

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR

TULAROSA FARMS (UNIT A)

A HORSE AND RESIDENTIAL COMMUNITY

THIS DECLARATION is made this 23rd day of May, 2005 by **Ruidoso Valley Builders, LLC**, a New Mexico Limited Liability Company, hereinafter referred to as the "**Declarant.**"

RECITALS

Declarant is the owner of real property located in Otero County, New Mexico, which is described as Lots 1 through 12 of **TULAROSA FARMS (UNIT A)**, hereinafter referred to as the "**Property,**" recorded as Document No. ⁰⁵⁻11572, Page 28-29, Book 63 of the Records of the County Clerk for Otero County, New Mexico on the 4th day of October, 2005. Declarant desires to develop this property as a residential and horse community and desires that all the real estate, which it develops will be subject to the easements, covenants, conditions and restrictions set forth in this Declaration.

Declarant states that the real property shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. These easements, covenants, conditions and restrictions shall run with the property and shall be binding upon all persons having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each such person.

ARTICLE 1

DEFINITIONS

“Architectural Review Committee” or **“ARC”** refers to the Committee established by the Declarant pursuant to Article 2 of this Declaration.

“Declarant” refers to Ruidoso Valley Builders, LLC, its successors and assigns.

“Declaration” shall mean and refer to this instrument and any amendment thereto or restatement thereof.

“Dwelling Unit” or **“Unit”** shall mean any improvements placed within the confines of any Lot.

“Development Period” refers to the period of time that it takes for the Declarant to sell all of the Lots to a consumer.

“Guidelines” means those rules and regulations adopted, amended and supplemented by the ARC pursuant to Article 2 of this Declaration.

“Lot” unless otherwise indicated by the context, shall refer to Lots 1 through 12 within the Properties shown on the Plat, as may be amended, together with the Dwelling Unit, if any, thereon, and if re-subdivided shall include all additional lots and all improvements, if any, thereon.

“Owner” means the record owner, whether one or more persons, of the fee simple title to any lot which is part of Tularosa Farms (Unit A) including a buyer under a contract for the sale of real estate, but excluding any person who holds an interest merely as security for the performance of an obligation.

“Person” shall mean a natural individual, corporation or other entity with the legal right to hold title to real property.

“Plat” shall mean the plat of the real estate that is subject to this Declaration recorded in the Records of the County Clerk, Otero County, New Mexico and any amendment thereto or re-subdivision thereof.

“Properties” shall mean and refer to Lots 1 through 12 and roads of Tularosa Farms (Unit A) subdivision as described on the Plat.

ARTICLE 2

ARCHITECTURAL REVIEW COMMITTEE

Composition of Committee: An Architectural Review Committee ("ARC") is hereby established and shall consist of three (3) persons voted on by the property Owners; provided however, that until all Lots have been conveyed to the first Owner thereof, other than the Declarant, Declarant shall appoint the Architectural Review Committee without a meeting and without a vote of the Owners, and during said period, no election of the Members of said committee shall be had unless Declarant has in writing relinquished its rights of exclusive appointment. A majority of the Committee may designate a representative to act for it. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed in connection with their activities as members or representatives of the Committee.

Review by Committee: No Dwelling Unit, Barn, structure, improvement, (including but not limited to any building, fence, wall, driveway or other surfaced area), or any attachment to an existing structure, shall be made, placed or constructed upon any Lot; no change of the exterior of a Dwelling Unit, Barn, structure, or improvement shall be made; no change in the final grade of any Lot shall be made; and no landscaping shall be installed or changed unless complete plans and specifications (including construction schedule) showing the nature, design, kind, quality, shape, height, materials, color scheme and location have first been submitted to and approved in writing by the Architectural Review Committee. The ARC shall exercise its best judgment to the end that all Dwelling Units, Barns, attachments, improvements, construction, landscaping and alterations to structures on lands located within the Lots (collectively referred to herein as "Architectural Improvements") conform to and harmonize with the existing surroundings and structures. Decisions of the Architectural Review Committee shall be binding and conclusive.

Procedures: The Architectural Review Committee shall approve or disapprove all plans within thirty (30) days, after submission. In the event the ARC fails to approve or disapprove such design and location within thirty (30) days, then approval shall be deemed given; provided, that no Building or "Architectural Improvements" shall be erected which violates any of the covenants herein contained. The ARC may establish its own rules amplifying or supplementing the foregoing procedures. The ARC may from time to time, without notice, establish, add to, delete or amend separate standards, rules and procedures, which shall not be contrary to or inconsistent with these Restrictions, providing for or otherwise relating to the submission, processing, review and approval of plans and specifications for Architectural Improvements or various portions or stages thereof. The ARC shall not be bound by previous standards or interpretations of its standards; and any consent or approval of a prior set of plans and specifications shall not preclude disapproval of a subsequent identical or similar set of plans and specifications.

Vote: A majority vote of the Architectural Review Committee is required to approve a proposed change or improvement, unless the Committee has designated a representative to act for it, in which case the decision of the representative shall control.

Liability: The Architectural Review Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Variance: The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 3 hereof. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the Properties and shall not militate against the general intent and purpose hereof.

Nonconforming Architectural Improvements: In the event that the Architectural Improvements do not conform to the construction plans submitted to and approved by the

Architectural Review Committee, the ARC shall give written notice to the Owner of the property upon which such Architectural Improvements have been made. Such notice shall specify the nature of the nonconformity of the Architectural Improvements and shall grant the Owner a hearing before the ARC within 15 days.

If an Owner has not, within thirty (30) days of the mailing or delivery of the written notice, corrected the nonconformity of the Architectural Improvement, then the ARC shall have the right and an easement to direct its agents, employees or contractors to enter upon the Owner's property for the purpose of making any or all of such improvements, alterations or repairs as are necessary to bring the Owner's Architectural Improvements into conformity with the plans submitted to and approved by the ARC.

All costs incurred by the Architectural Review Committee, in the course of the ARC's efforts to bring the nonconforming Architectural Improvements into conformity with the approved plans as provided above, including costs of labor, materials and all associated administrative costs reasonable incurred by the ARC in connection therewith, shall become a lien on such Owner's Lot and the improvements thereon, and shall be enforceable and collected as provided under New Mexico law.

Color and Building Materials: Without limiting the foregoing, no color changes, nor, any changes in the original building structure, composition or products shall be permitted without approval of the ARC.

Broad Discretion of Architectural Review Committee: In reviewing plans for alterations, modifications, additions or other changes to a Dwelling Unit, improvement or structure upon a Lot, the Architectural Review Committee shall exercise its discretion in deciding whether or not an alteration or modification is in harmony with the overall scheme of subdivision development. The ARC shall have the right to deny alterations or modifications for purely aesthetic reasons if the ARC considers the alteration or modification to be unattractive in relation to the overall scheme of development, or if the ARC considers the alteration or modification to be a nuisance or upset of design, or if the ARC considers the alterations or modifications to be in contrast to or out of harmony with the style of existing structures, or if the physical views of the Properties will be

disrupted by the alteration or modification. The ARC may elicit the opinion of other Owners, including the neighbors of the Owner submitting the plan for alteration or modification, as to the conformity and harmony of the proposed plan with the overall scheme of development, and the effect that the proposed plan might have on the physical views of other Owners. After eliciting these opinions, the ARC may, but need not, take them into account in making its final decision of approval or disapproval of an alteration or modification to an existing structure. While the opinion of no single Lot Owner will control a decision of the ARC, the ARC may, within its own discretion, but need not, attach whatever significance it deems sufficient to the statements of residents and/or neighbors of the Owner submitting the proposed alteration or Modifications to an existing structure.

ARTICLE 3

USES AND RESTRICTIONS

All the Lots shall be held, used and enjoyed subject to the following limitations and restrictions (in addition to all other provisions hereof):

1. **Residential Horse Property:** Lots shall be occupied and used by the respective Owners, family, tenants and social guests for residential and/or horse related purposes. No building or buildings shall be erected, constructed, altered or maintained on any lot other than approved residences and guest houses, barns, garages, storage and utility buildings, together with customary and incidental residential improvements. No building shall exceed two stories. Barns and horse facility improvements are permitted. The number of horses that each Lot will accommodate is hereby limited to five (5) horses per acre.

2. **Business Use:** The property may be used by horse owners for training, breeding and maintaining horses for commercial and personal use. Businesses

closely related to the horse and racehorse business (i.e. Veterinary, horseshoeing, etc.) may also be allowed or authorized upon written approval by the ARC. No lot shall be used as a commercial feedlot or kennel. No cattle, sheep, goats, pigs, peacocks, chickens or other animals may be raised on the Lots commercially. Other trades or businesses may be conducted in or from any Lot so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the lot; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve any person conducting such business who does not reside on the Property; (d) the business activity does not constitute a nuisance, or a hazardous or offensive use, or cause the Owners to violate any other provisions of this Declaration, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Architectural Review Committee.

3. **Minimum Size and Style:** The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than 1170 square feet. In order to maintain a consistent style and atmosphere within the Subdivision, residences, storage buildings, barns, fences and other structures must be of an appropriate style as determined by the Architectural Review Committee in its sole discretion. If a manufactured home is placed on any lot, it must: (1) be set properly and underpinned, (2) there must be an overhang of the roof a minimum of six (6) inches around the exterior of the house.

4. **Setbacks:** No structure (horse pens excluded) shall be erected on any lot nearer than fifty (50) feet from any property line. If more than one (1) lot is acquired as a single building site, then the side setbacks shall refer only to the lot lines bordering the adjoining property owners.

5. **Diligent Construction:** The exterior of any buildings constructed on any lot must be finished within a period of six (6) months from the date of commencement of construction of such house or building. During the period of construction, the construction site must be kept clean and orderly at all times. All

construction trash must be stored in a bin large enough and suitable for such purpose, and must be legally disposed of on a regular basis.

6. **Destruction of Structures:** In the event a structure is destroyed, either wholly or partially by fire or any other casualty, said structure shall be properly rebuilt or repaired to conform to this Declaration, or all of the remaining structure including the foundation and all remaining debris shall be totally removed from the lot within ninety (90) days from said occurrence.

7. **Sound Devices:** No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of any building without prior written consent of all neighbors within hearing range. Neighbors may withdraw consent by sending a letter stating that consent has been withdrawn.

8. **Nuisances:** No obnoxious or offensive activities, excessively glaring or bright lights, foul odors or any other nuisances shall be carried on upon any lot, nor shall anything be done thereon which will or might disturb the peace, quiet, comfort or serenity of the occupants or surrounding property. The Architectural Review Committee in its sole discretion, shall have the right to determine the existence of any such nuisance.

9. **Replating or Subdividing:** Replating, subdividing or reapportionment of lots shall be permitted. Each Lot may be divided one time into two (2) separate tracts; the smaller tract being no less than three (3) acres in size. Road access must be provided by the Owner to the re-subdivided lot and access must be approved by the ARC.

10. **Signs:** No exterior signs or advertisements of any kind may be placed, allowed or maintained on any lot exceeding 15 square feet, except that the mailboxes, residential nameplates and "for sale signs" may be placed and maintained subject to reasonable restrictions as to size. Private entry signs may be allowed if approved by the ARC.

11. **Storage of Equipment and Parking:** No storage of equipment, materials, supplies, machinery, commercial trucks, horse trailers, vans or property other than that necessary to the normal use of the premises as a residential or horse property.

12. **Storage of Building or Other Materials:** No lot may be used for storage of building materials, pipe, wood, lumber or any other materials, unless such materials are placed inside of a structure so they are not visible from neighboring properties.

13. **Animals:** A reasonable number of dogs, cats, or other small household pets may be kept on the property, providing they remain in the control of the owner. What is a reasonable number depends on the size and nature of the animal and the propensity of such animal or animals to become offensive to the neighbors. No animal may be kept if such animal creates any nuisances to any neighbor such as, but not limited to, offensive odor, offensive noise, aggressive behavior. All animals must be restrained on site. All horses maintained on the property will be properly cared for and housed/stabled and/or pastured in an humane manner. The ARC may determine, in its sole and absolute discretion, whether a particular animal is a nuisance, or whether the number of animals is reasonable.

14. **Diseases and Insects:** No Owner shall permit any thing or condition to exist upon any Lot, which shall induce, breed or harbor infectious plant diseases, animal diseases, or noxious insects.

15. **Drainage:** There shall be no interference with the established drainage pattern over any Lot unless approved by the Architectural Review Committee or unless adequate provisions is made for proper drainage conforming to applicable city and county rules, regulations, ordinances, and drainage criteria.

16. **Garbage, Trash and Weeds:** On-site burning of garbage, trash or weeds is prohibited. No garbage or trash shall be placed on the exterior of any building, except in appropriate sealed rigid containers that are maintained in a neat and orderly fashion. It shall be the responsibility of each lot owner to keep his or her lot clear of garbage, trash, weeds, rubbish or unsightly materials. All garbage, weeds, trash, rubbish or unsightly materials shall be removed from the Lots on a regular basis and shall not be allowed to accumulate thereon.

17. **Sewage Disposal:** A septic tank shall be placed on each lot and maintained properly. No septic tank shall be placed closer than 100 feet from any domestic well or closer than 100 feet from any property boundary.

18. **No Hazardous Activities:** No activities shall be conducted on the Lots and on improvements constructed on the Lots, which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing no firearms, fireworks or firecrackers will be discharged upon the Property. No open fires shall be permitted on the Property, except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or fire pit.

19. **Inoperative Vehicles and Vehicle Repair:** Unless kept in a fully enclosed building, no inoperative vehicles shall be kept, permitted or allowed to remain on any lot in the Subdivision. No vehicle parts, motors or vehicle bodies may be stored on any lot. If any lot owner permits an inoperative vehicle to remain on his or her lot for more than two (2) months, the vehicle may be removed or towed off at the lot owner's expense.

20. **Vehicle Storage:** No commercial vehicle, boat, recreational vehicle, travel trailer, motorhome, tent, camper, or horse vans, or similar vehicle may be stored on any lot except within the confines of an enclosed structure, which has been first approved by the ARC, in its sole and absolute discretion.

21. **Right of Entry and Reimbursement:** The Declarant, Architectural Review Committee may, upon the failure of the owner of any lot to maintain his or her lot and improvements, in a reasonable satisfactory manner, or upon use by the owner in a manner inconsistent with these covenants, may enter upon the lot and repair, maintain, rehabilitate and restore the premises and/or improvements or abate the improper use, thereon. Any costs, shall be charged and assessed against the owner of said lot and collected in a legal manner.

22. **Utility Easements and Lines:** All utility (i.e. electrical, cable tv, and telephone) lines shall be placed underground and no outside electrical lines shall be place overhead. Easements as shown upon the plat of Tularosa Farms (Unit A) and recorded with the County Clerk for Otero County, New Mexico, are reserved for the purpose of installing and maintaining utility facilities, and for such other purposes incidental to the development of the property. All claims for damages, if any, arising out of the construction, maintenance and repair of utilities or on account of temporary or other inconvenience caused thereby against the Declarant or any utility company or any of its agents or employees, are waived by the owners. The Declarant may install domestic water lines and/or irrigation service lines along the fifty (50) foot property setbacks and road easements as may become necessary to service other parcels in the area or subdivision.

23. **Fencing and Walls:** The Architectural Review Committee must approve all perimeter and interior fencing and walls. The placement, type, color and materials require prior approval by the Architectural Review Committee before any fencing or wall is installed. For the safety of all horses housed within the development, all fencing will be uniform and safe and be of NO HAZARD to other owner's horses. **Note:** Declarant recommends that all fencing and walls adjoining other lots be set back by 7 ½ feet from the property line along the common boundary, leaving a 15-foot separation between property fences, so horses cannot fight.

24. **Renting:** Each Owner shall have the right to lease or rent his Lot, provided however, that any lease agreement, including any agreement to lease the Dwelling Unit on a month to month basis, must be in writing and must provide that the failure of any lessee or tenant to comply with the Rules, Articles and provisions of this Declaration shall be a default under the lease. Any lease agreement shall be for a period of not less than thirty (30) days, and a copy shall be made available to the ARC upon request.

25. **Barns and other Animal Facilities:** All animal facilities must be strictly maintained in a neat and sanitary condition. Animal manure, waste, shavings, etc. generated in the upkeep of all animals will be removed from the Lot on a regular basis.

ARTICLE 4

GENERAL PROVISIONS

1. **Enforcement:** If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for the Declarant, Architectural Review Committee or Persons owning lots situated in the Subdivision or any persons owning a security, collateral or Real Estate Contract Owner's Interest in any lot in the Subdivision to prosecute proceedings at law or in equity against all persons violating or attempting to violate or threatening to violate any such restrictions, covenants, conditions or stipulations and such violators shall reimburse said person or persons prosecuting said action for attorney's fees and expenses incurred in prosecution of such action or proceedings. Any persons owning lots that are affected by such violation may impose a \$ 10.00 per day damage assessment to accrue against the violator's lot. This damage assessment may be secured by filing a lien against the violator's lot owner.

2. **Right of Inspection:** During reasonable hours, any member of the Architectural Review Committee or any authorized representative of the ARC shall have

the right upon reasonable notice to the Owner of a Lots to enter upon and inspect the Lot (except the interior of the Dwelling Unit), for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

3. **Severability:** In the event any one or more of the foregoing covenants, conditions, reservations or restrictions is declared for any reason, by a court of competent jurisdiction, to be null and void, the judgement or decree shall not in any way affect, modify, change, abrogate or nullify any of the covenants, conditions, reservations and restrictions not expressly held to be void or unenforceable and they shall continue unimpaired and in full force and effect.

4. **Priority or Mortgage Lien:** No breach of the covenants, conditions, reservations and restrictions herein contained, nor the enforcement of any lien provisions herein shall affect, impair, defeat or render invalid the lien or charge of any mortgage, real estate contract or deed of trust (mortgage) made in good faith and for value encumbering any lot, but all of said covenants, conditions, reservations, rules and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or trustee's sale with respect to a lot.

5. **Term:** The Restrictions in this Declaration, as amended from time to time as provided below, shall remain in full force and effect for a period of twenty (20) years from the date of recordation thereof. Thereafter, they shall be deemed to have been renewed and automatically extended for successive periods of ten (10) years each, unless then repealed by the written consent of the Owners of at least seventy-five (75%) of the Lots.

6. **Amendments; Termination:**

A. **Procedure.** This Declaration may be amended by an instrument in writing, signed and acknowledged by the Lot Owners, certifying that such Amendment has been approved by the then Owners including Declarant and of not less than seventy-

five percent (75%) of the Lots within the Properties. Such amendment shall be effective upon its recordation in the Records of the County Clerk, Otero County, New Mexico.

B. Declarant Approval. So long as Declarant owns a single Lot, any amendment or termination proposed shall be first submitted to Declarant for approval and, should Declarant refuse to approve such amendment, such amendment or termination shall be null and void.

7. Enforcement and Non-Waiver.

A. Enforcement. Except as otherwise provided herein, the Declarant or any Owner shall have the right to enforce by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges or Rules now or hereafter imposed by provision of this Declaration.

B. Violation of Law. Each and every provision of this Declaration and any amendment hereto shall be subject to all applicable governmental ordinances and subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Properties is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

C. Non-Waiver. Failure by the Declarant, the Architectural Review Committee, or by any Owner to enforce any of the provisions hereof at any time shall not constitute a waiver of the right thereafter to enforce any such provisions.

8. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If 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 the Declarant: Ruidoso Valley Builders, LLC.

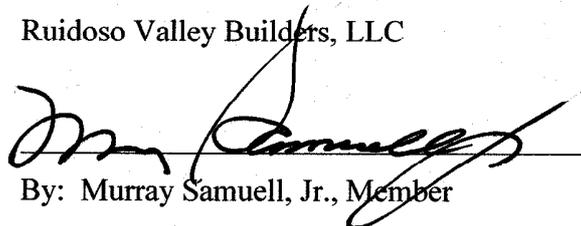
3130 S. Kinney Rd.
Tucson, Arizona 85713

If to an Owner: to the address of the Owner within the subdivision. The address, of any of the above parties, may be changed at any time by the party concerned by promptly delivering written notice of change of address to the ARC. If no address is on file with the ARC then the Owner may use the mailing address on the tax records of Otero County for that particular lot.

9. **Binding Effect.** By acceptance of a deed or acquiring any ownership interest in any of the Properties included within this Declaration, each person or entity, for himself, or his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, Restriction, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Properties and hereby evidences his intent that all the Restrictions, conditions, covenants, rules, and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on this the
23rd day of May, 2005.

Ruidoso Valley Builders, LLC



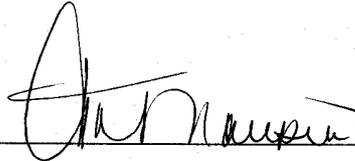
By: Murray Samuel, Jr., Member

State of New Mexico)

) ss:

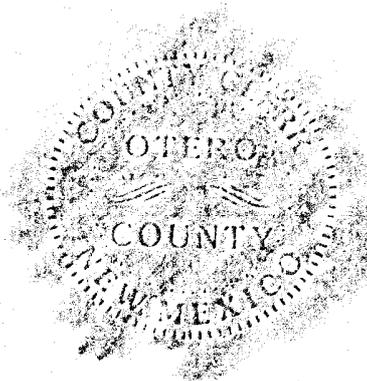
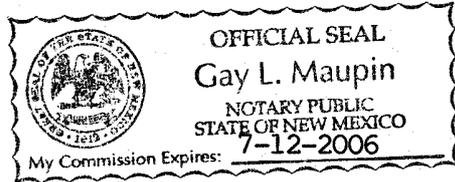
County of Otero)

This instrument was subscribed and sworn before me this 23rd
day of May, 2005 by MURRAY SAMUELL, JR., Member of
RUIDOSO VALLEY BUILDERS, LLC, A New Mexico limited Liability Company, as
Declarant.



Notary Public

My Commission Expires: 7-12-2006



STATE OF NEW MEXICO } S.S.
OTERO COUNTY

FILED FOR RECORD IN MY OFFICE

This 4 day of Oct, 2005

At 3:35 o'clock P M and duly recorded

In Book No. 1209 Page 633-648

The records of Otero County, New Mexico

Robyn Silva
County Clerk, Otero County, New Mexico

By Chris Dendri Deputy

11570