

DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

ALTA VALLE DEL SOL ESTATES
El Paso, Texas

This declaration (the "Declaration") is made this _____ day of _____, 2004 by
Haciendas Adobe Development, L.P., a Texas limited partnership, hereinafter referred to as the
Declarant."

RECITALS

The Declarant is the owner of that certain real estate situated in the City and County of El Paso Texas more particularly described as follows (the "Property"):

Lots 1 through 35, Block 1; Lots 1 through 10, Block 2; and Lots 1 through 80, Block 3 ALTA VALLE DEL SOL ESTATES, an Addition to the City of El Paso, El Paso County, Texas according to the map thereof on file in Book _____, Page _____ of the Plat Records of El Paso County, Texas.

Declarant hereby states that the real estate described above is held and shall be sold and conveyed subject to the following covenants, conditions, restrictions and easements which shall run with the land in order to protect the value and desirability of such real estate binding upon any and all parties having any right, title or interest in and to such land or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner who may have an interest in said land.

1 **DEFINITIONS.**

1.1 Architectural Control Committee. "Architectural Control Committee" shall mean the committee established pursuant to Section 3.2 of this Declaration.

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1 2 Association. "Association" shall mean a Texas non-profit corporation to be created by Declarant, of which each Owner shall be a member.

1 3 Board of Directors. "Board of Directors" shall mean the Board of Directors of the Association.

1 4 Common Area. "Common Area" shall mean and refer to all real property owned by the Association, if any, for the common and/or restricted use and enjoyment or benefit of the Owners, including without limitation, drainage easements and landscape areas.

1 5 Declarant. "Declarant" shall mean Haciendas Adobe Development, L.P. or its assigns.

1 6 Developed Lot. "Developed Lots" shall mean Lots that are either: (i) not held in the name of the Declarant; or (ii) if held in the name of the Declarant, Lots on which construction of a single-family residence has been completed.

1 7 Lot. "Lot" shall mean any plot of land shown upon the recorded subdivision map of the Subdivision.

1 8 Member. "Member" shall mean a member of the Association.

1 9 Mortgage. "Mortgage" shall mean the conveyance of any Lot to secure the payment of a debt held by a bona fide third party lender, which conveyance shall be released or reconveyed upon the due payment of such debt and shall include a deed of trust.

1 10 Mortgagee. "Mortgagee" shall mean a person or entity to whom a deed of trust or mortgage lien upon a Lot is given and shall include the beneficiary of a deed of trust.

1 11 Owner. "Owner" shall mean the record Owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the above described real estate. Owner shall not include any tenant or party which has an interest merely as security for the performance of any obligation.

1 12 Rules and Regulations. "Rules and Regulations" shall mean the Rules and Regulations pertaining to the landscaping, equestrian use, architectural control of improvements and other matters from time-to-time developed by the Association.

1 13 Subdivision. "Subdivision" shall mean the real estate hereinabove described and any addition thereto which shall come under the control of the Association.

1 14 Undeveloped Lot. "Undeveloped Lots" shall mean any Lot that is held in the name of the Declarant upon which Declarant has not completed construction of a single-family residence

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2 **REQUIREMENTS FOR LAND USE AND CONSTRUCTION.**

2 1 Single-Family Residential Lots. All Lots within the Subdivision are zoned R2-A and shall be single-family residential Lots. No structure shall be erected on any Lot to exceed thirty feet (30') in height, including private garages and garden structures such as are ordinarily used in connection with a single-family residence, excepting aerials and chimneys which are approved by the Architectural Control Committee.

2 2 Setbacks. No building shall be erected or permitted to remain on any residential Lot nearer to any street or property line than the following setback lines:

Rear Lot Line	-	30 feet
Front Lot Line	-	30 feet
Interior Side Lot Line	-	5 feet
Side Lot Line Abutting Street -		10 feet

2 3 Resubdividing. No Lot shall be resubdivided. Only one (1) single-family structure shall be permitted on each Lot.

2 4 Temporary Structures. No mobile home, tent, shack, barn, portable building, motor home or trailer shall at any time be used on any part of the Subdivision as a residence, temporarily or permanently, nor shall any such structure be erected or permitted on any part of the Subdivision, except that portable buildings and trailers may be used to house construction materials or for a construction office; provided, however, all such portable buildings and trailers must be moved immediately upon the completion of construction.

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2 5 Detached Buildings. Cabanas and storage buildings are permitted provided that they are architecturally compatible with the exterior of the primary residence on such Lot, comply with all terms of the Declaration and are pre-approved by the Architectural Control Committee.

2 6 Minimum Size. No single-family dwelling shall be permitted on any Lot in the Subdivision unless such dwelling has a ground floor area of more than 2,000 square feet in the case of a one story structure; and more than 1,500 square feet in ground floor area and total living area of more than 2,500 square feet in the case of a one and one-half or two story structure, both exclusive of porches and garages.

In the event that a one and one-half or two story structure is commenced on any Lot in the Subdivision the structure shall be designed and constructed in such a fashion that in the sole judgment of the Architectural Control Committee the privacy of other Lot Owners shall not be affected.

2 7 Garages. Boats, trailers, recreational vehicles shall be parked in a garage or in a rear or side yard so as to be hidden or obscured from any street. However, for a period not to exceed thirty-six (36) hours boats, trailers, and recreational vehicles may be parked on a side drive or in front of a residence for loading and unloading purposes.

2 8 Multi-Family Structures. No multi-family dwelling of any kind shall be permitted on any single-family residential Lot. No boardinghouse, apartment or other rental unit shall be permitted on any single-family residential Lot or as part of any residence in the Subdivision.

2 9 Animals. Normal household pets such as dogs, cats and birds are permitted. Notwithstanding the foregoing, no Owner may have a pit bull or any other breed of animal which the Association from time-to-time deems aggressive or dangerous. The City of El Paso's ordinances and codes pertaining to livestock and pets will be strictly adhered to by each Owner.

2 10 Offensive Conduct. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Subdivision.

2 11 Commercial Activities. No commercial or professional trade, business or activity shall be conducted on any Lot. Provided, however, home offices are permitted, if no additional traffic or parking is generated above the normal residential traffic counts. No signs of any kind shall be displayed to the public view on any residential Lot except one sign of not more than four square feet in area advertising a Lot(s) for sale, or signs used by the Declarant or builders to advertise a Lot(s) during the construction period.

2 12 Fences/Rear Access Gates. All permanent fences shall be constructed of rock matching the perimeter wall of the Subdivision or of materials approved by the Architectural

Control Committee and shall be five (5) to six (6) feet in height. Walls of unstuccoed masonry units or unstuccoed concrete or chain-link or metal wire, or similar materials, are prohibited. The type, height and location of all fences and the location, type, and material of all rear access gates shall be indicated on plans submitted to and approved by the Architectural Control Committee. Walls, fences or hedges shall not extend beyond front yard setback lines. The first Owner to build upon a Lot shall construct the interior walls dividing the Owner's Lot from adjacent Lots (the "*Common Walls*"), and if not already constructed, the perimeter walls along the boundaries of the Owner's Lot. All construction of these walls shall be in accordance with the standards of this Agreement and the Architectural Control Committee, as defined below. In the event the Common Walls applicable to an Owner's Lot have already been constructed, upon commencement of construction upon an Owner's Lot, such Owner shall reimburse the other Owner or Owners of adjacent Lot or Lots who paid for construction of the Common Walls, for one-half (1/2) of the reasonable construction cost of such Common Walls which are applicable to the Owner's Lot. All such costs shall be witnessed by valid invoices and such other reasonable verification as is required by the Board and/or the Owner who is required to make reimbursement. Payment of such reimbursement amount shall be made on or before forty-five (45) days after the residence constructed upon the reimbursing Owner's Lot is complete. In the event reimbursement is not made within such forty-five (45) day period, the Association may, but is not obligated to do so, impose a Special Member Assessment upon the Owner of the Lot who has failed to reimburse the Owner of the adjacent Lot or Lots and enforce the Special Member Assessment in the manner provided within this Agreement.

2.13 Ordinances. In addition to complying with the terms of this Declaration, all improvements shall be erected in conformity with the ordinances and building codes of the City of El Paso.

2.14 Architectural Styles. It is the intention of this Declaration to establish a uniform scheme of design for the Subdivision with respect to such issues as the appearance, location, orientation, exterior materials, colors, fencing and landscaping of the Lots and all improvements constructed thereon. The Architectural Control Committee may from time-to-time adopt detailed specifications as to such items and other matters and such standards when adopted will be binding as if originally set forth herein. Declarant may also, by supplemental declaration, set forth detailed specifications and standards. Each Owner will be deemed to have consented to such standards and to the authority of the Architectural Control Committee. All homes and detached structures shall be constructed in the Southwestern, Adobe or Mediterranean style. The following standards shall apply to the Subdivision as a general rule. However, the Architectural Control Committee may permit deviations therefrom where the Committee deems it appropriate.

2.14.1 Materials. Bricks are allowed within the Subdivision. However, mission stones or bricks exceeding 3" x 3" x 12" are prohibited, unless plastered over. Stone work as an exterior finish is permitted provided no more than 20% of the exterior wall where such stone is to be located will be covered with stone; provided further, that the mortar be recessed minimum of 1" from the face of the stone, and color of stone and mortar be approved by the Architectural Control Committee. Materials such as aluminum siding, metal panels, mirrored glass, masonry units, [unplastered] cinder block or cement block are prohibited.

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Wood siding is allowed only for a portion of a wall and only as approved by the Architectural Control Committee.

2.14.2 Color. The color of all improvements shall be approved by the Architectural Control Committee and shall generally be in tans, off-whites (dull or matte off-white), light brown and earth tones. Surfaces of stone or brick shall be in natural color. Entrances and portals may be emphasized by the use of white or other approved colors or materials. Painting of residences with bold patterns shall be prohibited.

2.14.3 Roof Form, Slope and Shape. Shingles, rock-type roofs or roll-type composition roofs are prohibited, unless otherwise exempted by the Architectural Control Committee. Permitted roof types are clay or cement tile in red or earth tone colors. Flat, gabled, shed or hipped roofs with dormers are allowed if designed as Awall dominated roofs or installed with red or earth tone clay or cement tile. The Architectural Control Committee shall have the discretion to approve or disapprove the color and style of roofs within the subdivision.

2.14.4 Roof-mounted Equipment. Roof-mounted mechanical (including, without limitation, air-conditioning and heating equipment), electrical, microwave dishes, antennas, telephone and television equipment and other obtrusive structures shall be architecturally screened or avoided and shall be of a low profile to minimize visibility. Ground mount of these items is strongly encouraged. Solar devices shall be mounted flush with the roof, behind a parapet or otherwise architecturally screened to minimize visibility.

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2.14.5 Porches, Portals and Patios. The use of porches, portals and patios, wood beams, vigas, corbals, spindles, columns, planters, tile, niches, and stone details and other such unique architectural details is encouraged in the design of any residence; provided such items match the architectural style of the residence.

2.14.6 Security Bars. No exterior security bars visible from the outside shall be allowed on windows and doors on any structure on any Lot. The Architectural Control Committee may, however, in its sole discretion, waive this restriction on a case by case basis if it has first received detailed plans and specifications for any proposed installation, and approves the same in writing prior to installation based upon its determination that the same will be aesthetically pleasing in said committee's sole discretion, and compatible with the uniform scheme established herein.

2.15 Landscaping/Exterior Lighting. Landscaping and exterior lighting plans for front and side yards visible from the street shall be submitted to the Architectural Control Committee for approval. Rock and desert landscaping shall not exceed twenty percent (20%) of any front yard area. All exterior lighting shall be designed and installed in such a fashion that in the judgment of the Architectural Control Committee the privacy of other Owners shall not be affected. No shrubs, plants, or other objects shall be placed near the curb so as to cause a hazard to the pedestrian or vehicular traffic in the area, both as to visibility or interference with movement.

2 16 Exceptions. The Architectural Control Committee shall have the right to make exceptions to any of the requirements, conditions or covenants of this Declaration, except where such exception may be in conflict with any law, ordinance or other governmental regulation.

2 17 Building Time Requirements. By the acceptance of this Declaration each Owner covenants and agrees with the Declarant to complete such construction as soon as reasonably possible, but in any event within one (1) year from the date of the commencement of construction. The period to complete construction may, however, be extended by the Architectural Control Committee for: (i) interruption of construction due to Acts of God, labor strikes, delay in the transportation of materials, fire or casualty loss and any other interruption which in the opinion of the Architectural Control Committee was reasonably beyond the control of the Owner, and/or (ii) if construction has been carried on continuously the Architectural Control Committee may grant a reasonable extension for the completion of such construction. Without limitation on the foregoing, the Owner of a lot shall complete landscaping of the front and side yards of a Lot within one hundred twenty (120) days following the completion of the residence.

3 **ARCHITECTURAL CONTROL COMMITTEE.**

3 1 Approval of Plans and Contractors. No building, structure, fence, wall, party wall, or other improvements shall be commenced, erected, constructed, reconstructed, placed, altered, removed, permitted to remain, or maintained upon any portion of the Property, until the detailed plans and specifications therefor shall have been submitted to

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and approved in writing as to compliance with structural and mechanical standards, location and situation on the Lot, and as to harmony of external design or location in relation to property lines, building lines, easements, grades, surrounding structures, walks, and topography (including the orientation of the front and rear of any such building) by the Architectural Control Committee constituted as provided herein. The submitted plans and specifications shall specify, in such form as the Architectural Control Committee may reasonably require, structural, mechanical, electrical, and plumbing detail and the nature, kind, shape, height, exterior color scheme, materials to be incorporated into, and location of the proposed improvements or alterations thereto. In the event said Architectural Control Committee fails to approve or disapprove such plans and specifications within fifteen (15) days after said plans and specifications have been submitted to it, approval will not be required and the provisions of this Section will be deemed to have been fully complied with; provided, however, that the failure of the Architectural Control Committee to approve or disapprove such plans and specifications within such fifteen (15) day period shall not operate to permit any structure to be commenced, erected, placed, constructed, reconstructed or maintained on any Lot in the Subdivision in a manner inconsistent with any provision of this Declaration. The Architectural Control Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in the sole discretion of the Architectural Control Committee, with a residential subdivision of high quality or with the design or overall character and aesthetics of the Subdivision. The Architectural Control

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Committee shall be entitled to charge any Owner a reasonable fee, not to exceed \$150.00, for review of plans.

3 2 Committee Membership. The Architectural Control Committee shall be initially composed of Samuel Bert Borsberry, Ralph Padilla and Robert Pofahl, who by a majority vote may designate a representative or representatives to act for them (the term "*Architectural Control Committee*" as used herein shall refer to the individuals named above, their assignees as permitted herein, or the Architectural Control Committee's *designated representative[s]*). In the event of death, resignation or removal of any member or members of the Architectural Control Committee, prior to the Conversion Date, the Declarant shall appoint a successor member or members, after the Conversion Date, the Association shall appoint a successor member or members. Until such successor member or members shall have been so appointed, the remaining member or members shall have full right, authority and power to carry out the functions of the Architectural Control Committee as provided herein, or to designate a representative with like right, authority and power.

3 3 Transfer of Authority to the Association. Until the Conversion Date, the appointment of the members of the Architectural Control Committee will be by Declarant, and any or all members of such committee may be removed by the Declarant without cause. After the Conversion Date, the Association shall have the exclusive right and authority at any time to appoint, remove and fill vacancies on the Architectural Control Committee.

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and special assessments, and to administer the funds so collected, to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Areas in the Subdivision and such other purposes as are stated in the Articles of Incorporation consistent with the provisions of this Declaration and all supplemental Declarations.

4 3 Trustees. The Association shall initially act through a three-member Board of Trustees (or "*Board*" collectively, or "*Trustee*" individually), which shall manage the affairs of the Association. The initial Trustees of the Association shall be selected by Declarant. Each initial Trustee shall serve for an initial term as provided in the Bylaws of the Association and, thereafter, until his successor is duly elected and qualified. After the expiration of the term of the initial Trustees, the Members shall elect a five-member (or such other number as approved by the Members) Board as provided for in the Bylaws. Any vacancy, from whatever cause other than removal, occurring in the Board shall be filled by appointment made by the remaining Trustee or Trustees. The person appointed by the remaining Trustee or Trustees to fill such vacancy shall serve for the remainder of the initial term and until his successor is duly elected and qualified. The Trustees (together with officers, employees, and agents of the Association) may be indemnified to the full extent permitted by law, with such costs not covered by insurance to be treated as Special Group Assessments. The Board has full power and authority, on behalf of the Association, to enter into such contracts, as the Board deems appropriate, for the management, maintenance or operations of the Association which shall include, without limitation, the right to contract with any third-party Owner (including Declarant) or any affiliate of an Owner, for such services.

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4 4 Members. Each Owner, whether one or more persons or entities, of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association (and any Subsidiary Association, if applicable) and shall remain a Member thereof until his ownership ceases for any reason, at which time membership in the Association shall automatically cease, except that such termination shall not release or relieve any such person or entity from any liability or obligation incurred under this Declaration during the period of such persons's or entity's ownership, nor impair any rights or remedies which the Association or any other Owner may have with regard to such former Owner. If an Association is created, membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

4 5 Voting Rights. The Association shall have two classes of voting membership:

4 5.1 Class A. The Class A Members shall be all Owners with the exception of the Declarant. After the Conversion Date, as defined below in Subsection 4.5.2, Declarant shall also become a Class A Member to the extent Declarant is an Owner of a Lot or Lots.

4.5.2 Class B. The Class B Member shall be the Declarant. The Class B membership of Declarant shall cease and become converted to Class A membership upon occurrence of the later of the following (the "*Conversion Date*"):

- (a) When Declarant has: (i) conveyed its fee interest title in a number of Lots totaling Seventy-Five percent (75%) of the total number of Lots in the Property; or (ii) leased for a term in excess of forty (40) years, its interest in Seventy-Five percent (75%) of the total number of Lots in the Property; to unrelated third parties; or
- (b) Such earlier date as may be established by Declarant in a Supplemental Declaration to be recorded by Declarant.

Declarant may assign its rights as Declarant under these Declarations to a third party having an interest in the Property. Upon assignment and assumption of the Declarant's rights and obligations under these Declarations, and recording of the assignment and assumption, the assignee ("*Successor Declarant*") will be deemed the Declarant under these Declarations and will have all of the rights and obligations of the original Declarant named in these Declarations. Thereafter, the original Declarant named in these Declarations will have no further rights or obligations under these Declarations. If additional property is made subject to this Declaration, the "*Conversion Date*" shall not occur until the * percent (*%) threshold has been reached with respect to the Property initially subject to this Declaration and the Other Units annexed. Further, in the event Declarant conveys its fee interest title in all or a majority of the Lots to a third party, when coupled with an assignment of Declarant's rights under this Declaration to the Successor Declarant will be deemed to have assumed all of the rights and obligations of the original Declarant and the Conversion Date will not occur due to the transfer to the Successor Declarant

4 6 Restricted Voting Rights Prior to Conversion. Until the Conversion Date, the Class A Members shall not be entitled to vote. The Class B Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership.

4 7 Voting Rights After Conversion. From and after the Conversion Date (and at any time with respect to votes pertaining to special Group Assessments and amendments to the Declaration), each Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership. Where more than one person or entity holds such interest in any Lot or Lots or subdivided portion thereof, all such persons collectively shall be a single Member, and the vote for such Member (with as many votes as the ownership of such Lot or Lots would permit) shall be exercised as the several parties shall determine among themselves, provided, however, that in the aggregate no more than one vote shall be cast with respect to each Lot. The Association shall not be a voting member of the Association by virtue of its ownership of any Lot, or subdivided portion thereof.

4 8 Title to Common Areas and Limited Assessment Rights. Until such time as an Association is created, Declarant shall be entitled to exercise all rights and privileges herein created in favor of the Association or the Board, including without limitation, the power to levy assessments and otherwise exercise all rights of the Association in connection therewith, so long as the Regular Annual Assessment does not exceed Fifty and no/100 Dollars (\$50.00) per month per Lot during the first year after the primary Subdivision improvements, such as street, medians, and custom lighting, are approved for

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use and/or occupancy by the City of El Paso and any such assessments levied and collected and not used shall be turned over to the Association when created. Statements in this Declaration which qualify that certain grants of authority inure to the benefit of the Declarant if the Association has not been created, are not intended to limit the general statement above or in any way to create an implication that such powers are exclusive to the Association where not qualified. Rather, such statements are intended simply to underscore the Declarant's authority. The Declarant may retain the legal title to the Common Areas in the Subdivision until such time as it has completed improvements thereon and until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Until title to such Common Areas has been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all rights and privileges relating to such Common Areas granted to the Association in this Declaration and all Supplemental Declarations.

5 **ASSESSMENTS AND LIENS.**

5 1 Power to Levy Assessments. There is hereby granted to the Board of the Association (and to Declarant, prior to creating the Association and conveying the Common Areas thereto), the right to levy assessments, and a lien to secure the payment thereof, as herein provided.

5 2 Purpose of Assessments. The assessments levied hereunder by the Association shall be used exclusively for the purpose of protecting and promoting the comfort,

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collective mutual enjoyment, health, safety and welfare of the Owners of the Property, including but not limited to, the following:

5 2 1 Maintenance. The maintenance, repair or replacement of any and all Common Areas and any improvements thereon, including, by way of example and not limitation, of medians, walls or fences, of electrical systems and lighting, of the waterscapes, and of irrigation systems, sprinklers, pumphouses, etc., along with the cost of any associated management or supervisory services, fees, labor, equipment, utility costs and materials. Assessments may also be levied with respect to installation, maintenance, and services related to common security systems and/or gates along with repair and maintenance of any irrigation ditches or canals where applicable.

5 2 2 Improvements. The design, purchase and installation of any Common Areas and improvements.

5 2 3 Insurance. The purchase of insurance coverage relating to Common Areas and any improvements thereon, and other property of the Association.

5 2 4 Administration. The carrying out of duties of the Board as provided herein and in the Articles of Incorporation of the Association.

5 2 5 Purposes. The carrying out of purposes of the Association as stated herein and in the Articles of Incorporation.

5 4 2 Allocation. Each Developed Lot's pro rata share of the Regular Annual Assessment shall be determined by dividing the Regular Annual Assessment by the number of all Developed Lots then subject to the Declaration. The Undeveloped Lots shall not be subject to Regular Annual Assessments.

5 4 3 Surplus. Should any surplus exist at the end of any year, the Board of Trustees may, at its own discretion, reduce the amount required for the next Regular Annual Assessment by an amount not more than said surplus, provided, however, that reserve fund requirements are first met.

5 5 Special Group Assessments. In addition to the Regular Annual Assessments provided for herein, the Association by resolution of its Board as provided for in the By-laws may levy in and for any year, applicable to that year only, a "*Special Group Assessment*" for the purpose of:

- (a) Defraying the cost of any new construction or reconstruction, unexpected repair or replacement of capital improvements for and within Common Areas, including the necessary fixtures and personal property related thereto;
- (b) Defraying the cost of repairs or replacements resulting from an uninsured loss or damage or insured loss or damage when there are insufficient insurance proceeds as provided for in the Declaration; and

(c) Responding to unusual or emergency needs of the Association, including but not limited to indemnification obligations of the Association not covered by insurance.

Such Special Group Assessments shall be allocated and prorated among the Owners at the date each such Special Group Assessment is levied by dividing the Special Group Assessment by the number of Lots then subject to this Declaration.

5.6 Special Member Assessments. In addition to other assessments provided for herein the Association, by resolution of its Board, may levy a special assessment ("*Special Member Assessment*") on any Owner for the purpose of:

(a) Defraying the cost of any unexpected damage or loss requiring maintenance, repairs, or replacement of improvements associated either with a Common Area or with a Lot not owned by the Owner causing such damage or loss which damage or loss has been determined by the Board to have been caused, either directly or indirectly, by the willful or negligent acts of such Owner or its agent, occupant or visitor. In reaching a decision to levy such Special Assessment upon any Owner, the Board shall first determine, in its sole discretion, that reasonable evidence exists to support a determination that said damage or loss was caused, directly or indirectly by a particular Owner, or its agent, occupant or visitor. Prior to making such determination, the Board shall inform such Owner of its findings and afford the Owner the reasonable opportunity (not less than seven

(7) days) to (i) introduce evidence regarding such damage or loss and the cause thereof, or (ii) remedy such loss or damage.

(b) Reimbursing the Association for any and all direct or indirect costs incurred by the Association with regard to the maintenance, repair or replacement of any improvements on any particular Lot owned by such Owner when:

(i) It has been determined by the Board that the maintenance, repair or replacement of improvements associated with such Owner's Lot has been neglected to the point where conditions existing on such Lot are not in conformance with the maintenance obligations set forth in this Declaration;

(ii) The Owner of such Lot shall have been informed in writing of deficiencies found to exist and shall have been afforded a specific and reasonable period of time (not less than seven (7) days) to respond to said notice and/or remedy such deficiencies, the determination of what constitutes a reasonable period of time for remedial action to be made by the Board in its sole discretion;

(iii) Those deficiencies determined by the Board and reported in writing to the Owner of such Lot are not fully corrected within the time period established by the Board for such corrective action to be completed; and

(iv) Due to the failure of the Owner owning such Lot to take corrective action within the period of time established by the Board, it has been necessary or appropriate for the Association to contract for, initiate or complete such corrective action to meet the maintenance requirements of

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this Declaration. In the event such Owner shall start corrective action on a Lot after the Association has either contracted for such work to be done or actually accomplished such work in whole or in part, such Owner shall be obligated to the Association for the reimbursement of any costs actually incurred by the Association, including without limitation: release from contract settlements; design, legal or other professional fees; labor, equipment, materials or guarantees required to accomplish corrective work; management or supervisory services; and any other costs directly or indirectly attributable to the work.

(c) **Reimbursement of an Owner or Owners of adjacent Lots for one-half (1/2) of the construction cost of Common Walls.**

5 7 **Payment of Regular Annual Assessments.** The Regular Annual Assessments provided for herein shall commence on a date fixed by the Board and thereafter shall be due and payable in monthly installments, in advance, on the first day of each month.

5 8 **Payment of Special Assessments.** Special Group Assessments and Special Member Assessments shall be due and payable in full thirty (30) days following the date such assessment is set by the Board or in installments as may be determined by the Board.

5 9 **Collection and Enforcement.** Each Owner, by its assertion of title or claim of ownership or by his acceptance of a deed to a Lot regardless of whether it shall be so

recited in such deed, shall be conclusively deemed to have expressly vested in the Declarant and after creation, the Association, and specifically the Board, the right, power and authority to take all action which the Association and/or the Board shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the liens securing the same.

5 10 Enforcement and Personal Obligation of Owners for Payment of Assessments. The Regular Annual Assessments, Special Group Assessments and Special Member Assessments provided for herein shall be the personal and individual debt of the Owner of a Lot covered by such assessments. No Owner may, for any reason, exempt itself from liability for such assessments levied in accordance with the provisions of this Declaration or the Bylaws. In the event that any assessment or installment thereof is not paid when due, and remains unpaid for a period of thirty (30) days thereafter, then the unpaid amount of any such assessment or installment thereof shall become delinquent and shall, together with interest thereon as herein provided and costs of collection thereof, become a continuing personal obligation and debt of the nonpaying Owner secured by a self-executing lien on such Owner's Lot. The Association shall have the right to reject any partial payment of any assessment or installment thereof. The Association's acceptance of any partial payment tendered by an Owner shall neither relieve an Owner from his continued liability for the balance owed nor obligate the Association to accept any other partial payments. The unpaid amount of any assessment shall bear interest from its due date until paid at eighteen percent (18%) per annum or the maximum legal rate of interest then prevailing, whichever is less. In addition, the Board may retain the services of an

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attorney of its choice for the purposes of collecting any unpaid assessment and interest charges thereon, and/or to foreclose the lien against the property subject thereto and/or to pursue any other legal or equitable remedy which the Association may have and there shall be added to the amount of unpaid assessment and interest charges thereon, any and all collection costs incurred by the Association, whether judicial or nonjudicial, and including, but not limited to, reasonable attorney's fees and costs of legal suit.

5 11 Homestead Rights Inferior. The lien created hereunder and any lien subsequently created pursuant hereto shall at all times be superior to any claim of homestead by or in any Owner, such pre-existing assessment liabilities being an inherent characteristic of the property interest of such Owner.

5 12 Effect of Transfer on Unpaid Assessments. The lien for any unpaid assessments shall be unaffected by any sale or transfer of the full or of a partial ownership interest in a Lot. In the event of full or partial sale or transfer of an ownership interest in a Lot, it shall be the sole obligation of the Owner selling or transferring such interest (and not the Association) to disclose to any buyer or transferee by written notice that an unpaid assessment and associated lien against the ownership interest exists prior to the date such sale or transfer is to be consummated. A copy of such notice shall be sent to the Association at the same time. Upon written request, the Association shall provide an Owner with a statement reflecting the amount of any unpaid or delinquent assessments with respect to a Lot owned by said Owner. A sale or other transfer of title to such Lot

Texas Property Code, as amended. The Trustee shall sell such Lot to the highest bidder for cash and pay the money received from such sale in the following order: (i) to the expenses of conducting such sale, including without limitation a commission to itself not to exceed five percent (5%) of the sales price and attorneys fees; and (ii) to the amount of the past-due obligations, including interest and other charges due. In any foreclosure proceeding whether judicial or nonjudicial, the Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid (by offset or otherwise) on the property being foreclosed.

5 14 Lien Subordination. Any lien established as provided for in this Declaration or the Bylaws, shall be subordinate and inferior to any first lien mortgage or deed of trust in favor of any bank, savings and loan association, insurance company, pension fund, or other similar financial institution or other lender approved by the Board; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a foreclosure sale (whether public or private) of any such Lot pursuant to the terms and conditions of any such mortgage or deed of trust. No such foreclosure sale shall relieve a new Owner taking title at such sale from liability for the amount of any assessments thereafter becoming due or from a lien arising from any such subsequent assessment. Notwithstanding anything contained herein to the contrary, a lien for assessments shall be unaffected by a foreclosure of other than a first lien created by a mortgage or deed of trust in favor of a bona fide lender.

5 15 Common Areas Exempt. Common Areas shall be exempted from any assessments and any lien created herein.

5 16 Notice of Lien or Suit. Each Owner shall at the request of the Association give notice to the Association of every lien or encumbrance upon his Lot or subdivided portion thereon, other than for taxes and Assessments. Additionally, each Owner shall give notice to the Association of every suit or other proceeding which may affect the title to its Lot or subdivided portion thereon, and such notice shall be given within five (5) days after the Owner has knowledge thereof.

6 **PONDING, DRAINAGE AND SEPTIC.**

6 1 On-Site Ponding. All Lots in the Subdivision are subject to on-site ponding of storm waters. All Lots shall be designed to accommodate storm waters up to a maximum depth of eight (8) inches following the occurrence of the design storm. All Lots shall be developed by the Owners thereof in accordance with the drainage and grading plan for the Subdivision on file with the City of El Paso.

6 2 Markers. Each lot shall have one (1) permanent marker in the rear yard and one (1) permanent marker in the front yard which shall be placed to establish the maximum elevation to which a Lot can be raised without disturbing, impairing or defeating the on-site ponding design imposed on the Lot by Declarants as shown on the approved drainage plans for the Subdivision on file in the City Engineer's Office. No Owner shall do or permit to be done any act which prevents, hinders, or alters the on-site ponding of storm waters on any Lot

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including, but not limited to, increasing the elevation of the Lot above the markers in the front and rear yards, or moving or covering the elevation markers.

6 3 Building and Occupancy. No Owner shall build on his Lot or occupy the residence on his Lot until the permanent markers have been placed on his Lot.

6 4 Inspection. The city of El Paso and its employees, agents and independent contractors shall have the right at all reasonable times to enter upon any Lot in the Subdivision for the purpose of verifying the location and existence of the permanent elevation markers and determining whether the original on-site ponding design of the Lot has been changed or altered in any manner whatsoever.

6 5 Barriers. No Owner shall place or construct on any unimproved portion of his Lot a permanent barrier (e.g. plastic under gravel or concrete under gravel) which impedes or defeats percolation of water through the soil.

6 6 Restoration. In the event the original on-site ponding areas on a Lot become altered by reason of active or passive conduct of the Owner or some third person or by reason of Acts of God, the Owner of such Lot shall forthwith restore the on-site ponding areas to their original design and capacities for storage of storm waters. This covenant shall benefit all other Owners in the Subdivision.

6 7 Improvement Limitation. No Owner shall improve with building, patios, impermeable surfacing or other structures more than 50% of the gross area of his Lot, whether such structures be temporary or permanent.

6 8 WAIVER OF CLAIMS. EACH OWNER IN THE SUBDIVISION SHALL BE DEEMED TO HAVE WAIVED ANY CLAIM OR CAUSE OF ACTION AGAINST THE DEVELOPER, ITS AGENTS, EMPLOYEES, DIRECTORS, SHAREHOLDERS AND OFFICERS AND THE CITY OF EL PASO, ITS ELECTED OFFICIALS OR EMPLOYEES FOR ANY DEATH, INJURY OR PROPERTY DAMAGE RESULTING FROM EITHER THE EXISTENCE OF ON-SITE PONDING IN THE SUBDIVISION, OR THE ALTERATION OF THE PONDING CAPACITY OF ANY LOT IN THE SUBDIVISION.

6 9 LAWFUL ORDERS. EACH OWNER OF A LOT IN THE SUBDIVISION SHALL BY ACCEPTANCE OF HIS DEED BE DEEMED TO HAVE AGREED TO COMPLY WITH ANY LAWFUL ORDER OF THE CITY OF EL PASO REQUIRING THE CORRECTION OF A VIOLATION OF THE APPROVED DRAINAGE PLAN INSOFAR AS IT APPLIES TO HIS LOT WITHIN FOURTEEN (14) DAYS AFTER BEING GIVEN WRITTEN NOTICE OF THE VIOLATION.

6 10 Injunction. Deed restrictions placed upon the Subdivision or parts of the Subdivision may be enforced by injunction without the necessity for a bond.

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6 11 Disclosure. Every deed to a Lot in the Subdivision shall contain a conspicuous disclosure that the Lot is subject to on-site ponding, that permanent elevation markers have been installed on the Lot to control on-site ponding, that storm waters may stand on the Lot up to the depth specified in the Declaration, that the Lot is subject to inspection by City officials and that the Lot is subject to other restrictions as set forth in this Declaration.

6 12 Compliance with Ordinance No. The covenants set forth in this Paragraph 6 are adopted to conform with the on-site ponding requirements of Ordinance No. _____, and shall not be released in whole or part by the Owners, in the absence of a similar release from the City of El Paso, evidenced by the recording of an instrument in writing to that effect in the Decd Records of El Paso County, Texas. The interest of the City of El Paso may be released without the consent of any third person who may be benefited thereby.

6 13 Septic. No septic systems will be allowed. Lot Owners will each be responsible for such hookup and other fees, if any, charged, along with the cost for connecting to the sewer rom the Lot line to the interior of such Owner's Lot.

7 **GENERAL CONDITIONS.**

7 1 Easements. Easements for utilities, drainage facilities and irrigation facilities are reserved as shown on the recorded Plat of the Subdivision, the County Real Property Records, or other records, or as apparent upon the ground, along with easements for installation and maintenance of such utilities, drainage facilities and irrigation facilities.

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7 3 Clean Condition. The Owner of each Lot shall maintain such Lot in a clean condition free and clear of trash, debris, weeds and excessive vegetation. All clothes lines must be placed behind the principal dwelling and out of view from any street. Any repairs or alterations to an automobile or other vehicle (except emergency repairs) must be done in the garage, carport or behind the principal dwelling and out of view from any street.

7 4 Rubbish. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other wastes shall be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

7 5 Ordinances/Zoning. Nothing herein shall be considered as authority for the waiver or relaxation of any ordinance of the City of El Paso. By acceptance of this Declaration each Owner covenants and agrees to maintain a Residential District zoning classification with respect to such Owner's Lot. In instances where the standards or requirements provided in this Declaration differ from those of any City of El Paso ordinance, and the City of El Paso ordinance is more restrictive or requires more comprehensive development standards, the El Paso City ordinance shall apply.

7 6 Covenants. The covenants of this Declaration shall run with the land and be binding upon each Lot Owner, his successors in interest, and all persons claiming under them for a period of forty (40) years from the date these covenants are recorded; thereafter these covenants shall be automatically extended for successive periods of ten (10) years each,

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any way. All irrigation facilities shall be in conformity with the ordinances of the City of El Paso and shall be maintained by the Association, if required. Declarant specifically reserves irrigation rights for every Lot within the Subdivision, with the intention of transferring all such irrigation rights to the Public Service Board of El Paso, and the conveyance of any and all Lots to any Lot Owners shall not include any irrigation rights.

7 11 Soils Tests. Each Lot Owner shall obtain at his expense a soils test of such Owner's Lot prior to the commencement of any construction on such Lot. The slab for each residence within the Subdivision shall be engineered and constructed in accordance with the results of such soils tests.

7 12 Agreement to Arbitrate. The parties agree that, at the option of Declarant, any dispute or claim arising out of or relating to this declaration, or the interpretation, breach or termination thereof shall be resolved by binding arbitration under the Rules of the American Arbitration Association ("AAA"), as amended from time to time. The arbitration will be conducted in the City of El Paso, Texas, unless the parties agree in writing to another location. The appointing authority will be the AAA. The number of arbitrators will be three (3), who shall constitute the "Arbitral Panel." The language of the arbitration shall be English.

7.12.1 Notice of Arbitration. The arbitration will begin on the date on which the notice of demand for arbitration is delivered to the party or parties involved in the dispute (the "Disputing Parties"), by Declarant at the last known address of the

Disputing Parties. The Declarant will give a copy of such notice to the AAA. The notice of demand for arbitration will include the following, and any other information required by the AAA: (a) a demand that the dispute be submitted to arbitration; (b) the names and domiciles of the parties, if known; (c) a reference to this declaration and this arbitration provision; (d) a description of the dispute under this declaration and of the petitions and amounts claimed, if any.

7 12 2 Confidentiality. The parties agree to continue performing their respective obligations under this declaration during the resolution of any dispute regarding this declaration. All the matters regarding or submitted to the Arbitral Panel during any arbitration proceeding herein will be treated as "Confidential Information" and any and all arbitrators will maintain the confidentiality of such matters.

7 12 3 Interim Relief. The parties expressly agree that prior to the selection of the Arbitral Panel, nothing in this declaration shall prevent the parties from applying to a Court they would otherwise have jurisdiction for provisional or interim measures. After the Arbitral Panel is selected, it should have sole jurisdiction to hear such applications, except that the parties agree that any measure ordered by the Arbitral Panel may be immediately and specifically enforced by Court otherwise having jurisdiction over the parties.

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Panel, the cost of the record of transcripts thereof, if any, administrative fees, the attorney's fees of the parties, and all other fees and costs shall be allocated to the parties to the arbitration as determined by the Arbitral Panel, except that the prevailing party in such arbitration will be entitled to recover its reasonable attorney's fees and expenses.

7 12 7 Law Applicable. Notwithstanding anything to the contrary contained herein the law applicable to the validity to this Section 7.11 regarding arbitration, the conduct of the arbitration, including any resort to a Court for provisional or interim remedies, the enforcement of any award and any other questions of arbitration law or procedure shall be Chapter 172 of the Civil Practice and Remedies Code of the State of Texas.

7 13 Access. No Lot shall have access to Borderland or Artcraft roads. All ingress and egress to and from the Subdivision shall be had via Viale del Sol Avenue and/or Viale Lungo

7 14 Severability. Invalidation of any 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.

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