

PROTECTIVE COVENANTS
AMENDMENT #1 ON 06-21-07

DIAMOND SPRING 5

HIGH RANGE
LAS CRUCES, NEW MEXICO

WHEREAS, BINNS LTD. CO., is the owner of all the following described read estate situate in Dona Ana County, New Mexico (hereinafter called the "Property"):
Diamond Spring Subdivision Unit #5.

WHEREAS, Binns Ltd. Co., has established a general plan for the improvement and development of the property, and desires to impose certain protective covenants and restrictions on the Property in accordance with that plan:

NOW, THEREFORE, the Property is hereby made subject to the following protective covenants, conditions, reservations and restrictions, which shall run with the land and shall be binding upon all persons owning lots affected by these covenants or claiming under them until January 1, 2028, after which time said protective covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change, alter, amend or remove said protective covenants in whole or in part. If the owners of such lots, or any of them, or their heirs or assigns, shall violate any of the covenants hereinafter set out, it shall be lawful for any other person or entity owning an interest in the Property to prosecute any proceedings at law or in equity against the person or persons violating any of the covenants, and either to prevent him from doing so, or to recover damages for such violation, or both, or require removal of the offending structure. It is the intent of this paragraph to give all fee simple, owners, contract sellers or purchasers and mortgagees standing to enforce these covenants.

1. PURPOSE.

The purpose of these covenants is to insure the use of the Property for attractive residential purposes only; to prevent nuisances; to prevent the impairment of the attractiveness of the property; to maintain the desired tone of the community and thereby to secure each site owner of the full benefit and enjoyment of his property, with no greater restriction on free and undisturbed use of his site than is necessary to insure the same advantage to the other site owners; and to allow only that use which is consistent with these covenants. Deeds of conveyance of said property, or any party thereof, may contain these covenants, conditions and restrictions by reference of this document, but whether or not such reference is made in such deed, or any part thereof, each and all of such covenants, conditions and restrictions shall be binding upon the respective grantees, their heirs, successors and assigns.

2. APPLICABILITY.

The conditions and restrictions imposed herein shall apply to all lots Described above, unless variations therefrom are granted by the Architectural Review Committee as provided herein.

3. LAND USE THE BUILDING TYPES.

a. All lots described above are hereby declared to be residential lots, and no Lots shall be used for other than residential purposes. There shall not be allowed on any lot any structure, which allows more than one family to reside therein.

b. Should any building be constructed on more than one lot, the lines of lot ownership shall be used for determining the front, rear and side lot lines.

c. No building shall be erected, altered, placed or permitted to remain on any lot with fully enclosed living area of 1800 sqft/2000sqft, exclusive of carports, garages and open process. Each dwelling shall have a minimum two-car garage.

Chart for Building Minimum sq. ft.

Lot 27 – 33 Min 1800 sq ft. heated area

Lot 42 – 48

Lot 51 – 57

Lot 66 – 71

Lot 74 – 79

Lot 87 – 92

Lot 116-135 Min 1900 sq ft. heated area

All other lots minimum of 2000 sq ft.

d. No building or any part thereof, including garages shall be erected on any lot closer to the respective property line than as follows for the respective designated lot:

Lots 1 -12	Front setback	25 feet
	Front setback to garage	25 feet
Lots 13 - 135	Front setback	20 feet
	Side street setback	15 feet
	Side Yard setback	5 feet
	Rear yard setback	20 feet

e. All building, constructed on the Property shall be of mission stone, rock, frame and stucco, adobe or other such surfaces and materials as may be authorized by the Architectural Review Committee. Garages, carports and permitted accessory buildings shall conform in material and design to the dwelling to which they pertain. No metal storage building shall be allowed on any lot unless fully shielded and screened from view from any street or any other lot either abutting or otherwise. Only earth tone colors and white exterior surface materials shall be used for any residence, accessory structure, wall or fence. Garage door colors other than white or earth tones must be approved by the Architectural Review Committee.

f. It is understood that no mobile home prefab construction, geodesic domes, manufactured housing, modular units or other type of off-site construction shall be allowed.

g. A grading plan showing finished elevations or areas to be graded, paved areas, building sites, retention or detention areas, retaining walls and other structures has been approved by the City of Las Cruces. No grading, land filling excavating, or other alteration will be done except pursuant to the approved plan or revision approved by the City of Las Cruces and by the Architectural Review Committee.

h. No building shall exceed two stories in height above ground level, as measured from the lowest grade level on the respective lot abutting the structure.

- (1) The grades ESTABLISHED by developer as detailed on the final-approved subdivision grading plan shall not be altered without Architectural Review Committee approval.
- (2) From the ESTABLISHED grades the highest point of a building roof line shall not exceed 23 vertical feet above the highest ESTABLISHED grade elevation on the building site. Chimneys and other pipes and vents are excepted from the height limitation as long as their height and size are reasonable.
- (3) Single story buildings are encouraged, but if a two-story building is possible to be built within the parameters of the height limitation, then no more than 40% of the heated floor area of the total residence may be contained in the second floor area of the building. No open unheated floor area may be constructed on any second floor level in any regard that is not part of the 40% formula restriction.

i. Completion of Construction. The construction of all buildings shall be prosecuted and completed in accordance with the terms of the agreement between the builder or developer and Binns Ltd Co.,. The terms of such agreement are incorporated herein by reference for all purposes. All such construction shall be prosecuted with diligence continuously from the time of commencement until fully completed, and no building shall be occupied for dwelling purposes until construction has been completed. Permissible accessory buildings may not be constructed prior to the construction of the main residential structure. The Architectural Review Committee may, when it deems such necessary, require the posting of a performance bond in the form approved by the Committee prior to the beginning of the initial construction or to the beginning of any remodeling or improvement to the property. If construction is not commenced within the time period agreed upon, Binns Ltd Co., may at their option refund the original purchase price of the lot or offer another lot of equal value and reacquire title to the original lot.

4. APPROVAL OF PLANS.

No building, (including storage buildings) shall be erected, placed or Altered on any lot until the construction plans, specifications and a plan showing the location of the structure on the lot has been approved by the Architectural Review Committee (see paragraph 11 below) as to the harmony of external design with existing or proposed structures, exterior surfacing materials, and as to location with respect to topography and finish grade elevation. All requests for approval shall be in writing and personally delivered to the office at 1501 Don Roser Drive, or a designated representative. After building pads are located with respect to topography and finish grade elevation has been approved and the finish grade of the lot has been completed, such finish grade shall not be altered, changed or disturbed. If no Committee exists, or if the Committee shall fail to approve or disapprove the plans and specifications within thirty (30) days after submission of the information required hereby, then such approval shall be deemed to have been received as to the matters set out in this paragraph, provided, that no building or other structure shall be erected which violates any of the remaining covenants herein contained.

5. NUISANCES.

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done therein which may be or may become an annoyance or nuisance to the neighborhood. Such typical neighborhood annoyances and nuisances not allowed include (but not limited to): long term RV or motor home parking; ham radio towers and antennae; long term parking of "old" and/or disabled vehicles; boats; any trailer; campers; salvage materials; and any

such tangible property not directly essential to the support and maintenance of the respective residential property. No signs or other advertising shall be displayed on any lot unless the size, form and number of same are first approved in writing by the Architectural Review Committee. Provided, however, that any owner may, without such prior approval, erect one (1) sign or not more than three (3) feet by five (5) feet advertising the Property for sale or rent, either before or after the construction period. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept on any lot, providing that they are not kept, bred or maintained for any commercial purpose. When allowed to be kept, all pets must be kept within a fenced or bounded area upon the owner's property and must be on a leash accompanied by the owner or within the direct control of a responsible person when outside the fenced or bounded area. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept on any lot, except in sanitary containers, screened from view from all streets and other lots within the subdivision. Refuse placed on the curb or sidewalk for pickup shall not be placed in open view more than twenty-four (24) hours before the scheduled pickup time. Television reception dishes or large antennae must be approved by the Architectural Review Committee and will not be allowed unless properly screened from view and not in imposition to adjoining owners.

6. WALLS AND FENCES

a. Retaining walls shall be party walls if placed on the common property line between two (2) lots, and shall not be removed by either Property owner without written consent of the other party and the Architectural Review Committee.

b. Party walls shall be constructed on the lot property lines such that rear yards and side yards are enclosed, subject to other limitations contained herein and in the zoning ordinance. The party walls shall be a minimum for forty-two (42) inches in height, except where otherwise limited to a lower height. The party walls shall be no more than six (6) feet in height on high side of grade.

c. All party walls and retaining walls in view from at least one side, shall be constructed of rock or stone in conformance with that is known as "Las Cruces Rock Walls" standards, materials and styles. However, those walls, not on the property line forming the "return" from the residence, or courtyard and patio walls tied to the residence, may be of the same material used in the residence construction, however, being subject to used in the residence construction, however, being subject to Architectural Review Committee approval. Property line rock walls shall be paid for pro-rate by the respective property owner(s).

d. Except for required retaining walls, the following requirements shall be applied to fences or walls:

- (1) No fence or wall shall be erected or allowed to remain nearer the street than the front of the dwelling, except party walls on sides of property over 3" in height.
- (2) No fence or wall may be erected, placed altered relocated or removed without the express written consent of the Architectural Review Committee.
- (3) In the event any such wall which does not form a structural part of a dwelling or garage is damaged or destroyed by some cause (including) ordinary wear and tear and deterioration from lapse of time, other than the act of one of the adjoining owners, his agents, tenants, licensees, guests or family then, in such event both such adjoining owners shall proceed forthwith to rebuild or repair the wall to as good condition as formerly at their joint and equal expense.

- (4) The right and responsibilities of any owner to or from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.
- (5) In addition to meeting the other requirements of these Restrictive Covenants and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions to or rebuild his party wall in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining owner.
- (6) In the event of a dispute between owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the costs thereof, the matter shall be submitted to three arbitrators, one chosen by each of the owners and the third by the two so chosen. A determination of the matter signed by any two of the three arbitrators shall be binding upon the owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then said party shall have the right and power to choose both arbitrators.

7. LANDSCAPING.

a. The Architectural Review Committee shall review and approve all landscaping plans for building lots for all front yards and side yards facing streets on corner lots and same must be landscaped within ninety (90) days of completion of a residential building on the respective lot. The clear intent herein is the enhancement and protection of property values and the desirability and attractiveness of Diamond Spring #5.

b. Typical desert environment and drought resistant landscaping is encouraged. However, a sufficiently visible amount of foliage must be present on each building lot to comply with the landscaping requirements herein established or subsequently amended. The Architectural Review Committee shall be the final authority as to acceptability and the following criteria shall be used as a guideline for the required landscaping:

1-2" caliper broadleaf tree which when mature will reach a minimum height of 20 feet. (Two required if the side yard abuts a street.) Should a second tree be required by FHA or other Governmental regulation, such tree can be a 1: caliper broadleaf, unless it is the side yard tree on an abutting street, then it must be as required above. Examples are: seedless locust, ash and similar varieties.

3- Intermediate size shrub-bushy planting which when mature will reach a minimum height and width of 8 feet. (Six required if the side yard abuts a street.) Examples are: photinia, Texas sage, oleander, India hawthorne, pyracantha, forsythia, spiraea, flowering quince, honeysuckle, sumac, pomegranate and similar varieties.

5-Lower foundation plantings which when mature will reach a height of 2 to 3 feet. (Eight required if the side yard abuts a street. Examples are: Most of the above shrubs, nandina, rosemary, mock orange, blue chip and tam junipers and similar varieties.

An assortment of other hard, drought-resistant broadleaf plantings, cacti, yucca, cholla, agave, century plant, ocotilla and similar plantings are acceptable and encouraged in addition to the above required plantings.

In no event is the natural sandy surface to be left exposed and un-landscaped. Examples are: crushed rock, crusher fines, brick, crushed brick, paving stone and similar materials. A City approved under laminate shall be used. The landscaping material shall cover the under laying material in such quantity that the under laying material shall not soon nor readily begin showing through the surface material.

Any variation in use or placement of materials as prescribe above must first be approved by the Architectural Review Committee.

THE ABOVE ARE MINIMUMS. It is understood that the landscaping material and placement will be such as to provide a unified, complete and aesthetically pleasing view from the street at the front of the respective lot/residence.

NOTE: The Architectural Review Committee shall review landscaping plans for location of large trees and planting such that a "screen" is not created to substantially or completely block the view amenities of an adjoining property owner.

NOTE: The following are examples of unacceptable varieties of trees: Globe Willow, Weeping Willow, Mulberry, Cottonwood, Junipers, Arborvitae or other varieties unacceptable to the Architectural Review Committee.

c. At any time a substantial change, alteration or modification is made to the front yard or side yard of a lot relative to landscaping, the Committee must approve such change, modification or alteration. Included within the purview of this paragraph shall be the instance where plants, trees, shrubbery or other landscaping materials may die, be destroyed, removed, or similarly caused to be reduced in quantity, and as such require replanting or replacement according to the same rules as apply to initial planting requirements above set forth.

8. EASEMENTS.

Easements for installation and maintenance of utilities and other uses are Reserved and are hereby expressly acknowledged and granted as shown on the recorded plat. Upon the described easements, no structure, ground cover, planting or other material shall be placed or permitted to remain, except as may be authorized in writing by the Committee. The easement area of each lot and all improvements thereon shall be maintained by the owner of the land, except those improvements for which the easement owner may be responsible, as determined by the Committee. The owner of each lot shall also be responsible for maintaining the strip of land between his property line and the back of the curb on the near side of any street adjacent to or in front of the owner's lot.

9. COMPLETION OF CONSTRUCTION.

The construction of all building shall proceed and be completed in accordance with the terms of the agreement between the builder or developer and Binns Ltd Co., The terms of such agreement are incorporated herein by reference and for all purposes such construction shall be undertaken with diligence, continuously from time of commencement until fully completed, and no building shall be occupied for dwelling purposes until construction has been completed. Permissible accessory buildings may not be constructed prior to the construction of the main residential structure. Once construction commences, whether of the new structure or

any subsequent additions, alterations, or modifications, such construction will be completed within nine (9) months.

10. OIL AND MINERAL OPERATIONS;

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

1. ARCHITECTURAL REVIEW COMMITTEE.

a. There is hereby established the Architectural Review Committee referred to herein. The Committee shall initially be composed of Eddie Binns, David Binns, and Binns Ltd Co.,. A majority of the Committee may designate a representative to act on its behalf. In the event of death or resignation of any member(s) of the Committee the remaining members, whether or not constitution a majority, shall have full authority to designate a successor to fill such vacancy. Neither the member 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. Upon completion of construction of all lots subject to these covenants, or ten (10) years from the date of recordation hereof, whichever occurs first, the above named members of the Architectural Review Committee shall be deemed to have resigned without further notice. After such date, all privileges, powers, right and authority of the Committee shall be exercised by and vesting in a Committee to be selected by the owners of a majority of the lots in the subdivision.

b. AUTHORITY

The Committee may adopt resolutions or policies or both not inconsistent with the laws of New Mexico, any of its subdivisions, or these Restrictive Covenants for the purpose of:

c. Providing for the clarifications, interpretation, supplementation and construction of these Restrictive Covenants;

d. DUE NOTICE

If after due notice has been given by the Architectural Review Committee, violation is not remedied within in thirty days or what ever time limit is agreed upon, the owner of the property give Binns Ltd Co.,. the right to remedy the violation and agrees to be responsible for any expense incurred in that remedy. If this expense is not paid within a reasonable length of time the property owner gives Binns Ltd. Co., permission to attach a lien to his property to cover these damages.

e. LIEN

To correct any violation of these Restrictive Covenants, or the resolutions and policies published by the Committee, the Committee is granted, in addition to the right herein granted, the authority to take any action that an owner or property in these units could take. Both owner of land affected by any such action or against whom an assessment has been imposed under provisions of these covenants hereby grants to the Committee or its assigns a lien against his property and all improvements thereon for the payment of all expenses thereby incurred by the Committee and any such assessment. The lien may be foreclosed in accordance with the statutory provisions of the Mechanic's and Materialman's Lien Law of the State of New Mexico.

f. COMMITTEE PROCEDURES

The committee shall meet at times and places to be determined by the Committee. Any party wishing to submit a matter to the Committee for consideration shall submit such matters in writing delivered to the office of Binns Ltd Co., or such other location as may be

designated by the Committee, all upon such forms and in accordance with such procedures as may be hereinafter prescribed by the Committee. The Committee shall respond to such request in writing within thirty (30) days after the submission thereof. Should the Committee fail to so respond, any such request shall be deemed to have been denied. All plans, specifications, plot plans, requests for variances or other requests for action pursuant to these Restrictive Covenants shall be submitted in accordance with the above described procedures.

g. POWERS OF COMMITTEE

The Committee shall have the power to authorize, on a case-by-case basis, variances from the requirements herein contained, in cases where strict adherence to those requirements would operate to work a hardship on landowners, or where the requirements cannot reasonably be met due to the topography, location or shape of a particular lot. The Committee's approval or disapproval as required in these covenants must be in writing.

h. DISCLAIMER

Nothing herein shall be construed to require the Committee to take any actions herein authorized. The taking of any such action by the Committee shall at all time have the option to disregard its authority, regardless of prior publication of resolution or policies.

Binns Ltd Co., is complying with the Department of Housing and Urban Development's Interstate Land Sales Full Disclosure Act by meeting the criteria of the self-determining exemption of the Sparkman-Tower Amendment. Binns Ltd Co., HAS MET THE Las Cruces City requirements and regulations governing subdivision development.

i. SAVING CLAUSE

In the event any part of these Restrictive Covenants shall be help to be ineffective or be otherwise invalidated by a could of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall not thereby be affected.

j. NONLIABILITY OF COMMITTEE.

Members of the Architectural Review Committee, or the representatives, shall not incur any liability of whatever nature to any person or entity, their assigns, purchasers or personal representatives submitting plans or specifications as hereinbefore provided for, or to any homeowner of a lot or lots within the land covered herein, by reason of a mistake in judgment or discretion, of nonfeasance, or negligence arising out of or in connection with the approval, disapproval or the failure to approve any plans or specifications submitted.

12. GENERAL PROVISIONS.

a. Tolerance. A twelve (12) inch tolerance by reason of mechanical variance of construction is hereby automatically allowed for any distance or grade requirements imposed by these covenants.

b. Amendments. These covenants may be modified, changed, altered or revoked at any time after ten (10) years from the date of recordation hereof by any instrument duly signed, acknowledged and recorded by a simple majority of the then owners of lots (each lot shall be entitled to one vote) subject to these restrictions.

c. Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

13. MODIFICATION WITH CONSENT OF COMMITTEE.

Until the Architectural Review Committee is deemed to have resigned pursuant to paragraph 11 hereof, Binns Ltd. Co., shall have the authority to unilaterally change, amend or modify these covenants; provided, that such changes, modifications or amendments do not

