce the Code and exercise the remedies herein for a violation of a provision of the Code to the same extent as any for any other violation of this Declaration.

Section 3.05. Equestrian Lot Provisions. Certain Lots will be designated on the Subdivision Plat or otherwise by Grantor as Equestrian Lots. Up to two (2) horses, lamas, or other large animals if approved by the Association (specifically excluding donkeys, mules, and other braying or loud animals), may be kept on any Equestrian Lot, although up to four (4) may be maintained on a Lot for a period of up to forty-eight (48) hours. No arenas, stages, exhibition areas or rodeo areas are allowed. Hay, feed, tack, and training equipment not in use must be stored in a fully enclosed structure. Equestrian Lots may not be used for commercial purposes, other than a home occupation in compliance with the Code.

Section 3.06. Gated Lot Provisions. Certain Lots in the Subdivision will be designed with the potential to be developed so that access to the Lot would be through a gated entrance. Any Lot within the Subdivision that could be developed to have gated access shall be considered to be a gated Lot for purposes of assessing road maintenance fees to gated Lots, as provided for otherwise herein.

ARTICLE 4: ARCHITECTURAL REVIEW COMMITTEE

Section 4.01. Membership and Authority. As long as Grantor is an Owner of any Lot or any other interest in the Subdivision, the Architectural Review Committee shall be composed of members appointed by Grantor in writing. Members of the Committee shall serve without compensation, and shall be subject to removal by Grantor with or without cause. Grantor may appoint different members to different Committees for certain Lots or phases of the Subdivision, and each and every such Committee shall have the full authority of the Committee as provided herein. The Committee shall have the authority to designate an individual or group of individuals on the Committee to act on behalf of the Committee. Except as otherwise provided in this Article, the Design Guidelines, and written supplements issued by the Committee, no Improvements shall be erected, placed, remodeled, resurfaced or in any way altered on any Lot until construction plans and specifications showing the location, materials, and all other details of the planned Improvements required by the Committee have been approved by the Committee. Upon the written request of any Owner, the Committee shall have discretion to grant a variance to any Design Guideline, or to the application of any other provision in these Declarations where such authority is explicitly granted herein, if the Committee determines that granting the requested variance will not have a detrimental impact on La Tierra Escondida.

Upon written notice to the Association from the Grantor that the

Grantor no longer owns any Lot or has any other interest in the Subdivision, the Association shall have the authority to appoint the Committee and govern its procedures and practices.

Section 4.02. Standards. The Committee shall implement this Declaration and in particular the Design Guidelines by reviewing proposed construction drawings and other related documents detailing proposed Improvements to a Lot. The Committee may clarify and refine the Design Guidelines through the adoption of written supplements to the Design Guidelines. The Committee shall have the authority to approve or disapprove proposed Improvements based upon the quality of materials, harmony of external design with existing structures and with the character of the La Tierra Escondida Subdivision generally, the location of the Improvements with respect to topography, Building Envelope and Setback Requirements, finish grade elevation, and compliance with any and all provisions of the Design Guidelines, including as supplemented by the Committee.

Section 4.03. Review and Approval Procedures. Prior to beginning construction of any Improvement on any Lot, or to altering any existing Improvement in any way, the Owner (or the Owner's agent) shall submit a written request for approval to the Committee, together with all documentation reasonably necessary for the Committee to act on the request. The Committee may request additional information should the same be

deemed necessary. See the Design Guidelines in Exhibit B to this Declaration for detailed procedures and requirements.

Section 4.04. Inspection Procedures. The Committee, or its authorized representative, shall have the authority to enter onto any Lot for the purpose of inspecting on-going construction of Improvements or recently completed Improvements to ensure that such Improvements conform to the plans approved by the Committee.

Section 4.05. Liability and Indemnity. Members of the Architectural Review Committee shall have no liability to any Owner or other person or entity for any action or inaction with respect to this Declaration and the responsibilities and authority of the Committee pursuant hereto or arising from La Tierra Escondida generally. Any Owner or other person having an interest in any Lot in La Tierra Escondida Subdivision, by accepting an interest in a Lot, or any person or entity submitting plans to the Committee, by the act of submitting plans to the Committee, covenants not to bring any action or suit to recover any alleged damages arising from approval, rejection, or the application of requirements by the Committee with respect to any submittal, against the Committee, its members, the Declarant, or any other person or entity participating in the design review process provided for in this Declaration, including the Design Guidelines and written supplements thereto. The Association shall defend, indemnify and hold harmless the Committee and

each member thereof from any and all allegations and claims arising from or relating to this Declaration or La Tierra Escondida generally.

ARTICLE 5: LA TIERRA ESCONDIDA COMMUNITY ASSOCIATION

Section 5.01. Organization. The La Tierra Escondida Community Association shall be a non-profit corporation charged with the duties and empowered with the rights herein set forth; its affairs shall be governed by this Declaration and to the extent not inconsistent herewith its Articles of Incorporation and By-laws.

Grantor appointed the initial Board of Directors of the Association. Each Owner, by and in consideration of accepting an interest in a Lot, irrevocably pledges to the Grantor its vote to elect Grantor's choice of Directors for the Association so long as the Grantor retains an ownership interest in any Lot, or Grantor, in writing, releases this pledge.

Section 5.02. Membership. Each Owner, by virtue of being an Owner, and for so long as he or she is an Owner, shall be a Member of the Association (or of a succeeding unincorporated association). The rights, duties, privileges and obligations of an Owner as a Member of the Association shall be those set forth in this Declaration and the Association's Articles and By-Laws. In the event of dissolution of the Association, each Owner shall have an equal, underlying beneficial interest in all of the Association's property in direct proportion to the number of Lots owned by such Member; provided, however,

that there shall be no judicial partition of such property, or any part thereof.

Members, members of their families, or their guests, or renters who actually reside within the Subdivision, shall have a right to use the Common Areas on a non-exclusive basis subject to the Subdivision Rules established by the Association.

Section 5.03. Association Responsibilities. The Association shall accept from Grantor the fee or leasehold estate in all Common Areas from time to time transferred to it, subject to the reservations of all easements, licenses and rights to use, and the rights of Grantor. The Association shall maintain, or provide for the maintenance of, Common Area and all Improvements thereon including, without limitation, recreational facilities, in good order and repair, provided, that the Association shall have no maintenance responsibility with respect to Improvements installed by other than the Association or Grantor, pursuant to easements, licenses and rights of use.

To the extent not assessed to or paid by the Owners, the Association shall pay all real property taxes and assessments levied upon Common Area.

ARTICLE 6: FUNDS. ASSESSMENTS AND DELINQUENCY

Section 6.01. Creation of Lien, Personal Obligation for Assessments.

Each Owner, by and in consideration of accepting an interest in a Lot, is deemed to agree to pay the Association: (1) maintenance Assessments; (2)

special Assessments; (3) penalty Assessments; (4) Assessments for capital improvements; (4) all other fees or other moneys due to the Association from such Owner; all as further detailed in Exhibit C to this Declaration. Owners of gated Lots shall be exclusively responsible for payment of the costs of maintaining the roads within the gated areas of the Subdivision. The maintenance Assessment, special Assessment and Assessment for Improvements, plus interest, late charges, costs and attorneys' fees, shall be a charge against and continuing lien upon the Lot against which each such Assessment is made, and shall also be the personal obligation of the Owner or Owners of the Lot on the Assessment date. The ability to lien is also granted to the local governing authority in the event necessary to provide maintenance within the Common Areas consistent with promoting the health, safety and welfare of the residents of the Subdivision or the community in general.

Section 6.02. Application of Assessments to Mortgagees. The liens created under this Declaration upon any Lot shall be subject and subordinate to, and shall not affect the rights of a first Mortgagee under any recorded first Mortgage upon a Lot made in good faith and for value, but shall be enforceable as a second mortgage on the property. After foreclosure sale by a first Mortgagee or the date the Mortgagee obtains possession of the property, whichever is later, the Lot so acquired shall become exempt from liability for payment of assessments and shall remain exempt for so long as the dwelling

unit on the Lot remains unoccupied, or until the first Mortgagee conveys the Lot to a new Owner.

Section 6.03. No Amendment Affect Mortgagees. No amendment to this Declaration shall adversely affect the rights of any Mortgagee who does not join in the execution thereof; as to mortgages recorded prior to the date such amendment is recorded.

Section 6.04. Limitation of Enforcement Against Mortgagee. No violation of this Declaration or enforcement of this Declaration shall defeat or render invalid the lien of any first Mortgagee when such Mortgage is made in good faith and for value against the property but this Declaration shall be effective against any person whose title to property within the Subdivision is acquired by foreclosure, voluntary conveyance or otherwise.

ARTICLE 7: RIGHTS OF GRANTOR

Section 7.01. Future Development. Grantor is developing the initial Subdivision for Single Family Dwelling Units. All Owners are hereby placed on notice that Grantor may develop subsequent phases of La Tierra Escondida under different covenants, and may develop subsequent phases of La Tierra Escondida to include different uses and additional Common Areas or Open Space. Each person accepting a grant of property subject to this Declaration hereby consents to such development, including all Improvements, provided that such development is not in violation of law.

Section 7.02. Application of Protective Covenants to Grantor.

Grantor is under-taking the work of developing the Subdivision. The completion of that work and the sale, rental and other disposition of the property within the Subdivision is essential for the development of the Subdivision. In order that the work may be completed and the property developed and fully occupied as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Grantor or its agents, employees and contractors from doing on the property within the Subdivision or any Lot thereof, whatever is reasonably necessary or advisable in connection with the completion of its work;

(b) Prevent Grantor or its agents, employees and contractors from erecting, constructing and maintaining on any part or parts of the Subdivision, such facilities, structures and offices as may be reasonably necessary for the conduct of its business of completing the work and disposing of the property in parcels by sale, lease or otherwise, including without limitation sales offices, model homes or general business offices for its staff and employees, contractors or subcontractors, storage and parking facilities for material and equipment and fabrication and assembly shop; or

(c) Prevent Grantor from conducting on any part of the properties its business of completing the work, and disposing of the property therein;

(d) Prevent Grantor from maintaining such sign or signs in the Subdivision as Grantor deems necessary for its advertisement, and the sale, lease or disposition of any Lot or Improvement;

(e) Prevent Grantor from making and constructing any Improvements;

(f) Prevent Grantor from combining Lots within the Subdivision or applying for any use permit on any property within the Subdivision.

Section 7.03. Use of Subdivision Name. Grantor may use the name La Tierra Escondida in connection with other developments, whether adjacent to the Subdivision or not, in connection with a business entity or commercial endeavor, or for any other purpose.

Section 7.04. Grantor's Use of Common Area. So long as Grantor owns any Lot or other interest in the Subdivision, including in any part of the Subdivision added by Annexation Grantor reserves unto itself, in any grant of Common Area to the Association, the following rights:

(a) To use any building as a sales center and to maintain therein a sales office with normal and customary office and communication equipment and to maintain therein personnel, maps, display cases, models and decoration; to use the adjacent parking facilities for itself, its agents, employees and invitees; and to use such facilities for such social events as Grantor feels are necessary or proper to promote or aid the Subdivision or Grantor.

(b) To use the facilities of the Association for the purpose of promoting

the sale of property within the Subdivision or of promoting Grantor, and to allow the use of such facilities to its officers, employees, agents, contractors and guests.

(c) To enter onto the Common Area for any purpose for the development or promotion of the Subdivision and Grantor.

Section 7.05. No Amendment or Repeal. The provisions of this Article may not be amended or repealed without the consent of Grantor.

ARTICLE 8: AMENDMENT, REPEAL AND DURATION

Section 8.01. Amendment and Repeal. In addition to the rights reserved to Grantor to modify or supplement this Declaration with respect to property Annexed to the Subdivision, and unless specifically provided to the contrary herein, this Declaration, or any part thereof, may be amended or repealed upon the vote of seventy-five percent (75%) of the Owners, as verified by the Secretary of the Association in a sworn statement setting forth in full the amendment or amendments to this Declaration so approved, , and if necessary, signed by the Grantor, and Recorded.

Section 8.02. Duration. All of the limitations, restrictions, covenants and conditions of this Declaration shall continue and remain in full force and effect at all times with respect to all property, and each part thereof, included within the Subdivision, to the Owners of such property and to the Association in perpetuity, subject however, to the right to amend and terminate.

ARTICLE 9: MISCELLANEOUS PROVISIONS

Section 9.01. Enforcement.

(a) This Declaration shall be binding upon Grantor, all Owners, and all the successors in interest thereto. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservation, liens and charges now or hereafter imposed by the provisions of this Declaration, except that any dispute between an Owner and Grantor, the Association and Grantor, an Owner and the Committee, or the Association and the Committee, shall be determined by binding arbitration conducted pursuant to the New Mexico Uniform Arbitration Act. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(b) Except to the extent otherwise expressly provided herein, Grantor and the Association or any Owner shall have the right to enforce any and all of the limitations, restrictions, covenants, conditions, obligations, liens and charges now or hereafter imposed by this Declaration upon other Owners, or upon any property within the Subdivision.

(c) Except to the extent otherwise expressly provided herein, Grantor and any Owner or Owners shall have the right to enforce any and all limitations, restrictions, covenants, conditions, obligations now or hereafter

imposed by this Declaration upon the Association.

(d) Every act or omission whereby any restriction, condition or covenant of this Declaration is violated in whole or in part is hereby declared to be and to constitute a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Grantor, the Association or by an Owner or Owners, as provided for in subsections (a) and (b) above; provided, only the Association or its duly authorized agents may enforce by self-help any limitation, restriction, covenant, condition or obligation herein set forth.

(e) Each remedy provided for in this Declaration is cumulative and not exclusive.

(f) The failure to enforce the provisions of any limitation, restriction, covenant, condition, obligation, lien or charge of this Declaration shall not constitute a waiver of any right to enforce any such provision or any other provision of this Declaration.

Section 9.02. Construction.

(a) All of the limitations, restrictions, covenants and conditions of this Declaration shall be liberally construed, together, to promote and effectuate the beneficial operation of the Subdivision, the Lots, and Common Areas located therein.

(b) No provision of this Declaration shall be construed to excuse any

person from observing any law or regulation of any governmental body having jurisdiction over such person or the Subdivision.

(c) Notwithstanding the provisions of Subsection (a) above, the limitations, restrictions, covenants and conditions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision, or portion thereof, or any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.

(d) The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter, as the context requires.

(e) All titles used in this Declaration, including those of articles and sections, are intended solely for convenience of reference and the same shall not, nor shall any of them affect that which is set forth in such articles, sections nor any of the terms or provisions of this Declaration.

Section 9.03. Lot Division and Consolidation. No Lot shall be further divided. No Lot shall be consolidated or merged unless the Architectural Review Committee has given written consent and the Owner obtains approval from the local governing authority.

Section 9.04. Obligations of Owners; Avoidance; Termination.

(a) No Owner, through non-use of any Common Area or recreational

facility, or by abandonment of his property, may avoid the burdens or obligations imposed on Owner by this Declaration by virtue of being an Owner.

(b) Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any assessments levied with respect to such Lot after the date of such transfer, and no person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration following the date of such termination.

Section 9.05. Notices Delivery. Any notice or other document permitted or required by this Declaration to be delivered may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to an Owner, then at any Lot within the Subdivision owned by the Owner or at such other address given by Owner to the Association, and if to the Grantor, the Architectural Review Committee or the Association at an address to be provided at the time a lot is purchased; provided, however, that any such address may be changed from time to time by any such Owner, by the Architectural Review Committee, or by Grantor by notice in writing, delivered to the Association, or by the Association, by notice in writing delivered to all Owners. If any mortgagee of an Owner files a written notice with the

Exhibit A: Legal Description

La Tierra Escondida Subdivision Phase I, as depicted on the Plat thereof, being Plat No. 4117, filed of record in the Office of the Doña Ana County Clerk on March 4, 2005, in Book 21, at pages 149-150.

Exhibit B: Design Guidelines for La Tierra Escondida

1. Purpose. La Tierra Escondida is intended to be a premier private community. The community offers exceptional views, rolling topography and natural arroyos, all complemented by desert vegetation. La Tierra Escondida was designed so that the infrastructure could be constructed without destroying the natural beauty of the land and so that homes can exist within the natural landscape of La Tierra Escondida without dominating the landscape.

1.1. The Design Guidelines. The goal of these Design Guidelines is to achieve a harmony of design within La Tierra Escondida so that the reasonable expectations of Owners for the community can be fulfilled. The Design Guidelines established in this document should be viewed by each Owner as protection that this special environment will be complemented by the homes built at La Tierra Escondida. Each Lot is unique in terms of its development opportunities and constraints and will require an individualized approach in design and construction. It is expected that each residence will be designed to fit the individual features of the Lot and that a natural undisturbed setting will be the underlying theme for La Tierra Escondida.

The purpose of this document is to:

- 1 Describe the design review application and approval procedures of the La Tierra Escondida; and
- 2 Communicate those specific design and use elements that will create a very unique and desirable residential neighborhood character.

These Design Guidelines should not be considered as constraints to creativity, but rather as parameters within which the community as a whole is characterized and protected. There is a specific intent to maintain a consistent application of the Design Guidelines (including supplemental Guidelines issued by the Architectural Review Committee) and policies on an equitable and uniform basis. However, due to variations in topography, soil conditions, elevations, dimensions, sizes, views, and similar conditions from Lot to Lot within La Tierra Escondida, equitable will not always mean the same. It may also occur that a particular material or design aspect will be approved by the Architectural Review Committee, but that based on the results the Committee will deem future use of the same material or design aspect within La Tierra Escondida to be inappropriate. The Architectural Review Committee may also disapprove a proposal based upon similarity to a previously approved proposal, to avoid monotonous design within La Tierra Escondida.

1.2. Relationship to the Declaration. The Declaration of Covenants to which these Design Standards are an exhibit includes provisions which relate to these Design Guidelines, to development and use of Lots generally, and to the authority of the Architectural Review Committee. These Design Guidelines are supplemental to other provisions of the Declaration, and EACH OWNER MUST COMPLY WITH ALL PROVISIONS OF THE DECLARATION OF COVENANTS, including but not limited to these Design Standards. It is strongly recommended that each Owner proposing any Improvements seek the assistance of qualified design professional to lend expertise and guidance in preparing development plans for submission to the Architectural Review Committee.

1.3. Supplemental Design Guidelines. As provided in the Declaration, the Architectural Committee has the authority to clarify and supplement these Design Guidelines in writing, and shall provide copies of all written supplements upon request to any Owner. The Architectural Review Committee shall have the authority to grant a variance, but shall not have the authority to allow a use or Improvement which is *prohibited* in the Declaration (including these Design Guidelines).

1.4. Potential Owners. If an individual is considering purchasing a Lot within La Tierra Escondida and is uncertain as to whether or not their preferred design style would be acceptable the individual (or his or her agent) may request preliminary review by the Architectural Review Committee even though the individual is not an Owner. The Architectural Review Committee may establish a reasonable fee schedule for review of plans submitted other than from or on behalf of a current Owner.

2. Liability and Indemnity. Members of the Architectural Review Committee shall have no liability to any Owner or other person or entity for any action or inaction with respect to this Declaration and the responsibilities and authority of the Committee pursuant hereto or arising from La Tierra Escondida generally. Any Owner or other person having an interest in any Lot in Tierra Escondida Subdivision, by accepting an interest in a Lot, or any person or entity submitting plans to the Committee, by the act of submitting plans to the Architectural Review Committee, covenants not to bring any action or suit to recover any alleged damages arising from approval, rejection, or the application of requirements by the Committee with respect to any submittal, against the Architectural Review Committee, its members, the Declarant, or any other person or entity participating in the design review process provided for in this Declaration, including the Design Guidelines, and written supplements thereto by the Architectural Review Committee. The Association shall defend, indemnify and hold harmless the Committee and each member thereof from any and all allegations and claims

arising from or relating to this Declaration or La Tierra Escondida generally. Approval by the Architectural Review Committee or any member thereof shall not be deemed to be a representation or warranty that the Owner's plans or specifications or the actual construction of any Improvements comply with applicable governmental ordinances or regulations.

3. Design Review Procedures and Requirements. All Improvements to any Lot within La Tierra Escondida, other than to the interior of a residence or other structure that have no visual or other exterior impact, must be pre-approved by the Architectural Review Committee. The Committee may, by written supplement, pre-approve certain types of Improvements generally, without requiring case-by-case review. However, all such Improvements must comply with the Declaration, including these Design Guidelines, and any written supplements by the Architectural Review Committee. __

3.1. Pre-Application Considerations. Prior to investing extensive time and money in the preparation of detailed plans, each Owner should provide their architect, designer, or contractor with a copy of these Design Guidelines, and should attempt to identify any unique conditions or issues to be included in the design review submission.

3.2. General Application Procedures. All applications for review and approval of proposed Improvements shall be submitted in writing, and shall be signed and dated for as proof of receipt. All submittals will be reviewed by the Architectural Review Committee and each sheet will be stamped 'approved' or 'address comments and resubmit'; comments shall include all reasons that the proposed plan was not approved. The Owner shall sign a proof of receipt for submittals being returned to the Owner by the Committee.

3.2.1. General Review Process. Within twenty (20) days after all plans and specifications requested by the Architectural Review Committee have been submitted to the Committee by or on behalf of the Owner, the Architectural Review Committee shall approve or disapprove the request in writing as provided for above. Except as to a request for a variance, if the Architectural Review Committee fails to approve or disapprove the request in writing within twenty (20) days, the request shall be deemed approved. If an Owner fails to obtain approval of the Architectural Review Committee, either in writing or by a failure by the Committee to act on a request within twenty (20) days, Grantor shall file suit to enjoin the unapproved Improvements within one-hundred twenty (120) days after the Architectural Review Committee becomes aware that construction of such Improvements have begun. If the Grantor fails to act within said time period, approval will not be required and said Improvements shall be deemed to comply with this Declaration.

3.2.2. Variance Review. As to a request for a variance, if the Committee fails to respond within twenty (20) days, the request shall be deemed denied.

3.2.3. Referrals to the Association. The Architectural Review Committee shall have the discretion but never an obligation to refer any decision to the Association for a vote, and shall not be bound by a vote of the Association even on

a matter referred to the Association by the Committee.

3.2.4. Post-Review Conference. Upon receipt of submittal comments, the Owner or Owner's agent may request a meeting with the Committee to review and explain comments in further detail, and the Committee shall schedule such a meeting as promptly as reasonably possible.

3.2.5. Building Permit. Application for a building permit shall not be made prior to approval of all plans for the Improvement by the Committee.

3.3. Preliminary Submittal. A preliminary submittal would be recommended when there is a request for special construction or materials not covered in the Design Guidelines, or when the Owner or the Owner's agents has any questions about these Design Guidelines (or supplemental Guidelines). All Lot improvements will require review and approval by the Architectural Committee.

A preliminary plan need not be elaborate but should include the following information:

3.3.1. The name of the Owner, and the names, addresses, and phone numbers of the contractor, architect, landscape professional, or other professionals working with the Owner on the proposed Improvements.

3.3.2. Full legal description, including lot and block, and the assigned address for the Lot.

3.3.3. Site Survey-no less than 1" = 20'.

3.3.4. Preliminary grading plan indicating the building envelope and all disturbed areas at the same scale as the site survey and calculation of proposed disturbance area.

3.3.5. Conceptual landscape plan showing the intent for renovation of all disturbed areas and general plant palette and illustrating general locations and varieties of trees, other plantings, and groundcover.

3.3.6. Proposed floor plan, elevations and roof plan (showing areas, heights, and angles of flat and sloped roofs).

3.3.7. The location and approximate size of all proposed Improvements, including buildings, walls, courtyards, driveway, and curb cuts (please show existing street curb), and all legal restrictions, rights of way,

property lines, setbacks, drainage and other easements, dimensioned the same as all documents to be submitted to the building permit office.

3.3.8. Any other details or information that should be addressed such as unique or special construction materials, colors or systems.

The Owner who has elected to submit a preliminary plan should not proceed beyond this point in their planning efforts until written approval is received on the preliminary plans. The plan staging is to the Owner's benefit and can result in substantial savings in time and expense.

3.4 Final Submittal. Other than as provided for below with respect to color choices for approved materials, a complete application for plan review and formal written approval by the Architectural Review Committee must be complete BEFORE any Improvements are made to any Lot.

The following items are requirements for a final submission:

3.4.1. The name of the Owner, and the names, addresses, and phone numbers of the contractor, architect, landscape professional, or other professionals working with the Owner on the proposed Improvements.

3.4.2. Full legal description, including lot and block, and the assigned address for the Lot.

3.4.3. Site/Grading/Drainage Plan showing development envelope, existing and finished grade lines, curb lines and cuts (please show the existing street curb), building footprint with finished floor elevations, retaining and screen walls with top and bottom elevations, pools, spas, water features and outdoor patio areas with elevations and materials denoted, and any other proposed Improvements.

3.4.4. Floor Plans, elevations and all design and trim details for all proposed structures at $\frac{1}{4}'' = 1'$, fully dimensioned with any details necessary to explain the design.

3.4.5. Specifications and samples of all exterior materials, finishes and colors to be used, including brands; however, if the Owner has not made a final decision about colors they may be omitted from the application but any colors must be approved by the Architectural Review Committee as within the approved color palette for the Subdivision before the materials can be applied to the Improvements.

3.4.6. Additional drawings as necessary to aid in portraying the planned improvements.

3.4.7. Landscaping details in compliance with Section 7 herein.

3.4.8. A specific written statement of any variance to the Declaration (including these Design Guidelines) being requested in connection with the proposed Improvements, including the reasons that the variance is being requested, and why the Owner believes that granting the variance will not have a negative impact on La Tierra Escondida.

4.0. Architectural Design. The architectural character should reflect the casual elegance of southwestern living. Southwestern architecture is the result of a wide variety of historical and cultural influences ranging from the Mediterranean to Mexico to the pioneering American West.

It is recommended that homes be designed to be compatible with the southwestern desert environment, which may take the form of Traditional Southwest, Contemporary Southwest, Pueblo, Territorial, Spanish Colonial, Santa Fe, Old World, Tuscan, or Mediterranean, as defined in these Design Guidelines. Exterior materials of stone, stucco or adobe are encouraged while large expanses of treated wood siding are prohibited. Chain link is prohibited for any exterior fencing or gates, although it may be allowed for fencing interior areas that will not be visible from streets or other Lots. Expanses of wood will not be allowed for exterior fencing, although limited use of decorative fencing, such as “coyote fencing”, and decorative wood gates, may be approved if compatible with the design of the other approved Improvements on the Lot.

Plans reflecting the natural topography, area compatibility and excellence of design are the three criteria that will receive more emphasis in the design review process than adherence to a limited architectural “style”. Well designed contemporary homes that blend with the desert due to their simple low profile and horizontal lines are acceptable, while homes that are “transplanted” from regions with very different environments or styles will not be approved. Geodesic domes, quansit huts, and kiva-style homes are specifically prohibited; additional similar style homes may be prohibited by written supplement issued by the Architectural Review Committee.

The garage, any allowed outbuildings, and any allowed accessory living quarter shall be compatible with the Single Family Dwelling Unit on the Lot, both in design and materials, as determined within the discretion of the Committee. Rock or other approved walls should not be totally linear, and

should instead be designed to flow with and complement the natural topography.

4.1. Traditional Southwest. Deep roof overhangs, recessed windows, covered patios or porches, sun screens and trellises typify this character. A limited number of exterior materials and muted colors with forms and massing that often reflect a more indigenous design approach to the desert environment are reflective of this style.

4.2. Contemporary Southwest. This term refers generally to the architecture whose form may or may not be historically or stylistically based. Contemporary forms often embrace the exploration of technology and often result in buildings of lighter weight and unusual, nonclassical geometry. Contemporary designs are humanistically sensitive and indigenously structured while exploring nonclassical and nonstylistic forms and spaces resulting in a compatible, environmentally appropriate architecture.

4.3. Pueblo. A walled architecture simulating the low adobe, flat roofed dwellings of the northern New Mexico Pueblo Indians. Characterized by the “Pueblo Revival” buildings of historical Santa Fe; deep set doors and windows, deep portals or patios, walled entry courts. Almost exclusively post and beam or bearing wall structures, the pueblo style uses no arches, and incorporates no pitched roofs. Interesting multiple building masses and soft edged smooth stucco are distinctive features of this style.

Contemporary interpretations of this style generally incorporate larger glass areas and higher ceilings. Contemporary versions, however, should not lose the sense of strength and mass of thick adobe walls. Therefore, doors and windows should remain deep set with softened edges through extensive rounding.

4.4. Territorial. Generally, a walled architecture simulating, flat roofed dwellings of territorial New Mexico. Generally characterized by decorative columns, and wood door and window surrounds. The territorial style uses no arches and incorporates no pitched roofs. Often constructed of stuccoed block or frame construction, the doors and windows are not as deeply set from the outside. The edges and corners are not as soft as in the Pueblo Style.

4.5. Spanish Colonial. Rambling, flat roofed one-story structures combining Pueblo and Moorish influences, often built around a central courtyard typify the Spanish Colonial style.

4.6. Santa Fe. A mixture of Pueblo, Spanish, and Territorial styles are

typical of what has come to be known as Santa Fe (or Northern New Mexico). Use of bright colors and decorative carvings and mouldings are typical of the Santa Fe style. Typical architectural features may include flat roofs, thick walls (to suggest adobe), vigas and latillas, exposed beams, and earth tones on exterior walls. Corbels, bancos, kiva fireplaces, and portales are also important features of this style.

4.7. Old World. This style conveys an “old world” feel characteristic to older widely accepted architectural elements. The hallmark of Old World design is a comfortable, broken-in look that shows the wear and tear of usage. Textured walls, hand-trlawed finishes, rough-hewn beams, and tumbled marble exemplify this style. Distressed, matte, and honed finishes are highly desirable to achieve the Old World characteristics.

4.8. Tuscan. Rough plaster walls, rustic beamed ceilings, and small simple windows dominate this unpretentious style common to the Tuscan hillside. The rustic color palette leans heavily towards the earthy hues representative of the countryside. Interiors feature a sun baked look characterized by crumbling stone patios, elegant iron accents, terra cotta tiles, stone with mosaic inlay, worn wood elements, and decorative paintings including detailed murals and trompe l’oeil designs.

4.9. Mediterranean. The Mediterranean style covers a broad range of style mixtures. The Architectural Review Committee may refine the acceptable parameters for a Mediterranean style home in La Tierra Escondida through written supplements to these Design Guidelines, including samples of acceptable Mediterranean style home designs.

5.0. Design Standards.

5.1. Natural Lot Perimeter. No Improvements, including grading, shall be allowed within the fifteen foot (15’) perimeter of each Lot, other than to construct and maintain a driveway as approved by the Committee. Lots with frontage on a cul-de-sac may need to disturb more of the perimeter to accommodate a driveway due to the limited width of frontage, and the Committee should be flexible in approving an appropriate design on a case-by-case basis.

5.2. Minimum House Size. The primary dwelling unit on any Lot shall be a minimum of two-thousand four hundred (2,400) square feet in size, total foundation footprint exclusive of any garage, patio, or porch, unless a variance is granted by the Architectural Review Committee. The Committee shall have the authority to determine, on a case by case basis, an appropriate minimum square footage for the ground level of any multi-level dwelling unit,

based upon the design and style of the home, and the characteristics of the Lot.

5.3. Building Height and Setbacks. No ridgeline is to exceed thirty (30) feet, except that the Committee will review structures on Equestrian Lots on a case by case basis and may allow additional height on such Lots as reasonably necessary to accommodate the special needs of an Equestrian Lot. No portion of any wall (including protrusions such as a chimney, facility for electrical equipment, or a bay window), or of any roof overhang, of the dwelling unit or of any allowed accessory living quarters or outbuilding, shall be constructed closer than 50 feet from the front or rear Lot lines, or 30 feet from a side Lot line.

5.4. Garages and Driveways. All dwelling units shall have an attached or detached garage for no fewer than two (2) full-size vehicles, unless a smaller garage is approved by the Architectural Review Committee. Carports or motor courts may be permitted for additional vehicle storage. The garage and any carport or motor court shall complement the architectural design of the residence. No parking shall be allowed in the front yard except in the driveway directly in front of the garage, or along a circular driveway. Driveways must include a concrete apron stained to match the curb used in the Subdivision, to extend from the back of the curb for at least twenty feet (20') in length, and for the minimum width of the driveway required by applicable fire codes, but in no case less than twelve feet (12'). The Committee shall have the authority to approve complementary variations to the design of the driveway apron, such as the inclusion of stone or other natural materials that will provide comparable protection of the roadways within the Subdivision.

5.5. Elevations. All elevations shall continue the design theme; detail requirements are the same for front, side and rear elevations. It is recommended that all residences be designed with '360 architecture' as the rule.

5.6. Roofs. Roofs must be designed to be compatible with the style of home submitted and be aesthetically pleasing to the environment. Clay tile, Mission or concrete tile, concrete shakes, darker "Bermuda" type, or standing seam oxidized (non-reflective) copper are preferred materials for pitched roofs. Roof colors will be subject to approval. Flat roofs are to have a 90 degree felt with color compatible with their stucco color. Maximum slope allowed is 5/12, and reflectance shall not exceed 40%. Horizontal rooflines need to be articulated into several elevations.

5.7. Parapets.

It is recommended that Parapet walls have elevation level changes around the entire perimeter of the house.

5.8. Terrain Management. Each Owner shall develop, landscape, and maintain the Lot to prevent damaging runoff onto other Lots, the public or Community Streets, or Common Areas as a result of the Owner's use of the Lot, and shall promptly clean up or otherwise repair any such damage that may occur. All Improvements shall be designed so that runoff leaves the Lot at the same location in a similar manner as the historical runoff pattern for the Lot. Notwithstanding this provision, all Owners should note that historical runoff patterns throughout La Tierra Escondida will continue to exist, and without the exception of changes in such patterns through Improvements or other actions by an Owner, such historical runoff (including any damages therefrom) is not the responsibility of any Owner.

5.9. Recreational Improvements. Any recreational or play equipment (such as but not limited to swings, play houses, batting cages, basketball hoops, backboards, and poles) shall be limited to areas enclosed by an approved fence or wall, and located so as not to significantly interfere with views from other Lots.

5.10. Materials Palette. Exterior elements and materials chosen should be compatible with one another in an appropriate scale for the building, and appropriate to the home's architectural theme and be compatible with the existing neighborhood. The following materials are approved for use in La Tierra Escondida.

Stucco/Synthetic Stucco.

Masonry adobe or comparable materials.

Stone, Stone veneers with honed or natural split face finishes, stucco stone (cultured), or cantera; natural stones also blend with the desert environment.

Wood may be used if properly installed, braced or bracketed to prevent unsightly twisting and warping. Wood as well as beam work can be for semi covered patio areas etc.

Pre-cast concrete elements such as columns, pots, or windowsills and lintels are encouraged.

Metal accents such as railings and gates are encouraged.

Ceramic tile can be used to provide an accent of color at the windowsill, as an accent above the window or door, on chimneys, or incorporated into the wall elevation to add nice focal points.

Some materials that are foreign to the local region or inappropriate to the

surrounding community are prohibited. These include mirrored glass, wood siding, asphalt shingles, wood shingles and metal siding.

5.11. Character Elements and Architectural Detailing.

5.11.1. Chimneys. Chimneys shall be designed to be in scale and proportioned with the architecture of the building. Chimney tops shall incorporate materials consistent with the detailing of the principal elevations. Open screen spark arrestors should be avoided.

5.11.2. Trellises and Arbors. Trellises and arbors provide shade and shadow variation on principal elevations. It's best if they are designed and detailed to maintain their appearance in the desert climate, detailed with blocking and metal fasteners to minimize twisting of wooden members.

5.11.3. Porches and Front Courtyards. At-grade porches or entry courtyards are encouraged.

5.11.4. Front Doors. The front door of each dwelling unit should serve as an attractive focal point.

5.11.5. Windows. Highly reflective mirrored windows are prohibited. If windows are flush mounted they must have a trimmed or wrapped surround.

5.11.6. Structural Masses. Multiple building masses are encouraged to avoid a monolithic structure appearance.

5.11.7. Approved Building Colors. The Architectural Review Committee has samples of the allowable palette of colors. The basic intent for colors is to be subdued to enhance the colors of the natural landscape. However, accent colors, if used, must be approved by the Committee of Architecture.

5.11.8. Vents and Stack Pipes. Stack pipes and mechanical vents shall be limited in number and painted to blend with the roof color.

5.11.9. Solar Panels. Roof mounted solar panels and equipment shall match the roof in color and appearance. Panels must be an integral part of the roof design and mounted directly to the roof plane or concealed behind a parapet. Roof mounted hot weather storage systems shall not be visible from neighboring property or community open space. Solar retrofits, if ground mounted, must be properly screened.

5.11.10. Mechanical and Other Equipment. Heating and cooling equipment, water heaters, geothermal equipment, amateur radio, citizen's band radio, television antennae, satellite dishes, and other mechanical and similar equipment shall be shielded or integrated into the design of the dwelling unit so as to minimize their visual impact, such as within the parapet of the roof. The Committee shall have complete discretion to determine on a case by case basis whether a proposed construction plan meets this requirement.

5.11.11. Signs. No more than two (2) personal signs measuring a maximum of two (2) square feet shall be allowed on any Lot, other than during construction, and during periods approved by State statute or the local governing authority for election advertisements. No advertisements, other than those related to a home-based business allowed by the Code, shall be placed on any Lot. Materials used for signs shall be aesthetically pleasing, and the content shall not be offensive to the community, as determined by the Association. No lighted signs (other than as allowed in the Declaration to celebrate holidays) shall be allowed in La Tierra Escondida.

5.11.12. Lighting. All exterior lighting shall comply with the Night Sky Protection Act and Article 3 in this Declaration pertaining thereto, and shall be compatible with the dwelling unit and the Subdivision generally, as determined by the Architectural Review Committee through supplements to these Design Guidelines, and on a case by case basis.

5.11.13. Yard Walls. Walls to enclose areas within the yard of the Lot may be of natural rock or plastered block, and should be limited to enclosing the back yard only, unless needed for retainage in other areas. Walls should be designed to meander and not in long straight lines. The enclosure of the perimeter of a Lot will not be allowed.

5.11.14. Revegetation. No Lot may be graded or filled for a building site and left indefinitely in this state. If an Owner requires added fill or redistribution of existing soil to allow for the proposed house plan to fit the Lot, all disturbed areas must either be landscaped or returned to approximately the original natural condition of the area. _

6.0. Construction Regulations.

6.1. Improvements and Alterations. No Improvement, including alterations, excavations, grading, landscaping or other work, which alters the exterior appearance of any Dwelling Unit or Lot, shall be initiated without the prior written approval of the Committee. Any Improvement requiring a permit

from the local governing authority must be completed by the Owner or a contractor with a license issued by the State of New Mexico, appropriate to the nature of the Improvements.

6.2. Construction Periods. The exterior of any Single Family Dwelling Unit shall be finished within twelve (12) months of start of construction, unless the Architectural Review Committee grants a variance, which shall be limited to an additional six (6) month period and shall be based upon a finding by the Committee that unanticipated circumstances beyond the Owner's control prevented timely completion, or that the size, detailing, or other aspects of the approved design reasonably necessitate a longer construction period, and that the Owner has continuously made good faith efforts to timely complete construction. A certificate of occupancy shall be issued within eighteen (18) months of construction commencing for a Single Family Dwelling Unit, unless a variance is granted by the Committee, which shall be limited to an additional six (6) month period on the same bases. Other than for construction of a Dwelling Unit and landscaping, all construction of any Improvements, whether new or to repair or remodel existing Improvements, shall be completed within six (9) months from the date of commencement, subject to the grant of a variance on the same basis as provided for completion of a Single Family Dwelling Unit.

6.3. Storage. No Lot shall be used for the storage of materials for a period greater than thirty (30) days prior to the start of construction and during the construction period. All such materials shall be maintained in a neat and orderly condition at all times.

6.4. Off-Site Limitations. Driving on, loading or storing construction materials (including plants or landscaping of any kind) outside of construction fencing or areas on the Lot otherwise approved by the Committee for on-site storage during construction, on adjacent Lots, or on public or Community Streets will not be permitted. Rinsing concrete trucks or cleaning other construction equipment is prohibited anywhere within La Tierra Escondida other than on the Lot to which the delivery has been made or on which the equipment has been used. The Architectural Review Committee may approve parking on an adjacent Lot during construction with the approval of the Lot Owner.

6.5. Construction Debris. A trash dumpster and a portable toilet must be located on each Lot, within an area of the Lot approved by the Committee, during construction of a home or other major Improvements on the Lot.

6.6. Cleanliness. All areas shall be kept free of trash, materials and waste, which can be carried by the wind. The site shall be left in a neat and

orderly condition during construction. No hazardous material shall be stored on the site.

6.7. Noise and Dust Abatement. At any time the Committee may enact strict procedures, operational time frames, temporary or permanent, to ensure noise and dust abatement measures are taken by builders or their contractors.

6.8. Protection Of Natural Open Space/Vegetation. In the event that a builder or their subcontractors damage areas of natural open space, the Owner shall be responsible for immediately restoring the damaged area to its original condition, as approved by the Architectural Review Committee.

6.9. Damage Repair. Each Owner has the direct responsibility for the control of their contractors and the actions of said contractors. The Owner shall be liable for violations of the Declaration, including these Design Guidelines, caused by the Owner's general contractor or subcontractors regardless of whether the Owner may be entitled to reimbursement or indemnification from the contractor or subcontractor.

6.10. Construction Signs. During the construction period a contractor may install an identification sign that must be removed immediately upon completion.

7.0 Landscaping. The goal of these landscape Design Guidelines is to ensure that developed areas within the community harmonize and blend with the natural environment. The landscape should be considered an integral part of the architecture and should be a factor in the initial site planning process. This sensitive approach to landscaping will help protect and preserve the wildlife and flora that contribute to the unique experience of living within a desert environment. A "cleaned up" natural look is the desired landscape theme for La Tierra Escondida Lots.

7.1. Preferred Plantings. There is an extensive array of indigenous and arid region plant materials to choose from which are suitable for this community. Native trees provide shade and appropriate scale to the built environment. Native cacti provide sculptural elements and interesting texture to a landscape. Native shrubs not only provide screening and stabilization of the desert floor, but provide cover for birds and other wildlife. An added benefit is lower maintenance as these plant materials are adapted to the desert climate.

More information is available on native desert plants through several knowledgeable sources; a list can be obtained from the Architectural Review

Committee. Contacting a landscape architect or designer with knowledge of native plants is also encouraged.

7.2. Use of Rock. Natural rock is encouraged. In slope stabilization circumstances use of medium size natural rock as “rip rap” may be approved to cover embankments. It is recommended that plantings are interspersed within these retaining walls so that vegetation will grow to cover portions of the rock.

7.3. Protected Cacti. All species indigenous to the Subdivision located in Common Areas and open areas must be protected and undisturbed to the maximum extent possible. All specimen quality plants that will be disturbed by development are to be salvaged and relocated.

7.4. Revegetation. The goal and intent of revegetation is to restore any areas disturbed by construction or grading to a natural appearance such that upon maturity of the revegetation, the area matches the adjacent natural desert and appears as though it was never disturbed. Revegetation includes the combined use of trees, cacti, ground cover and seed, all of which are necessary to achieve the desired results.

7.5. Prohibited Plants. The following may not be planted or maintained anywhere in La Tierra Escondida: Elm; Mulberry; Cottonwood; Oleanders, except that dwarf varieties may be allowed.

8. Enforcement. These Design Guidelines are enforceable by the Committee, the Association, or a Lot Owner with the approval of the Committee or the Association, by all means allowed for enforcement of the Declaration generally, including but not limited to the assessment and enforcement of liens for damages caused by a violation.

Exhibit C: Assessments and Liens

Consistent with Article 6 of this Declaration, each Owner and each Lot shall be subject to the assessments and liens provided for in this Declaration, including of this Exhibit C.

1. Maintenance Assessment. Within thirty (30) days prior to the commencement of each calendar year, the first day of which shall be the Assessment date, by a majority vote of the Members, the Association shall approve an estimate of the costs and expenses to be incurred by the Association during the coming calendar year in performing its functions pursuant to this Declaration (including a reasonable provision for contingencies and replacements), except those functions which relate to the purchase or development of Improvements, and shall subtract from such estimate any projected revenues and surplus balances not needed for reserves and contingencies. The sum or net estimate so determined shall be assessed to the Owner of each Lot, as a maintenance Assessment. In calculating maintenance Assessments, the Association shall separately estimate the costs for maintaining, repairing, reconstructing, or improving roads within gated areas of the Subdivision, and assess these costs equally among gated Lots only. Owners of gated Lots shall be exclusively responsible for payment of the costs of maintaining the roads within the gated areas of the Subdivision.

If at any time and from time to time during any fiscal year the maintenance Assessment proves or appears likely to prove inadequate for any reason, including nonpayment of any Owner's share thereof, by a majority vote the Association may levy a further assessment in the amount of such actual or estimated inadequacy, which shall be assessed to Owners divided as provided in this Section.

The maintenance assessment shall not be increased by more than the increase reflected by the Consumer Price Index, as published by the Bureau of Labor statistics of the Department of Labor, or other comparable index in the event the Consumer Price Index ceases to be published, without the approval of seventy-five percent (75%) of the Members, but the percentage increase shall be cumulative and any amount not used in one year may be used in later years. For purposes of implementing this paragraph, January 1, 2006, shall be the base index rate for determining any increases.

2. Special Assessments for Improvements. Upon the approval of seventy-five percent (75%) of the Membership, the Association may also levy in any fiscal year an assessment for the cost of acquisition, construction, reconstruction, repair or replacement of an Improvement to the Common Area, through the

same procedures established herein for imposition, collection, and other enforcement of maintenance assessments.

3. Special Assessment. The Association shall levy a special assessment against any Owner as a result of whose acts, or the acts of his tenant, family or invitees, or failure or refusal to act in accordance of this Declaration, or the Subdivision Rules, causes moneys to be expended from the operating fund by the Association in performing its functions. Such Assessment shall be in the amount so expended, and shall be due and payable to the Association when levied and notice given. A special Assessment may also be levied against any such Owner to collect any fee or charge levied pursuant to the authority of this Declaration, due to the Association from such Owner or Owners and not paid within thirty (30) days. In addition, and not as a punitive measure, any Owner who keeps horses may be specially assessed the reasonable costs incurred by the Association to prevent the undue accumulation of droppings in the Common Areas.

4. Penalty Assessments. Penalty Assessments may be imposed for violation of the Subdivision Rules, pursuant to the procedures established from time to time by the Association. Such Assessments shall be punitive in nature and may be imposed without regard to whether or not monies have been expended by the Association as a result of such violation. Notice of the intent of the Board of Directors of the Association to impose such assessments, provisions for hearing and appeal shall be established by resolution of the Board.

5. Notice of Assessment. The Association shall give each Owner written notice of such Assessments, the date of the Assessment, the due date or dates, and the amount of such Assessment and if applicable, an itemization of the various Assessments being made. The due date shall not be sooner than thirty (30) days after the date of the notice.

6. Date of Commencement of Regular Assessments. The Assessments provided for herein shall commence as to Lots conveyed by the Grantor on the first day of the first month following the sale or transfer to a new Owner.

7. Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by an officer or other authorized agent of the Association, setting forth whether the regular and special Assessments on a specified Lot have been paid, and the amount of the delinquency, if any. The Board may make a reasonable charge for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

8. Delinquency. For any Assessment established under this Declaration which is not paid within fifteen (15) days after its due date (the "delinquency date" herein), the Association shall require the Owner to pay a "late charge" in a sum to be determined by the Association, but not to exceed \$25.00 per delinquent Assessment or ten percent (10%) of the Assessment amount past due, whichever is greater. If any such Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at the rate determined by the Board, not to exceed ten percent (10%) over the minimal federal interest rate as determined by the Internal Revenue Service, and the Association may, at its option, bring an action at law against the Owner or Owners, or upon compliance with the notice provisions set forth herein, to foreclose the lien. There shall be added to the amount of such Assessment the late charges, the costs of preparing and filing the complaint in such action, including attorneys' fees incurred. Each Owner vests the in Association or its assigns, the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent Assessments.

9. Notice of Lien. No notice shall be required to perfect the lien for the Assessment. However, no action shall be brought to foreclose an Assessment lien as herein provided less than thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the delinquent Owner at the address of the Owner as registered in the Association Office. Said notice of claim must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which shall include the interest charges and late charges), and the name and address of the Association or its counsel or other representative. Unless an Owner files a complaint objecting to the Assessment within thirty (30) days of the date of delivery of the written notice of claim of lien as provided for herein, the Owner shall be deemed to have waived any objections to the lien.

10. Foreclosure Sale. Any sale after foreclosure shall be conducted in accordance with the laws governing foreclosure sales in the State of New Mexico. The Association, through its attorneys and duly authorized agents, shall have the power to bid on the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same and may bid the amount of the foreclosure decree in lieu of cash.

11. Curing of Default. Upon the timely curing of any default for which a notice of claim of lien was sent by the Association, the Association shall, upon request, provide a written acknowledgment of payment.

12. Cumulative Remedies. The Assessment lien and the rights to foreclosure and sale hereunder shall be in addition to and not in substitution for any other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.