

**Las Alturas**  
**Restrictive Covenants**

**Part A. WHEREAS** Tierra de Sueños, Inc. is the owner of lots 1 through 37, Las Alturas Subdivision, located in Alamogordo, Otero County, New Mexico.

And Whereas, said Owner above named desires to place certain restrictions in regard to the building and improvements to be placed on portions of the above described real estate as follows: to-wit

**PART B. FULLY RESTRICTED RESIDENTIAL AREA.** The residential area covenants in Part C in their entirety shall apply to lots 1 through 37. Provisions related to a party wall, attached hereto as Exhibit 1, shall be applicable to lots 1 through 37.

**PART C. RESIDENTIAL AREA COVENANTS**

**C-1 LAND USE AND BUILDING TYPES.** All lots shall be used for residential purposes only. Each lot shall contain one detached single family dwelling not to exceed one story in height and a private attached garage. No other buildings may be constructed or stored on the premise. Modular and pre-fabricated construction is prohibited. Finished height of dwelling may not exceed fifteen (15) feet tall.

**C-2 ARCHITECTURAL CONTROL.** No building shall be erected, placed or altered on any lot until the construction plans, specifications, and a site plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials and colors (harmony of external design with existing and/or planned structures), as to location with respect to lot lines, topography and finish grade elevations.

Positive site drainage shall be provided during construction and maintained thereafter. Such positive drainage shall be in accordance with city drainage and ponding requirements. This provision is placed in these restrictive covenants to recognize the moisture sensitivity of the soil and the responsibility of the owner to provide prudent moisture management.

**C-3. DWELLING, QUALITY AND SIZE.** On any dwelling, the main structure, exclusive of one-story open porches and garages, shall contain not less than one thousand four hundred (1400) square feet of heated or living area. The home shall have an attached garage for not less than one (1) car and not more than two (2) cars, which shall contain a minimum of two hundred fifty (250) square feet. All exteriors shall be stucco construction. All other materials

are prohibited.

Stucco color shall be one of three colors to match the Dryvit brand colors as follows

1. Tierra Madre 08
2. Adobe Accent 139
3. Sand Piper 385A

Wood beams, corbels, and vegas will be stained to color Sherwin Williams #SW 3511 Cedar Bark

Exterior door color shall be one of six colors to match Sherwin Williams-

1. SW 6054 Canyon Clay
2. SW 6215 Rocky River
3. SW 6235 Foggy Day
4. SW 6094 Sensational Sand
5. SW 6060 Moroccau Brown
6. SW 6065 Bonafide Beige

Garage doors may not exceed seven (7) feet in height.

No exterior color change shall be made, nor shall the style of stucco be changed from that as originally constructed by the builder/developer.

The Architectural Control Committee must approve variances.

**C-4. BUILDING LOCATION.** All buildings shall be located no nearer to the front property line than twenty-five (25) feet. The home, attached garage, and covered porches shall be located according to the setback codes as provided by the City of Alamogordo and approved side setback variance Case Number V-04-0475(A). This variance being recorded in the office of the County Clerk, book 1168, pages 636-637.

**C-5. EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of this subdivision. Modifications that would adversely affect drainage within said drainage easements are not allowed.

**C-6. NUISANCES.** No noxious or offensive activities shall be allowed upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

The owner of each lot shall be responsible for the repair of vandalism, including the removal of graffiti, which may occur to his/her property including perimeter fences, walls, roofs, sidewalks, mail boxes, etc. which may be seen from other lots, properties, streets, or sidewalks,

regardless of the source of the vandalism. The repair or removal of such vandalism shall occur within five (5) days of the vandalism. If the repair is not made within five (5) days of the vandalism, the Architectural Control Committee may, at its sole discretion, repair or arrange the repair and charge and collect from the owner of the property on which the vandalism exists all of the repair expenses, plus a fifteen (15) percent administrative charge, plus ten (10) percent interest thirty (30) days from notice of such charges. Said charges shall be a lien against the property.

Inoperative vehicles shall not be stored on any lot, or in the street in front of the lot.

The owner of each lot shall be responsible for the maintenance and timely repair of damages to his/her property including perimeter fences, partition fences, walls, roofs, sidewalks, landscaping, mail boxes, etc. which may be seen from other lots, properties, streets or sidewalks.

All repairs are to be made with materials and workmanship to replicate as closely as possible original design and construction. If the repair is not made within thirty (30) days of the damage, the Architectural Control Committee may, at its sole discretion, repair or arrange the repair of the damages and charge and collect from the owner of the damage property all of the repair expenses, plus a fifteen (15) percent administrative charge, plus ten (10) percent interest thirty (30) days from notice of such damages. Said charges shall be a lien against said property.

**C-7. TEMPORARY STRUCTURES.** No structures of a temporary character, trailer, basement, shack, garage, barn or other out-building shall be used on any lot at any time as a residence either temporarily or permanently.

**C-8. LOT AREA AND WIDTH.** No lot may be subdivided into smaller lots.

**C-9. SIGNS.** No signs of any kind shall be displayed to the public view on any lot except one professional sign of not more than one (1) square foot, one sign of not more than five (5) square feet advertising the property for sale or rent.

**C-10. LANDSCAPING.** All yards front and rear shall be landscaped within 30 days of the completion of the home. The front yard shall be landscaped using materials and shrubs that require little water. Grass, lawns, or other vegetative ground cover shall not be allowed in the front yards. Rear yards may contain lawns. Every front yard shall have at least one, but not more than two trees. The only trees allowed in the front yards are Mexican Elder, Bradford Pear, Purple Leaf Plum, Crape Myrtle, Palm, and Pinion. . The aforementioned trees and Afgan Pines trees shall be allowed in the rear.

**C-11. LIVESTOCK AND POULTRY.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other house-hold pets may be kept provided that they are not bred, kept or maintained for any commercial purposes. Even if not kept for commercial purposes the total number of dogs and cats combined may not exceed

three (3).

**C-12. GARBAGE AND REFUSE DISPOSAL.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Portable containers, except for scheduled pick up days, shall be screened from view.

**C-13. WATER SUPPLY.** No individual water supply systems shall be permitted on any lot.

**C-14. SEWAGE DISPOSAL.** No individual sewage system shall be permitted on any lot.

**C-15. STORAGE OF RECREATIONAL VEHICLES.** Recreational vehicles include, but are not limited to boats, airplanes, RV trailers, horse trailers, motor-homes, camp trailers, utility trailers, vehicle trailers or racing cars. No recreational vehicle shall be parked or stored on any lot or stored on any street within or adjacent to the subdivision.

**C-16. ANTENNAE.** No television or radio antenna shall extend higher than the roof of any structure, and all antennae shall be subject to the approval of the Architectural Control Committee prior to installation. No commercial or communication company towers will be installed. Satellite dishes shall not be more that twenty four (24) inches in diameter

**C-17. PARTITION FENCES.** The developer herein has constructed partition fences between each lot. Reference to partition fences is not a reference to party walls wherein two adjoining residential structures are connected by a party wall. All declarations as to the party wall are stated separately in this document for each lot or lots sharing a party wall.

**C-18. FENCES.** As to the partition fence, it shall be the joint responsibility of the adjoining property owners to mutually maintain such partition fence. Such adjoining property owners agree to permit any encroachment by the other party where necessary to perform maintenance on the partition fence or otherwise act to maintain or protect the stability of the partition fence. The perimeter fence as erected by the developer shall not be modified, heightened or shortened without the expressed permission of the architectural control committee. No openings shall be allowed in the fences which border Tenth street, Bellamah Street, or Bonnell Street. Any request to make such modifications shall be presented in writing, with appropriate plans to the architectural control committee.

**C-19. ZERO LOT LINE WALLS.** It is hereby recognized that the Las Alturas subdivision is zoned R-2 according to the City of Alamogordo zoning ordinances. Therefore there may be some homes which one or both side exterior walls are constructed on the property

line. In such cases-

The owner of such home shall have the right to enter onto the adjoining premise for reasons of inspection and maintenance of the exterior wall. Such inspections or maintenance shall occur at reasonable times and shall be done with reasonable notification to the owner and occupant of the adjoining property.

The owner of the adjoining lot may not alter, damage, or abuse the wall in any way.

**C-20. RESTRICTIVE COVENANTS MADE LEGAL.** Any lien created by these restrictive covenants or as allowed by law, shall be evidenced by a recorded Claim of lien filed in the records of Otero County, New Mexico, under the provisions of New Mexico law. Such lien shall be enforced in accordance with New Mexico Statutes (Section 48-2-1 to 48-2-17, NMSA 1978 Come., as same may be from time to time amended).

**PART D. PROPERTIES CONTAINING A PARTY WALL.** Attached to these Restrictive Covenants, and made a part hereof by reference, is Exhibit 1. Same shall be applicable to lots therein specified. Same shall not be applicable to the remaining lots in Las Alturas Subdivision.

**PART E. ARCHITECTURAL CONTROL COMMITTEE.**

**E-1. MEMBERSHIP.** The Architectural Control Committee shall be composed of three members. The initial committee shall be composed of James W. French, Tommy L. French and Renee J. French. All parties recognize that the above named members are associated with the developer, Tierra de SueZos, Inc.

Once more than 33-1/3 percent of the lots are owned by persons other than the developer, Renee J. French shall resign from the board and a property owner other than one associated with the developer shall be elected to the Architectural Control Committee under the terms and provisions set forth herein.

Once more than 66-2/3 percent of the lots are owned by persons other than the developer, James W. French shall resign from the board and a property owner other than one associated with the developer shall be elected to the Architectural Control Committee under the terms and provisions set forth herein.

Once 100 percent of the lots are owned by persons other than the developer, Tommy L. French shall resign from the board and a property owner other than one associated with the developer shall be elected to the Architectural Control Committee under the terms and provisions set forth herein.

**E-2. FUTURE MEMBERSHIP.** Future members of the Architectural Control Committee, under the formula set forth in the preceding subparagraph, shall be elected by all property owners of record for a 2 year term. A meeting shall be held during the first week of January to elect the Architectural Control Committee members on or after the members as selected by the developer are being replaced. Such annual meeting shall be conducted during the month of January at a place agreeable to a majority of all property owners and a notice of such meeting shall be delivered to the property owners at least seven days prior to such meeting being held. The term of an elected member of the Architectural Control Committee shall be from February 1 to January 31 for the two year term. Members may be re-elected to the board.

**E-3. PROCEDURE.** Building plans to be submitted for approval shall include at a minimum, floor plans, front elevations, and a complete description of exterior details, materials, and colors to be used. The approval as required in these covenants shall be in writing. In the event the Architectural Control Committee fails to approve or disapprove within forty (40) days after plans and specifications have been submitted to it, or in any event, if not suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required.

**E-4. OTHER DUTIES.** The Architectural Control Committee shall have such other and further duties as are set forth in these Restrictive Covenants, the Unincorporated Association for Homeowners of Lots in Las Alturas Subdivision, Alamogordo, Otero County, New Mexico, and other documents as may be approved from time to time by the property owners.

#### **PART F. GENERAL PROVISIONS.**

**F-1. TERM.** These covenants are to run with the land and shall be binding on the land, all parties and all persons claiming under them for a period for thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of thirty (30) years unless an instrument signed by a two-thirds majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part. Votes shall be counted on the bases of one (1) vote for each lot owned. These covenants may not be amended without the written consent of Tierra de Sueños Inc. through September 30, 2008. Beginning October 1, 2008, these covenants may be amended by a two-thirds majority of the owners at the time of the amendments. An instrument signed by the majority of the owners shall be recorded with the County Clerk.

**F-2. ENFORCEMENT.** Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant to restrain violation. Such enforcement may be by a property owner or may be by the Architectural Control Committee. Such action may also seek the recovery of damages, costs and reasonable attorney's fees. Enforcement may also include a claim for permanent, temporary or both injunctive relief.

**F-3. SEVERABILITY.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any other provision which shall be and remain in full force and effect.

**PART G. UNINCORPORATED ASSOCIATION.** Developer has established an unincorporated association for homeowners of lots in Las Alturas Subdivision, Alamogordo, Otero County, New Mexico. A copy of the document establishing such unincorporated association is attached as Exhibit 2 to these Restrictive Covenants, and made a part hereof by reference.



EXHIBIT 1

SUPPLEMENT TO LAS ALTURAS SUBDIVISION RESTRICTIVE  
COVENANTS AS TO PROPERTIES DIVIDED BY A PARTY WALL

1. Developer has constructed party walls between the following lots:
  - A. Lots 2 and 3.
  - B. Lots 6 and 7.
  - C. Lots 10 and 11.
  - D. Lots 12 and 13.
  - E. Lots 14 and 15.
  - F. Lots 16 and 17.
  - G. Lots 18 and 19.
  - H. Lots 22 and 23.
  - I. Lots 34 and 35.
  - J. Lots 35 and 36.
  - K. Lots 36 and 37.
  - L. Lots 37 and 38.
  
2. Should it become necessary or desirable to repair or rebuild the whole or any part of the party wall, the repairing or rebuilding expenses shall be borne equally by the parties, or by their heirs, successors and assigns, who shall at the time of the repair or rebuilding be using such party wall. Same shall not include interior painting, repairing of nail holes or such other minimal repairs or maintenance that solely benefits one party.
  
3. Any repairing or rebuilding of the party wall shall be on the same location, and of the same size, as the original party wall or part of the original party wall, and of the same or similar material of the same quality as that used in the original party wall or part of the original party wall.
  
4. Any controversy that may arise between a lot owner and the adjoining lot owner as described above shall be submitted to the architectural control committee for final determination.
  
5. No use of the party wall by an owner of the units in which a party wall has been constructed, shall interfere with the rights of the adjoining lot owner as described above in the use of the party wall.

**UNINCORPORATED ASSOCIATION FOR  
HOMEOWNERS OF LOTS IN LAS ALTURAS SUBDIVISION,  
ALAMOGORDO, OTERO COUNTY, NEW MEXICO**

COME NOW, the undersigned owners of all lots in Las Alturas Subdivision, Alamogordo, Otero County, New Mexico, being more specifically lots 1 thru 37, in Las Alturas Subdivision, Alamogordo, Otero County, New Mexico, and agree to this Unincorporated Association, all as set forth herein.

The name of the Unincorporated Association is: Las Alturas Homeowners Association.

1. This Unincorporated Association is organized pursuant to the Unincorporated Associations Act of the State of New Mexico, Sections 53-10-1 thru 53-10-8, NMSA 1978 Comp., and any amendments thereto.

2. The undersigned parties acknowledge that Tierra de Sueños, Inc., has developed Las Alturas subdivision, herein after referred to as "subdivision". As part of such subdivision, a private park and greenways have been dedicated to the use and enjoyment of the lot owners within the subdivision. Tierra de Sueños, Inc. as developer and the lot owners recognize the benefit to all lot owners to control the ownership, maintenance, repair and other activities of the park and the greenways for the enjoyment of the property owners.

3. The park and greenways as referred to in this agreement is such park and greenways as platted on the recorded plat of the subdivision, same being recorded in Book 61, Page 89-90 of the plat records of Otero County, New Mexico.

4. Based upon the development of the private park and the greenways, this association shall also provide front lawn care for the lots within the subdivision.

5. Providing for security services within the subdivision.

6. The parties acknowledge that an irrigation well has been drilled after permitting from the state engineer within the park and same is for the sole benefit and use of the park. Same is not for household consumption or other uses by the property owners or any other party.

7. The subdivision plat dedicates the park area and the greenways to the benefit of the property owners. Such park and greenways are dedicated to and owned by this Association established by this document and any instruments related thereto.

8. This agreement does not amend or modify any restrictive covenants or other applicable recorded instruments related to the subdivision.

9. Upon execution of this agreement, same shall be recorded with the Otero County Clerk and a copy of same shall be delivered to each property owner or subsequent property owner by the owner or owners of the respective lots within this subdivision. Further, any such amendment to this document shall also be recorded with the Otero County Clerk.

10. To control, plan and preserve the park and greenways, and further to coordinate the water times for zones of the system, the Architectural Control Committee as established by the restrictive covenants shall be responsible for any and all such upkeep, maintenance and control. Such Architectural Control Committee shall be composed of the members as set forth in the restrictive covenants and such members shall be elected in accordance with the restrictive covenants.

11. Title to the park shall be vested in the Las Alturas Homeowners Association, the unincorporated association established by this document.

12. The Architectural Control Committee shall have powers and duties as allowed by New Mexico law, and further as set forth in this agreement as follows:

- a. Determine amount and assess property owners;
- b. Determine maintenance, replacement and repair needs of the park and greenway;
- c. Maintain, repair and preserve the well and irrigation system;
- d. Secure liability insurance;
- e. Determine all other costs related to the purposes of this agreement and for the protection and preservation of the park and greenway;
- f. Establish watering times for the zones of the system;
- g. Maintain and operate the irrigation system that runs throughout the park;
- h. Provide such security services as may be determined to be in the best interest of the property owners. Any security services provided shall be by a licensed security service company.

- i. Establish bank accounts, collect fees, pay obligations and otherwise meet the responsibilities as outlined in this agreement and as allowed by law;
- j. Establish such rules and regulations as deemed applicable;
- k. Undertake such other activities to preserve and protect the property of the association to the mutual benefit and use of the subdivision property owners;
- l. Determine any objection or grievance as presented by a property owner;
- m. File a lien against the property of any lot owner not paying an assessment. Enforce the assessment by action in a court of competent jurisdiction within Otero County, New Mexico. Give notice of nonpayment of the assessment. Any action contemplated by this subparagraph shall be undertaken only after the giving of written notice to such property owner at the last known address of such property owner; and
- n. Take such further acts as are necessary to insure the proper funding for the park in accordance with this agreement.

13. Tierra de Sueños, Inc. hereby transfers to this association any and all rights in and to the park, greenway, irrigation system, improvements thereto (including the well) and other assets as may be listed on a bill of sale or applicable document. Tierra de Sueños, Inc. shall execute a bill of sale, special warranty deed or other document of conveyance as to complete the transfer of the park and park facilities to the Las Alturas Homeowners Association.

14. This agreement shall be construed in accordance with the laws of the State of New Mexico, particularly the Unincorporated Associations Act as previously referred to herein.

15. This agreement may be amended by a 2/3 majority of the lot owners of the subdivision at intervals not more frequent than every two years, with such two year calculation being calculated from January 1, 2008. Any amendment shall be after notice to all lot owners and such amendment shall be voted on by lot members at a special meeting or at the annual meeting of the park committee. Any notice of the amendment shall set forth specifically the amendment to be voted on by the lot owners and same shall not be subject to amendment or adjustment by the parties other than through a majority vote of at least 2/3 of the lot owners. For purposes of voting

