

411- Courtesy
62 pgs

**MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OCOTILLO ESTATES UNITS TWO, FIVE AND SIX
(Residential Subdivisions)**

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

THIS MASTER DECLARATION, made on the date hereinafter set forth by **EP PARK HILLS II, LTD.**, a Texas limited partnership, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article III of this Declaration and desires to create thereon residential communities with designated "Lots" and "Common Areas" (as those terms are defined herein) for the benefit of the present and future owners of said Lots; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said communities and for the maintenance of said Common Areas; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said communities, to create an association to which will be delegated and assigned the powers of maintaining and administering the Common Areas and Improvements and administering and enforcing the covenants and restrictions provided for herein and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant shall cause a non-profit corporation to be incorporated under the laws of the State of Texas for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, the Declarant declares that the real property described in Article III hereof is and shall be held, transferred, sold, conveyed, occupied and enjoyed subject to the covenants, restrictions, easements, charges and liens (sometimes referred to herein collectively as "covenants and restrictions") hereinafter set forth.

ARTICLE I. DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Architectural Control Committee" shall have the meaning set forth in Section 7.05 hereof.

(b) "Assessments" shall mean (unless otherwise noted) the Regular Annual Assessments, Special Lot Assessments, Special Member Assessments and Special Subdivision Assessments, as each is defined in Article VI hereof.

(c) "Association" shall mean and refer to the non-profit corporation which Declarant shall cause to be incorporated within the State of Texas under the name of OCOTILLO ESTATES UNIT TWO HOMEOWNERS ASSOCIATION (or such other name as determined by the Declarant, its successors and assigns).

(d) "Association Rules" shall have the meaning set forth in Section 4.09 hereof.

(e) "Board" or "Board of Trustees" shall mean the board of trustees of the Association.

(f) "Bylaws" shall mean the bylaws of the Association, as may be amended from time to time as provided for herein.

(g) "Construction Documents" shall have the meaning set forth in Section 7.01 hereof

(h) "Common Areas" shall mean the following portions of the Properties:

- (1) the Private Streets;
- (2) the Common Use Open Spaces;
- (3) walking and/or biking trails;
- (4) any areas designated as such in any Supplemental Declaration;
- (5) the landscaping and irrigation system within the medians within any of the Subdivisions; and
- (6) other areas dedicated in easements granted to the Association or leased from time to time by the Association, for the common use and enjoyment of the Members.

On or before the Conversion Date, Declarant shall convey to the Association by Special Warranty Deed title to the initial Common Areas, free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), and title exceptions of record.

(i) "Common Use Open Space" shall be defined as presently provided under Section 20.02.548 of the El Paso City Code, and shall include the areas labeled as such on each Plat of a Subdivision recorded in the Real Property Records of El Paso County, Texas.

(j) "Construction Drawings" shall mean the plans and specifications for construction of improvements and the installation of required landscaping on a Lot, as further described in the Design Guidelines for each Subdivision.

(k) "Design Guidelines" means the rules, guidelines, standards and procedures issued by the Declarant for each Subdivision (which may be amended from time to time by the Architectural Control Committee without prior notice) governing architectural control for each Subdivision. The Design Guidelines may be the same for two or more of the Subdivisions.

(l) "Entry Gate" shall mean the mechanical entry gate to the Properties located on Calle Lago Drive and said gate's associated appurtenances.

(m) "Exclusive Common Areas" shall mean those portions of the Common Areas, and the Improvements thereon, the use of which are restricted to Owners of Lots in a specific Subdivision, as may be established in Supplemental Declarations for each Subdivision.

(n) "Improvements" shall consist of improvements on or to the Common Areas for the use and benefit of all or some Owners. By way of illustration, it is intended that the Improvements will include, but not necessarily be limited to, the Private Streets, landscaping, decorative lighting, the Entry Gate, underground irrigation systems, drainage works and other similar and appurtenant improvements. Further, any Supplemental Declarations may identify additional Improvements, which shall be included under this definition.

(o) "Lot" and/or "Lots" shall mean and refer to each of the lots shown upon a Subdivision Plat.

(p) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property, but shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(q) "Master Declaration" shall mean this Master Declaration of Covenants, Conditions and Restrictions for Ocotillo Estates Units Two, Five and Six.

(r) "Member" and/or "Members" shall mean and refer to all those Owners who are members of the Association as provided in Section 4.04 hereof, together with all the Owners who become members of the Association.

(s) "Person" or "person" shall mean an individual, corporation, partnership, limited liability company, trust or other legal entity and their respective heirs, representatives, executors, administrators, successors and assigns.

(t) "Private Streets" shall have the meaning set forth in Section 3.03 hereof.

(u) "Properties" shall mean and refer to the properties described in Article III hereof, which are subject to the covenants, conditions and restrictions of this Declaration.

(v) "Regular Annual Assessment" shall have the meaning set forth in Section 6.02 hereof.

(w) "Regular Lot Assessment" shall have the meaning set forth in Section 6.02(b) hereof.

(x) "Special Lot Assessment" shall have the meaning set forth in Section 6.03 hereof.

(y) "Special Member Assessment" shall have the meaning set forth in Section 6.04 hereof.

(z) "Special Subdivision Assessment" shall have the meaning set forth in Section 6.05 hereof.

(aa) "Subdivision" shall mean and refer to each subdivision developed within the Properties and brought within the scheme of this Master Declaration. The Declarant anticipates not less than three (3) Subdivisions within the Properties, the first to be known as Ocotillo Estates Unit Two.

(ab) "Subdivision Plat" shall mean and refer to the map or plat of each Subdivision, as recorded in the Plat Records of El Paso County, Texas. The first Subdivision Plat shall be that for Ocotillo Estates Unit Two.

(ac) "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions amending this Master Declaration, covering additional property brought within the scheme of this Master Declaration under the authority provided in Article III hereof.

(ad) "Trustee" shall mean each and every member of the Board of Trustees.

ARTICLE II. EASEMENTS

Section 2.01. **Existing Easements.** Each Subdivision Plat may dedicate, subject to the limitations set forth therein, certain streets and easements as shown thereon, and may further establish limitations, reservations and restrictions applicable to the Properties. Further, Declarant and Declarant's predecessors in title may have heretofore granted, created and dedicated by recorded instruments certain other easements and related rights affecting the Properties. All dedications, limitations, restrictions and reservations shown on the Subdivision Plats and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Properties

are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Properties.

Section 2.02. **Changes and Additions.** Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the Improvements. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public utility purposes, (including, without limitation, gas, water, sanitary sewer, electricity, telephone and drainage) in favor of any person or entity furnishing or to furnish utility services to the Properties, along and on either or both sides of any side Lot line.

Section 2.03. **Installation and Maintenance.** There is hereby created an easement upon, across, over and under all of the Properties for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, telephones, electricity, gas, irrigation and any appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying such services to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, across and under the Properties within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this paragraph, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Common Areas until approved by Declarant or the Association's Board of Trustees. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Subdivision Plat, and to trim the overhanging trees and shrubs located on portions of the Properties abutting such easements.

Section 2.04. **Underground Electric Service.** An underground electric distribution system will be installed within the Properties.

Section 2.05. **Surface Areas.** The surface of easement areas for underground utility services may be used for the planting of shrubbery, trees, lawns, or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area. In the event of an inconsistency between the provisions of this Section 2.05 and the terms of any easement agreement with a utility company, the easement agreement shall control.

ARTICLE III. PROPERTY SUBJECT TO THIS DECLARATION

Section 3.01. **Description.** The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration (the "Properties") consists of the following:

A portion of A.G. McMath Survey No. 298 and a portion of H.G. Foster Survey No. 258 and 262, City of El Paso, El Paso County, Texas, being more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes, divided or subdivided into Ocotillo Estates Units Two, Five and Six, City of El Paso, County of El Paso, Texas.

Section 3.02. **Additions to the Properties.** Additional lands may become subject to the scheme of this Master Declaration in the following manner:

(a) **Additions by Declarant.** At any time within ten (10) years from the date of this Master Declaration, the Declarant, its successors and assigns, shall have the right, in its sole discretion, to bring within the scheme of this Master Declaration the additional properties in future states of development (including, without limitation, subsequent phases or subdivisions of Ocotillo Estates and all portions of other subdivisions being or to be developed by Declarant or affiliated or Subsidiary entities). Any additions authorized under this and the succeeding subsection shall be made by filing of record a Supplemental Declaration with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Master Declaration to such property. Such Supplemental Declaration must impose Assessments on the property covered thereby, on a uniform, per-Lot basis, substantially equivalent to the Assessments imposed by this Master Declaration and may contain such complimentary additions and/or modifications of the covenants and restrictions contained in this Master Declaration as may be applicable to the additional lands.

(b) **Other Additions.** Upon the approval of the Board of Trustees, in its sole discretion, the owner of any property who desires to add such property to the scheme of this Master Declaration and to subject it to the jurisdiction of the Association may file of record a Supplemental Declaration upon the satisfaction of the conditions specified in subsection a above.

(c) **Mergers.** Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving non-profit corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions established by this Master Declaration within the Properties, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions established

by this Master Declaration or any Supplemental Declaration except as herein provided.

(d) Withdrawal of Property. The Declarant reserves the absolute right to amend this Master Declaration at any time for the purpose of removing property then owned by the Declarant, its affiliates or the Association from the coverage of this Master Declaration.

Section 3.03. Private Streets and Entry Gate. The Private Streets and the Entry Gate within the Properties are and shall be "private" and constitute a portion of the Common Areas which are subject to the jurisdiction of and administration by the Association. The Board of Trustees is specifically authorized to recommend, adopt, implement and enforce rules, regulations, mechanisms and procedures governing use of the Private Streets and Entry Gate to include, without limitation:

- (a) identification and entry programs for Owners and Members, their respective immediate families or their guests and any vehicles owned or driven by any of them;
- (b) speed limits, designated parking areas, restricted parking areas and no parking areas;
- (c) signs and graphics to provide announcements to unauthorized personnel concerning potential criminal trespass matters;
- (d) a "fines" system through which the Association can levy and collect fines from its Members for violations of this Master Declaration, any Design Guidelines, the Bylaws and the Association Rules and/or other applicable rules and regulations established by the Association; and
- (e) disclaimers of liability for any and all matters or occurrences on or related to the Common Areas and Improvements.

At any time after the Conversion Date, the Members may elect to dedicate the Private Streets to public use by a vote of two-thirds of all then-current Owners of Lots within the Properties. If expenses must be incurred for the purpose of bringing the Private Streets into conformance with the specifications of the City of El Paso, such expenses shall be considered costs of capital improvements and shall be subject to the provisions hereof for Special Lot Assessments.

Section 3.04. Community Services Arrangements. Declarant will construct the Entry Gate at the entrance to the Properties, and, additionally, may also arrange for unarmed community services personnel to guard the Properties on Calle Lago Drive. The Declarant and the Association desire that the Entry Gate and the Private Streets will discourage undesired and unauthorized vehicular traffic within the Properties and foster a higher degree of peace and tranquility. However, the Properties are not entirely encompassed by a fence, nor are there any plans for such an enclosure. The Entry Gate is not designed to restrict or

impede pedestrian traffic into, within or out of the Properties, and will be left open during construction of homes, during development of the Properties and at other times as may be determined by the Board of Trustees.

Although the Declarant and the Association reasonably believe that the existence and visibility of community services personnel and/or controlled access points may discourage the commission of criminal acts (e.g. burglary, theft, etc.) within the Properties, nevertheless, neither the Declarant nor the Association warrant or guarantee that:

- (a) any community services personnel arrangement(s) and/or the Entry Gate are sufficient and adequate to diminish or eliminate the commission of crimes against persons or property within the Properties; or
- (b) such criminal acts will not be attempted or actually occur within the Properties.

The community services arrangements, if any, are not designed or intended to replace the conventional police and fire protection and paramedical services available from the City of El Paso.

The Association will not carry any insurance pertaining to, nor does it assume any liability or responsibility for, the real or personal property of the Owners and Members (and their respective family members and guests).

Each Owner and Member expressly understands, covenants and agrees with the Declarant and the Association that:

- (a) neither Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of any Owner and/or Member;
- (b) each Owner and Member shall from time to time and at various times consult with reputable insurance industry representatives of each Owner's and Member's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner and Member covering his or her real and personal property;
- (c) each Owner and Member releases, indemnifies and holds Declarant, the Association and their respective officers, directors, trustees and agents, harmless from any uninsured liability, claims, causes of action or damages of any kind or character whatsoever, arising out of or related to, directly or indirectly, any and all aspects of the community services arrangements, if any, within the Properties and the Private Streets, including, without limitation:
 - (1) the interviewing, hiring, training, licensing (if any), bonding (if any) and employment of community services personnel;

(2) the instructions, directions and guidelines issued to or by the community services personnel;

(3) the duties, performance, actions, inactions or omission of or by the community services personnel; and

(4) the function (whether mis-, mal- or non-) of the Entry Gate access; and

(d) each Owner and Member will cooperate with Declarant, the Association and the Architectural Control Committee in connection with the establishment, evolution and maintenance of reasonable controls on the pedestrian and vehicular traffic into and within the Properties and abide by any and all rules and regulations promulgated by the Association, including the Association Rules, related to the entry upon and use of the Private Streets and the Common Areas or Improvements within the Properties.

Section 3.05 **Exclusive Common Areas**. Certain portions of the Common Areas and the Improvements thereon, may be designated by Declarant as Exclusive Common Areas and reserved for the exclusive use or primary benefit of Owners of Lots within a particular Subdivision. By way of illustration, and not limitation, Exclusive Common Areas may include certain Common Use Open Space, landscaped medians, recreational facilities and other portions of the Common Areas within a particular Subdivision. All costs associated with the maintenance, repair and replacement of Exclusive Common Areas shall be assessed against the Owners of Lots within the Subdivision in which the Exclusive Common Area is assigned. The Declarant shall designate any Exclusive Common Areas in the deed conveying the Common Area to the Association or on the Subdivision Plat relating to such Common Area and shall reserve the exclusive use thereof to the Owners of Lots within the particular Subdivision; provided, any such designation or any reservation shall not preclude the Declarant from later expanding the reservation of the same Exclusive Common Area to additional Lots within the Properties. Even after the Conversion Date, as long as the Declarant owns at least one (1) Lot for development and/or sale, any change to or modification of the Exclusive Common Area shall require the Declarant's consent.

ARTICLE IV. THE ASSOCIATION

Section 4.01. **Organization**. The Declarant shall cause the Association to be organized and formed as a non-profit corporation under the laws of the State of Texas.

Section 4.02. **Purpose**. The purpose of the Association in general shall be to provide for and promote the health, safety and welfare of the Members, to collect Assessments and to administer the funds so collected, to provide for the maintenance, repair, preservation, upkeep and protection of the Common Areas and Improvements, and such other purposes as are stated in the Certificate of Formation for the Association consistent with the provisions of this Master Declaration and all Supplemental Declarations.

Section 4.03. **Trustees.** The Association shall initially act through a three-member Board of Trustees, which shall manage the affairs of the Association. The initial Board of Trustees shall be selected by Declarant. Each initial Trustee shall serve until the Conversion Date and, thereafter, until his successor is duly elected and qualified. After the Conversion Date, the Members shall elect the Board of Trustees as provided for in the Bylaws; provided, however, that Declarant shall be able to appoint one Trustee so long as Declarant owns at least one (1) Lot in any Subdivision. Any vacancy, from whatever cause other than removal, occurring in the Board of Trustees 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.

Section 4.04. **Members.** Each Owner, whether one or more persons, of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. 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.

Section 4.05. **Voting Rights.** The Association shall have two classes of voting membership:

(a) **CLASS A.** The Class A Members shall be all Owners with the exception of the Declarant. After the Conversion Date, Declarant shall also become a Class A Member to the extent that Declarant is the Owner of a Lot or Lots.

(b) **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 the occurrence of the earlier of the following (the "Conversion Date"):

(1) When Declarant has either (A) sold or (B) leased for a term in excess of forty (40) years, its interest in 100% of the Lots to unrelated third parties. A sale or a lease for such term to an unrelated third party shall also include those sales and leases to joint ventures or partnerships that include Declarant as a co-venturer or partner; or

(2) Such earlier date as may be established by Declarant in a Supplemental Declaration recorded by Declarant.

Until the Conversion Date, the Class A Members shall not be entitled to vote (except as provided for in the levying of Special Lot Assessments under Section 6.03 hereof). The Class B Member shall be entitled to one (1) vote for each Lot in which said Class B Member holds the interest required for membership.

From and after the Conversion Date (and at any time with respect to votes pertaining to Special Group Assessments), each Class A Member shall be entitled to two (2) votes for each Lot in which it holds the interest in its respective Lot required for Association membership. Where more than one person holds such interest in any Lot or subdivided portion thereof, all such persons, collectively, shall be a single Member, and the vote for such Member shall be exercised as the several parties shall determine among themselves, provided, however, that in the aggregate no more than two (2) votes shall be cast with respect to each Lot.

The Association shall not be a voting Member by virtue of its ownership of any Lot or any subdivided portion thereof.

Section 4.06. **Title to Common Areas.** To the extent permitted by law, the Declarant may have and retain the legal title to the Common Areas and any Improvements thereon until such time as Declarant has completed the Improvements and may thereafter convey such title as Declarant may have to the Association. Until the interest of the Declarant in the Common Areas and Improvements, or any part thereof, has been fully conveyed to the Association by Declarant, Declarant shall be entitled to exercise all rights and privileges it may have relating to such Common Areas and Improvements retained to the extent granted to the Association in this Declaration and any Supplemental Declarations, and otherwise exercise all rights of the Association in connection therewith.

Section 4.07. **Contracts with the City of El Paso.** Declarant shall have the right, on behalf of the Association, and without the joinder of any other party, to enter into contracts with the City of El Paso in connection with one or more of the Subdivisions and the Common Areas and Improvements, including, without limitation, contracts covering any city right-of-way, public streets, medians, light poles and lights, landscaping, drainage works and other similar and appurtenant improvements and liability insurance. Declarant shall have the further right at any time after the establishment of the Association, to assign any such contracts and all duties and obligations thereunder to the Association, which shall thereafter assume full responsibility for compliance with all such duties and obligations under the contracts. Upon assignment of the contract or contracts to the Association, Declarant shall automatically be released from all duties and obligations under and pursuant to the assigned contract or contracts.

Section 4.08. **Records.** The Association shall, upon reasonable written request and during normal business hours, make available for inspection to each Member the books, records and financial statements of the Association together with current copies of this Master Declaration, any Supplemental Declarations, the Certificate of Formation for the Association, the Bylaws, any Design Guidelines, the Association Rules and such other information as is required by Chapter 207 of the Texas Property Code, as may be amended from time to time. Declarant shall be under no obligation to make its own books and records available for inspection by any Owner, Member or other person.

Section 4.09. **Association Rules.** The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), binding upon all persons subject to this Master Declaration and governing the use and/or occupancy of the Common Areas, Improvements or any other part of the Properties, including, without limitation, all of the Lots. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Member Assessments pursuant to Section 6.04 hereof. The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Owners except as expressly provided or permitted herein, and shall not be inconsistent with this Master Declaration, the Certificate of Formation for the Association or the Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be made available to each Owner. Upon completion of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Master Declaration and shall be binding on the Owners and all other Persons having any interest in, or making any use of, the Properties, whether or not actually received thereby. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any provision of the Association Rules and any provisions of this Master Declaration or the Certificate of Formation for the Association or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Master Declaration, the Certificate of Formation for the Association or the Bylaws to the extent of any such conflict.

ARTICLE V. PROPERTY RIGHTS IN THE COMMON AREAS

Section 5.01. **Members' Easements of Enjoyment.** Subject to the provisions of Section 5.02 below, and the interests of the City of El Paso, every Member shall have a common right and easement of enjoyment in and to the Common Areas and Improvements, and such right and easement shall be appurtenant to and shall pass with the title to each Lot.

Section 5.02. **Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in its discretion, to make, publish and enforce reasonable rules and regulations, to include, without limitation, the Association Rules, which govern the use and enjoyment of the Common Areas and Improvements or any part thereof, all of which reasonable rules and regulations shall be binding upon, complied with and observed by each Member;

(b) The right of the Association to enter into contracts or agreements relative to the maintenance of such Common Areas and Improvements in such instances and on such terms as the Board of Trustees may deem appropriate;

(c) Subject to any limitations set forth in the Texas Property Code, the right of the Association to suspend the voting rights of a Member during the period that such Member is in default in excess of thirty (30) days in the payment of any Assessments against said Member or his respective Lot; and to suspend such rights for a period not to exceed sixty (60) days for any infractions of the Association Rules or other rules and regulations as are established by the Association pursuant to Section 5.02(a) above; and the aforesaid rights of the Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Association may have in this Master Declaration and all Supplemental Declarations or in the Bylaws or at law or in equity on account of any such default or infraction;

(d) The rights and easements existing, herein created or hereafter created in favor of others, as provided for in Article II of this Master Declaration or in any Supplemental Declarations;

(e) The right of the Association, in accordance with the Certificate of Formation for the Association and the Bylaws, to borrow money for the purpose of constructing and maintaining the Common Areas and Improvements. Notwithstanding any other provision in this Master Declaration to the contrary, no action under this subsection (e) may be had without the consent of at least two-thirds (2/3) of the Members having the right to use such Common Areas and Improvements as provided for in this Master Declaration and any Supplemental Declarations; and

(f) Subject to any limitations set forth in Chapter 209 of the Texas Property Code (Texas Residential Property Owners Protection Act) or any successor statute, the right of the Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Member to use or enjoy any of the Common Areas and Improvements for any period for which any Assessment or "fine" against a Lot resided upon by such Member remains unpaid, or during which noncompliance with this Master Declaration or any Design Guidelines exist, and otherwise for any period of time deemed reasonable by the Association Rules and/or Design Guidelines.

Section 5.03. **Delegation of Use.** Any Member may delegate his right of use and enjoyment of the Common Areas and Improvements together with all easement rights granted to Members in this Master Declaration and all Supplemental Declarations, to the members of his family, his tenants or contract purchasers who reside on his Lot. The term "Member" is further defined to include and refer to the executors, personal representatives and administrators of any Member, and all other persons, firms or corporations acquiring or succeeding to the ownership of Member by sale, grant, will, foreclosure or execution, or by any legal process, by operation of law or in any other legal manner.

ARTICLE VI. ASSESSMENTS AND LIENS

Section 6.01. **Purpose of Assessments.** Unless otherwise provided for herein, the Assessments levied hereunder by the Association shall be used exclusively for the purpose of maintaining the Common Areas and Improvements and promoting the comfort, collective mutual enjoyment, health, safety and welfare of the Owners of the Property, including, but not limited to, the following:

- (a) The maintenance, repair or replacement of any and all Common Areas and Improvements, along with the cost of any associated management or supervisory services, fees, labor, equipment and materials related thereto;
- (b) The design, purchase and installation of any Common Areas and Improvements;
- (c) The purchase of insurance coverage related to Common Areas and Improvements, and other property of the Association;
- (d) The carrying out of the duties of the Board of Trustees as provided in the Bylaws, the Certificate of Formation for the Association, in this Master Declaration and all Supplemental Declarations;
- (e) The carrying out of the purposes of the Association as stated in this Master Declaration and the Certificate of Formation for the Association; and
- (f) The carrying out of all other matters set forth or contemplated in this Master Declaration, any Supplemental Declarations or allowed by law for a Texas non-profit corporation.

Section 6.02. **Annual Budget and Regular Annual Assessments.** Each fiscal year while this Master Declaration or any Supplemental Declaration is in force, the Board shall adopt an annual budget and set the amount of the Regular Annual Assessment to be levied for the next year, taking into consideration Association operating costs for the then-current year, expected normal increases in such costs over the next year and additional future needs of the Association, including the establishment and maintenance of an Association reserve fund, as provided for herein. The annual budget shall be adopted by the Board not later than fifteen (15) days prior to the commencement of each fiscal year. Notwithstanding the above, in the event the Board fails for any reason to adopt an annual budget covering the succeeding fiscal year, then and until such time as an annual budget shall have been adopted for such succeeding fiscal year, the annual budget currently in effect shall continue, and the Regular Annual Assessment shall be deemed the same as for the current year.

The Regular Annual Assessment for each fiscal year shall be determined by the Board upon its adoption of the annual budget for such fiscal year in the following manner:

(a) The Regular Annual Assessment with respect to any fiscal year shall equal the total amount of the annual budget approved by the Board with respect to such fiscal year for all costs associated with the Common Areas and Improvements available for use by all Members (i.e., not Exclusive Common Areas), as determined in the sole discretion of the Board, such as the Private Streets, any Common Use Open Spaces, the Entry Gate and landscaping.

(b) Each Lot's pro rata share of the Regular Annual Assessment (the "Regular Lot Assessment") shall be determined by multiplying the Regular Annual Assessment by a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots. The Board, in its sole and absolute discretion, may adjust the annual budget and the Regular Lot Assessment to provide for a lesser assessment amount on any unimproved Lot(s). An improved Lot is one with a residence available for occupancy, whether occupied or not. In the event an Owner owns two (2) contiguous Lots on which a single homesite is constructed, said Owner shall pay a Regular Lot Assessment for each Lot owned.

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

Section 6.03. **Special Lot Assessments.** In addition to the Regular Annual Assessment provided for herein, the Association, by the vote of the Members as provided for in the Bylaws, may levy in and for any fiscal year, applicable to that fiscal year only, a special Lot assessment ("Special Lot Assessment") for the purpose of:

(a) Defraying the cost of any new construction or reconstruction, unexpected repair or replacement of capital improvements for Common Areas and Improvements other than Exclusive 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 an insured loss or damage where (i) there are insufficient insurance proceeds to cover such loss or damage or (ii) the Owner fails to utilize such insurance proceeds to correct such loss or damage; and

(c) Responding to unusual or emergency needs of the Association as may occur from time to time.

Any Special Lot Assessment shall be allocated and prorated among the Owners on the date on which such Special Lot Assessment is levied in the same manner as the Regular Annual Assessment is allocated and prorated among the Lots under Section 6.02 above.

Section 6.04. **Special Member Assessments.** In addition to the Regular Annual Assessments and any Special Lot Assessment, the Association, by vote of the Board, after complying with any notice and hearing requirements of Chapter 209 of the Texas Property

Code (Texas Residential Property Owners Protection Act) may levy a special assessment ("Special Member Assessment") on any Member for the purpose of:

(a) Defraying the cost of any unexpected damage or loss requiring maintenance, repair or replacement of the Common Areas or Improvements or with a Lot not owned by the Member causing such damage or loss when such 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 Member or its agents, occupants or invitees. In reaching a decision to levy such Special Member Assessment upon a Member, 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 such Member or its agents, occupants or invitees. Prior to making such determination, the Board shall inform such Member of the Board's findings and afford the Member a reasonable opportunity (not less than seven (7) days) in which to (i) introduce any mitigating evidence regarding such damage or loss or evidence regarding the cause of such loss or damage, 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 or drainage facilities located on a Lot owned by such Member when:

(1) It has been determined by the Board that the maintenance, repair or replacement of any improvements or drainage facilities located on such Member's Lot, or the Lot itself, have been neglected to the point where conditions existing on such Lot are not in conformance with the maintenance obligations set forth in this Declaration;

(2) The Member owning such Lot shall have been informed in writing of deficiencies found to exist on such Member's Lot 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;

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

(4) Due to the failure of the Member 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(s) to meet the repair, replacement and maintenance requirements of this Master Declaration or any Supplemental Declaration, as set out in the notice to the Member. In the event such Member shall start

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

Section 6.05. **Special Subdivision Assessments.** In Addition to the Regular Annual Assessments, any Special Lot Assessments and any Special Member Assessments, the Association, by vote of the Board, may levy a special assessment on Members within a particular Subdivision ("Special Subdivision Assessment") for the purpose of maintaining the Exclusive Common Areas and any Improvements thereon within the Subdivision, and promoting the comfort, collective mutual enjoyment, health, safety and welfare of the Owners within the particular Subdivision. By way of example, the Subdivision may have a swimming pool for the exclusive use of Owners of Lots within the Subdivision, in which case all costs related to the swimming pool will be allocated as a Special Subdivision Assessment to those Owners. In the event a Special Subdivision Assessment is levied, the Board will prepare a separate budget and prorate and allocate such Special Subdivision Assessments to the Members in the manner set forth in Section 6.02 hereof regarding Regular Annual Assessments.

Section 6.06. **Payment of Regular Annual Assessments and Special Subdivision Assessments.** The Regular Annual Assessments and the Special Subdivision Assessments provided for herein shall commence with respect to each Lot, and thus the Lot will be subject to the payment of such Assessments, on a date fixed by the Board and thereafter shall be due and payable on a monthly or quarterly basis (as determined by the Board), in advance, on the first day of each month or the first day of each quarter (as applicable).

Section 6.07. **Payment of Special Lot Assessments and Special Member Assessments.** Any Special Lot Assessments or any Special Member Assessments shall be due and payable in full thirty (30) days following the date on which any such Assessment is set by the Board in the resolution adopting such Assessment, except that, if it is specifically determined by the Board that any such Assessment is to be paid instead in deferred installments, then the payment dates and amounts of such installments shall be fixed in the resolution authorizing such Assessment.

Section 6.08. **Enforcement and Personal Obligation of Owners For Payment of Assessments.** The Assessments provided for herein shall be the personal and individual debt(s) of the Owner of a Lot, or subdivided portion thereof, 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 Master 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 all costs of collection thereof, become a continuing personal obligation and debt of the non-paying Owner secured by a self-executing lien (and may include a vendor's lien retained by Declarant) on the Lot or any subdivided portion thereof, including all improvements thereon, to which such Assessment or installment pertains. The Association shall have the right to reject any partial payment of any Assessment or installment thereof and demand full payment, or the Association may, in its sole discretion, elect to accept any such partial payment on account only, without waiving any rights established hereunder with respect to any remaining balance due.

The obligation of any Owner to pay any Assessment imposed on his Lot during such Owner's period of ownership shall remain the Owner's personal obligation, and a sale or other transfer of title to such Lot shall not release such former Owner from said liability, notwithstanding an assumption of liability by the purchaser or transferee. The lien for any unpaid Assessments shall be unaffected by any sale or transfer of a full or partial ownership interest in a Lot, or subdivided portion thereof, and shall continue in full force and effect. 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 purchaser or transferee that an unpaid Assessment and an associated lien against the respective Lot exist prior to the date at which 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.

The unpaid amount of any Assessment shall bear interest from its due date at eighteen percent (18%) per annum or the maximum legal rate of interest then prevailing, whichever is the lesser. In addition, the Board may elect to retain the services of an attorney of its choice for the purposes of collecting any unpaid Assessment and interest and collection charges due thereon, and/or to foreclose the lien against the Lot subject thereto and/or to pursue any other legal or equitable remedies which the Association may have, and there shall be added to the amount of any unpaid Assessment and interest and collection charges due thereon, any and all further costs incurred by the Association, whether judicial or non-judicial, including, but not limited to, reasonable attorney's fees and court costs.

To enforce the provisions of this Master Declaration and any rules made hereunder and to enjoin and seek damages from any Owner or Member for violation of such provisions or rules, including the failure to pay any Assessments when due, the Board of Trustees is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary "fines" system, which may include component steps such as warning citations, ticketing, due process hearings and appeals and a flat rate or discretionary range or geometric progression of fine amounts, which, when pronounced, shall constitute a permitted Special Member Assessment secured by the continuing lien herein established. Enforcement of the "fines" system is subject to Chapter 209 of the Texas Property Code (Texas Residential Property Owners Protection Act), or its successor statutes.

Section 6.09. **Lien and Foreclosure.** Upon delinquency, all sums assessed in the manner provided in this Master Declaration or in the Bylaws, together with all interest costs

provided for under Section 6.08 above, and the costs of collection, including reasonable attorneys' fees as hereinafter provided, thereupon shall be secured by a lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and his heirs, devisees, executors, administrators, personal representatives, successors and assigns. Except as may be provided otherwise herein, the aforesaid lien shall be superior to all other liens and charges against the Lot. As further evidence and notice of such Assessment lien, the Association may prepare a written notice of such lien setting forth the amount of delinquent indebtedness, the name of the Owner of the Lot covered by such lien, and a description of said Lot. Such notice shall be signed by a duly authorized officer of the Association and shall be recorded in the office of the County Clerk of El Paso County, Texas, or such other place as may be required by law for the recording of liens affecting real property at such time as such notice is recorded. The lien for payment of Assessments shall attach from the date such payment becomes delinquent and may be enforced after recording said notice through (i) nonjudicial foreclosure of such lien on the Lot, or any subdivided portion thereof and any improvements thereon in like manner as a mortgage on real property, and in accordance with the Texas Property Code, it being understood that each Owner expressly grants to the Board a power of sale, through a trustee designated in writing by the Board; (ii) suit against the Owner personally obligated to pay the Assessment; and/or (iii) judicial foreclosure of the aforesaid lien. In any foreclosure proceeding, whether judicial or nonjudicial, the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. The Association shall have the power to bid on the property being foreclosed.

Section 6.10. **Lien Subordination.** Any lien established as provided for in this Master Declaration or the Bylaws, shall be subordinate and inferior to any 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. Such foreclosure sale shall not relieve any 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 Assessments. Notwithstanding anything herein to the contrary, a lien for Assessments shall be unaffected by the foreclosure of any lien other than a first lien created by a deed of trust or mortgage.

Upon the written request of any such lender holding a superior lien on any Lot as provided herein, the Association shall report to such lender any unpaid Assessments, which are delinquent. The Association may from time to time, at its own initiative, elect to report any delinquent Assessments to such mortgage lenders without the consent of the respective Owner granting such superior lien.

Section 6.11. **Notice of Lien or Suit.** Any Owner shall, at the request of the Association, give notice to the Association of every lien or encumbrance upon his Lot or any subdivided portion thereof, other than for taxes and Assessments, and notice of every suit or other proceeding which may affect title to said Owner's Lot or any subdivided portion thereof,

and such notice shall be given within five (5) days after the Owner has knowledge of such matter.

Section 6.12 **Collection and Enforcement**. Each Member, by his assertion of title or claim of ownership or by his acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of any and all Assessments and/or for the enforcement and foreclosure of the liens securing the same, including the right to delegate collection and enforcement responsibilities to the City of El Paso, subject to the approval and consent of the City. The Association shall comply with Chapter 209 of the Texas Property Code (Texas Residential Property Owners Protection Act) to the extent applicable to any enforcement action taken by the Association.

Section 6.13. **Subdivision Information and Resale Certificate**. Not later than ten (10) days after the date a written request for Subdivision information is received from an Owner, Owner's agent or a title insurance company or its agent acting on behalf of the Owner, the Association shall deliver to the requesting party, current copies of this Master Declaration, any applicable Supplemental Declaration, a current copy of the Bylaws, the Design Guidelines, the Association Rules or any other rules and regulations the Association has adopted pertaining to the Subdivision, and a resale certificate that complies with Section 207.003 of the Texas Property Code, as may be amended. The Association may charge a reasonable fee (as established by the Board) for providing the information requested under this Section 6.13.

ARTICLE VII. ARCHITECTURAL CONTROL COMMITTEE

Section 7.01. **Approval of Plans**. No building, structure, fence, wall or other improvements shall be commenced, erected, constructed, placed or maintained upon any portion of the Properties, nor shall any exterior addition to or change or alteration therein be made until the construction documents therefore required by the applicable Design Guidelines (the "Construction Documents") shall have been reviewed and approved by the Architectural Control Committee in writing as to compliance with this Master Declaration and the applicable Design Guidelines, to include, without limitation, minimum structural and mechanical standards, location and situation on the Lot, and as to harmony of external design or location in relation to Lot lines, building lines, easements, grades, surrounding structures, walks and topography (including the orientation of the front and rear of any such building with respect to the Lot lines). Without limitation of the powers herein granted, and in addition to the Design Guidelines, the Architectural Control Committee shall have the right to specify requirements for each Lot as follows: the location, height and extent of fences, walls or other screening devices; the orientation of structures with respect to major entry and frontage; exterior design, exterior materials and colors; minimum roof exposures; common wall construction; landscaping; and driveways, and may take into consideration the impact of the construction on all portions of the Properties. The Architectural Control Committee shall be entitled to charge an Owner a reasonable fee for review of any and all Construction Documents, all or a portion of which may be paid to an outside consultant or to a member of

the Architectural Control Committee for review services rendered. Additionally, a fee may be imposed at each step of the plan approval process.

Section 7.02. **Written Action of Architectural Control Committee.** The Architectural Control Committee shall issue written approvals or disapprovals of the Construction Documents as required by the Design Guidelines. To apply for approval of the Construction Documents, an Owner shall, after reviewing the requirements of the applicable Design Guidelines and participating in a pre-design meeting, follow the steps set forth below:

(a) The Owner or the Owner's builder shall first seek approval of a conceptual plan by providing the information and Construction Documents required by the Design Guidelines. Approval of a conceptual plan shall be a prerequisite to final approval, which approval shall be made by a majority of the members of the Architectural Control Committee. The determination of whether a conceptual plan will be approved shall be made within ten (10) business days after the Architectural Control Committee has received the conceptual plan (drawn to scale), a site plan, a floor plan, front elevation and any other information that may be reasonably required by the Architectural Control Committee for such approval.

(b) When an Owner or the Owner's builder desires to obtain final approval of the Construction Documents, he shall provide the information and documents required by the Design Guidelines. Every Owner or his builder shall obtain final approval of his Construction Documents from the Architectural Control Committee, which approval shall be made by a majority of the members of the Architectural Control Committee. The determination of whether plans and specifications set out in the Construction Documents will be finally approved shall be made within fifteen (15) business days after the Architectural Control Committee has received all Construction Documents and any other information as required by the Architectural Control Committee pursuant to the Design Guidelines. In order to be approved, the Construction Documents shall comply with not only the Design Guidelines but also with all laws, ordinances, codes, rules and regulations of the City of El Paso, County of El Paso, State of Texas or any other governmental authority having jurisdiction over the Properties and the construction of improvements thereon.

(c) When an Owner or the Owner's builder desires to obtain final approval of the landscape plan for the Owner's Lot, he shall provide the information and documents required by the Design Guidelines. Every Owner or his builder shall obtain final approval of the landscape plan from the Architectural Control Committee, which approval shall be made by a majority of the members of the Architectural Control Committee. The determination of whether landscape plans and specifications will be finally approved shall be made within ten (10) business days after the Architectural Control Committee has received all documents and information as required by the Architectural Control Committee pursuant to the Design Guidelines. In order to be approved, the documents shall comply with not only the Design Guidelines but also with all laws, ordinances, codes, rules and regulations of the City of El Paso, County of

El Paso, State of Texas or any other governmental authority having jurisdiction over the Properties and the construction of improvements thereon.

(d) The Architectural Control Committee shall notify, in writing, the Owner or the Owner's builder who applied for conceptual or final approval within the times set forth in subsections (a), (b) and (c) above. Such notice shall be sent by United States mail, postage prepaid, return receipt requested, and shall be deemed received within three (3) business days of when such notice was deposited in the United States mail. If the Architectural Control Committee fails or refuses to notify the Owner or his builder of its approval or disapproval within the time periods set forth in subsections (a), (b) and (c) above, such plans and specifications shall be deemed approved by the Architectural Control Committee. The Architectural Control Committee may, however, extend the approval period by mutual agreement of the Architectural Control Committee and the Owner or the Owner's builder.

(e) Until otherwise notified, all Owners or their respective builders shall submit plans and specifications to the Architectural Control Committee, Ocotillo Estates Subdivisions, 2720 E. Yandell, Suite _____, El Paso, Texas 79903.

Section 7.03. **Variations**. The Architectural Control Committee is hereby authorized and empowered, upon written request of an Owner or his builder, to grant variances from the Design Guidelines if such variance will be in the best interests of all Owners where, owing to the Lot itself or special conditions caused by property adjacent to the Lot, whether within or without the Properties, literal enforcement of the provisions of the applicable Design Guidelines will result in non-economic hardship which prevents a reasonable use of the Lot or a reasonable design of a home and/or other improvements to be properly constructed on the Lot. The power to grant variances shall in no case be interpreted to completely dispense with the Design Guidelines. All decisions of the Architectural Control Committee regarding variances shall be made in the committee's sole and absolute discretion and shall not be subject to judicial review. The Architectural Control Committee shall render its decision either approving or disapproving a request for variance not later than twenty (20) business days following receipt of the written request and all information reasonably necessary to determine whether a variance is in the best interests of all Owners. The decision of the Architectural Control Committee shall be made by a majority of its members. If the Architectural Control Committee fails to approve or disapprove the requested variance within twenty (20) business days following the receipt of the variance request, then the request shall be deemed disapproved. All determinations shall be in writing and shall be served on the applicant by the United States mail, postage prepaid, return receipt requested, and shall be deemed received within three (3) days of when the determination was deposited in the United States mail. The Architectural Control Committee shall not consider a request for variance by an Owner that is the same or substantially similar to a variance request that was previously disapproved for such Owner within a period of six (6) months from the date of the prior disapproval. Further, the Architectural Control Committee shall not consider any request for variance which may be in violation of any statute, ordinance, rule or regulation to which the Lot is subject; provided, however, that if the subject of the variance request is on its face unlawful, but can be made lawful by governmental administrative action, then the

Architectural Control Committee may conditionally approve such request subject to a favorable governmental administrative action being obtained by the requesting Owner at such Owner's sole cost and expense. Notwithstanding any other provision of this Declaration to the contrary, Declarant has the right, in its sole discretion, to grant any variance whatsoever from the restrictions set forth in this Master Declaration and the applicable Design Guidelines up to and until the Conversion Date.

Section 7.04. **Design Guidelines.** All Construction Documents, including landscape plans, and all improvements made pursuant to such Construction Documents, shall comply with the applicable Design Guidelines. Any conflict between the Design Guidelines and this Master Declaration or any Supplemental Declaration shall be resolved in favor of this Declaration or the Supplemental Declaration. Any Design Guidelines may be amended at any time by the Architectural Control Committee; provided, however, that any such amendment shall not affect any construction previously approved and completed.

Section 7.05. **Committee Membership.** The Architectural Control Committee shall be initially composed of Douglas A. Schwartz, John Cullers and Jeff Huff, who may each 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 such committee's designated representative(s)). In the event of the death or resignation of any member or members of the Architectural Control Committee, the remaining member or members shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have the 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.

Section 7.06. **Transfer of Authority to the Association.** The duties, rights, power and authority of the Architectural Control Committee constituted hereby may be assigned at any time, at the sole election of a majority of the members of the Architectural Control Committee, to the Board of Trustees, and from and after the date of such assignment, the Board of Trustees shall have full right, authority and power, and shall be obligated to perform the functions of the Architectural Control Committee as provided herein, including the right to designate a representative or representatives with like right, authority and power. When there is no longer a Class B membership, the Board of Directors shall have the exclusive right and power at any time and from time to time to create and fill vacancies on the Architectural Control Committee.

ARTICLE VIII. GENERAL BUILDING AND USE RESTRICTIONS APPLICABLE TO THE SUBDIVISION

Section 8.01 General Construction Requirements.

(a) All approved exterior construction of the primary residential structure, garage, porches and any other appurtenances or appendages of every kind and character on any Lot and all approved landscaping in front yards and side yards

abutting streets shall be completed not later than one (1) year following commencement of such construction. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the foundation forms are set.

(b) No window or wall-type air conditioners shall be permitted to be used, placed or maintained on or in any building located within the Properties.

(c) Landscaping is to be performed in the parkway area and on the front of the Lot at the same time that the residential structure is being completed and before occupancy.

(d) Antennas and satellite dishes must be shielded from view from the Common Areas and streets, unless otherwise approved as a variance by the Architectural Control Committee when reception is not reasonably feasible from the shielded location.

Section 8.02. **Size of Homes**. The Design Guidelines for each Subdivision may establish maximum heights and minimum exterior areas for homes.

Section 8.03. **Building Location**. The Design Guidelines for each Subdivision shall establish setbacks for improvements constructed on the Lots within that Subdivision.

Section 8.04. **Walls, Fences and Hedges**. No walls or fences shall be erected or maintained on any Lot except in accordance with the Design Guidelines for that Subdivision. No chain link fences shall be permitted, except for temporary fences constructed by the Declarant or permitted by the Architectural Control Committee during construction of homes. All homes shall have backyards enclosed by side and rear fences constructed in accordance with this Section 8.04.

Section 8.05. **Temporary and Other Structures**. No structure of a temporary character, trailer, mobile, modular or prefabricated home, tent, shack, barn or any other structure or building, other than the residence to be built thereon, shall be placed on any Lot, either temporarily or permanently, and no home, garage or other structure appurtenant thereto, shall be moved upon any Lot from another location; except, however, that Declarant reserves the exclusive right to erect, place and maintain, and to permit builders to erect, place and maintain, such facilities in and upon the Properties as in the Declarant's sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, the construction and selling of residences and the construction of other improvements within the Properties. Such facilities may include, but not necessarily be limited to, a temporary office building, storage area, signs, portable toilet facilities and sales office. Declarant and the builders shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with construction and sales operations within the Properties, but in no event shall a builder have such right for a period in excess of one (1) year from the date of substantial completion of said builder's last residence within the Properties.

Section 8.06. **Nuisance.** No noxious or offensive activity shall be carried on or permitted upon any Lot or upon the Common Areas, nor shall anything be done thereon which may be or become an annoyance or nuisance to the respective Subdivision or to other Owners. The Board of Trustees shall have the sole and exclusive discretion to determine what constitutes a nuisance or annoyance. No trucks larger than one-ton, motor vehicles not currently licensed, boats, trailers, campers, motor or mobile homes or other vehicles shall be permitted to be parked on any Lot, except in a closed garage, or on any street, except passenger cars and trucks smaller than three-quarters of a ton may be parked on the street in front of the Lot for a period not to exceed twelve (12) hours in any twenty-four (24) hour period. Vehicles shall be parked only upon driveways and in garages, and no vehicle shall be parked on any landscaped areas of a Lot. No repair work, dismantling or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street, driveway or any part of the Common Areas. The use or discharge of firearms, firecrackers or other fireworks within a Subdivision is prohibited. No motor bikes, motorcycles, motor scooters, "go-carts" or other similar vehicles shall be permitted to be operated within any Subdivision if, in the sole judgment of the Board of Trustees, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance.

Section 8.07. **Signs.** Other than signs, billboards or other advertising devices displayed by Declarant or builders, no sign of any kind shall be displayed to the public view on any Lot or on the Common Areas except in accordance with the applicable Design Guidelines. Declarant or its agent or a member of the Architectural Control Committee shall have the right to remove any sign not in compliance with this Section 8.07, and in so doing shall not be liable and is expressly relieved of any liability for trespass or other tort in connection with or arising from such removal.

Section 8.08. **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other common household pets (not to exceed three (3) adult animals) may be kept, but they shall not be bred or kept for commercial purposes.

Section 8.09. **Removal of Dirt.** The digging of dirt or the removal of any dirt from any Lot is prohibited, except as necessary in conjunction with landscaping or the construction of improvements thereon and as approved by the Architectural Control Committee.

Section 8.10. **Garbage and Refuse Storage and Disposal.** All Lots and the Common Areas shall at all times be kept in a healthful, sanitary and attractive condition. No Lot or any part of the Common Areas shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage or waste materials shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tight-fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view. During construction, Owners and their builders are responsible for controlling construction debris. No Lot shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time

construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of such improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot, screened from public view. No garbage, trash, debris or other waste materials of any kind shall be burned on any Lot.

Section 8.11. **Septic Tanks.** No privy, cesspool or septic tank shall be placed or maintained upon or in any Lot or any other portion of the Properties.

Section 8.12. **Access.** No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot or other portion of the Properties unless the express written consent of the Architectural Control Committee first shall have been obtained.

Section 8.13 **Driveways and Culverts.** Each Lot must be accessible to an adjoining street by a driveway suitable for such purposes before the residential structure located on any such Lot may be occupied or used. No Owner may block any drainage ditch and shall be responsible for cleaning and maintaining any drainage structure on his Lot. The Association shall have the right to enforce the maintenance obligations of Owners having such drainage facilities on their Lots, including the right to go upon such Owner's Lot and perform the necessary cleaning and maintenance of the drainage facilities and to charge such Owner for the full cost thereof as a Special Member Assessment. The specifications for and construction of all drain tiles or culverts in any drainage ditch, whether to be installed in connection with a driveway or otherwise, must be approved by the Association.

Section 8.14 **Utilities.** Each residence situated on a Lot shall be connected to the municipal water and sewer lines as soon as practicable after same are made available at the Lot line. Each Owner, at its sole cost and expense, shall be responsible for all costs and expenses related to such utility connections.

Section 8.15. **Minimum Lot Area.** No Lot or Lots may be resubdivided into a greater number of Lots. Any number of Lots may, however, be subdivided into a lesser number of Lots, so long as none of the resulting lots is smaller than the smallest of the Lots resubdivided. For example, three Lots could be resubdivided into two Lots so long as both of the new Lots are larger than the smallest of the original three. In the event of such a resubdivision of any Lot or Lots, the Owner of such resubdivided Lot shall have two (2) votes for each Lot involved in the resubdivision, regardless of how many Lots result from the resubdivision.

Section 8.16. **Oil and Mining Operations.** No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, storage tanks, tunnels, mineral excavations or shafts 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.

Section 8.17. **Lot Maintenance.** The Owners or occupants of all Lots shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner and

shall in no event use any Lot for the storage of materials and equipment except for normal residential maintenance requirements or incident to the construction of improvements thereon as herein permitted. Further, such parties shall not permit the accumulation of garbage, trash or rubbish of any kind on their respective Lot and shall not burn any such materials within any of the Subdivisions. The drying of clothes in full public view is prohibited, and the Owners or occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds, waterfront or other facilities where the rear yard or portion of the Lot is visible to full public view shall construct and maintain a suitable enclosure to screen the following from public view: the drying of clothes, yard equipment, wood piles or storage piles which are incident to the normal residential requirements of a typical family. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements, or any of them, such default continuing after ten (10) days written notice thereof, Declarant, its successors and assigns, or the Association may, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause to be cut such weeds and grass and remove or cause to be removed such garbage, trash and rubbish or take such other actions as are necessary to secure compliance with this Declaration in order to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant of the Lot, as the case may be, agrees by the purchase or occupancy of such Lot to pay for such expenses incurred by the Declarant or the Association immediately upon receipt thereof.

Section 8.18. **Turf Restrictions.** Turf restrictions may be imposed on the Subdivision as provided for in the applicable Design Guidelines.

ARTICLE IX. GENERAL PROVISIONS

Section 9.01. **Duration and Amendment by Owners.** The covenants, conditions and restrictions of this Declaration and any Supplemental Declarations shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot, their respective legal representatives, heirs, executors, administrators, representatives, successors and assigns, for an initial term commencing on the effective date hereof and ending June 30, 2047. After the Conversion Date, the covenants, conditions and restrictions of this Declaration may be changed only by an instrument signed by the then Owners of seventy-five percent (75%) of all Lots within the Subdivisions subject to this Master Declaration and properly recorded in the appropriate records of El Paso County, Texas. Upon the expiration of such initial term, said covenants, conditions and restrictions (as changed, if changed), and the enforcement rights relative thereto, shall be automatically extended for successive periods of ten (10) years. During such extension periods, the covenants, conditions and restrictions of this Master Declaration or any Supplemental Declarations may be changed or terminated only by an instrument signed by the then Owners of not less than fifty-one percent (51%) of all Lots within the Subdivisions and properly recorded in the appropriate records of El Paso County, Texas. In addition to any other approvals required to be obtained herein, changes of a material nature to this Master Declaration must be approved by eligible mortgage holders representing at least fifty-one percent (51%) of the Lots which are subject to mortgages held by eligible mortgage holders. As used herein, the term "eligible mortgage holders" shall mean those holders of a first

mortgage on a Lot who have requested in writing that the Association notify them of any proposed action which requires the consent of a specified percentage of eligible mortgage holders. A change to any of the following shall be considered of a "material nature":

- (a) Voting rights;
- (b) Assessment liens or subordination of Assessment liens;
- (c) Reserves for maintenance and repairs;
- (d) Reallocation of the rights to use the Common Areas;
- (e) Contraction of any Subdivision or withdrawal of property from the Properties;
- (f) Imposition of any restrictions on an Owner's right to sell or transfer his or her Lot;
- (g) Any provisions hereof which expressly benefit mortgage holders, insurers or guarantors; or
- (h) Any decision not to restore or repair any material part of any Subdivision after a casualty damage or partial condemnation.

The approval by an eligible mortgage holder to an amendment other than a material change shall be implied if such holder fails to respond to any written proposal for an amendment within thirty (30) days of mailing such proposal. Notwithstanding any provision in this Declaration to the contrary, the legal status of any Subdivision may not be terminated for reasons other than substantial destruction or condemnation of a Subdivision unless eligible mortgage holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots agree otherwise.

Section 9.02. **Enforcement.** The Association, as a common expense, or any Owner at his own expense, shall have the right, but not the obligation, to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservations, liens, charges, Assessments, and all other provisions set out in this Master Declaration or any Supplemental Declaration. Failure of the Association or of any Owner to take any action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of their right to take enforcement action upon any subsequent breach or default. The Association shall comply with Chapter 209 of the Texas Property Code (Texas Residential Property Owners Protection Act) to the extent applicable to any enforcement action taken by the Association. The City of El Paso shall have a like right of enforcement under this Section 9.02. The prevailing party in any enforcement action shall be entitled to recover his costs, including reasonable attorney's fees. The Association shall not be required to post a bond in any injunction or other equitable proceeding necessary to assert such enforcement rights.

Section 9.03 **Management Agreements**. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be made reasonably available to each Owner upon request. Any and all management agreements entered into by the Association shall provide that said management agreement may be canceled by the Board or by an affirmative vote of the majority of the Members at a meeting at which a quorum is present. This Section 9.03 shall not be construed to mean that the Association is obligated to engage a manager for any of the Association's duties or obligations set forth herein. The Association may manage its affairs through its Members on such terms as the Association may determine.

Section 9.04. **Amendments by Declarant**. The Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration by any instrument in writing duly signed, acknowledged and filed of record for any purpose prior to the Conversion Date.

Section 9.05. **Interpretation**. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible of more than one or a conflicting interpretation, then the interpretation which is more nearly in accordance with the general purposes and objectives of this Master Declaration shall govern.

Section 9.06. **Omissions**. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Master Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

Section 9.07. **Notices**. Any notice required to be sent to any Member or Owner under the provisions of this Master Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 9.08. **Gender and Grammar**. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to a corporation or other legal entity or an individual, male or female, shall in all cases be assumed as though in each case fully expressed.

Section 9.09. **Severability**. Invalidation of any one or more of the covenants, restrictions, conditions or provisions contained in this Master Declaration, or any part thereof, shall in no manner affect any of the other covenants, restrictions, conditions or provisions hereof, which shall remain in full force and effect.

Section 9.10. **Security**. Neither Declarant nor the Association shall be obligated to provide security services of any kind to any of the Properties. The Declarant or the Association, upon the majority vote of its Members, may opt to provide limited security

services, but shall have no responsibility or liability for failure to provide any such services, or for the negligent acts or omissions of the employees or agents of any entity engaged to provide such security services.

Section 9.11. **Changes in Property Configuration.** Declarant reserves the right to make such changes in the boundaries and designations of Lots not sold to others and in the Common Areas as Declarant deems advisable, provided that any such changes shall not have a material adverse effect upon the boundaries or the beneficial use and enjoyment of any Lot then owned by an Owner other than Declarant.

Section 9.12. **Insurance.** The Association shall obtain and pay, as a common expense, premiums for policies of insurance providing coverage deemed necessary by the Board of Trustees, and as required by any contracts with the City of El Paso. All insurers and reinsurers, if applicable, must be licensed, or otherwise authorized by law to conduct business in the State of Texas. In addition, the Association shall purchase fidelity insurance or bonds covering losses resulting from dishonest or fraudulent acts committed by the Association's employees, trustees or volunteers who manage funds collected and held for the benefit of the Owners. The Association shall also purchase such other insurance coverage as shall hereafter be required by law or determined by the Board of Trustees to be necessary for the protection of the Owners and their respective mortgage holders, or to insure approval of the Subdivision for participation in the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association programs. Each Owner, and not the Association, shall have the responsibility of obtaining and keeping in full force and effect, at the Owner's sole cost and expense, insurance covering the properties and liabilities of such Owner, including its Lot(s) and the improvements thereon. In the event of loss or damage to the Common Areas, or the property of an Owner which shall be covered by insurance, the insurance company paying such claim shall have no right of subrogation against the Association, its agents and employees, nor against any of the Owners, their tenants or members of their respective households.

Section 9.13. **Power of Attorney.** Each and every Owner and Member hereby makes, constitutes and appoints Declarant as said party's true and lawful attorney-in-fact, coupled with an interest and irrevocable, for the party and in the party's name, place and stead and for his use and benefit, to do the following:

- (a) to exercise, do or perform and act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration, the Properties or any of the Subdivisions;
- (b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms of this Master Declaration, or any part thereof, with such clauses, recitals, covenants, agreements and restrictions as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon any Subdivision Plat, or any plat thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Master Declaration in the Real Property Records of El Paso County, Texas, and shall remain in full force and effect until the Conversion Date.

Section 9.14 **Disclaimer of Representations**. Declarant makes no representations or warranties whatsoever, and specifically disclaims any such representation or warranty, whether written or oral, express or implied, to any Owner or any other person that the Improvements or any other improvements within the Properties will be constructed in accordance with any particular plans and specifications, including without limitation those plans which exist as of the Effective Date hereof.

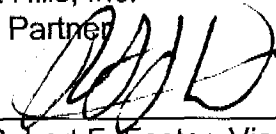
[THE REMAINDER OF THIS PAGE IS INTENTIONALLY RESERVED]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration to be effective as of the 9th day of April, 2007 ("Effective Date").

DECLARANT:

EP PARK HILLS II, LTD.,
a Texas limited partnership

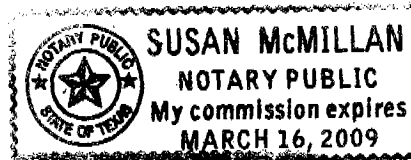
By: EP Park Hills, Inc.
Its: General Partner

By: 
Robert F. Foster, Vice President

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before on this 9th day of April 2007, by ROBERT F. FOSTER, Vice President of EP PARK HILLS, INC., in its capacity as the general partner of EP PARK HILLS II, LTD., a Texas limited partnership, on behalf of said limited partnership.


Notary Public



After Recording Return To:

EP PARK HILLS II, LTD.
1790 Lee Trevino, Suite 601
El Paso, Texas 79936

Being a portion of A.G. Mc Math Survey No. 298,
City of El Paso, El Paso County, Texas
Prepared for: Southwest Land Development Services Inc.
April 26, 2006
(Proposed Ocotillo Estates Phase 2 & 4)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of A.G. Mc Math Survey No. 298, City of El Paso El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing 1 1/2" pipe found for the southeast corner of H.G. Foster Survey No. 262, from this point an existing city monument at the intersection of the monument line of Ojo De Agua Drive with the centerline of Los Siglos Drive bears South 47°53'30" West a distance of 424.58 feet; Thence from said 1 1/2" pipe and along the line between A.G. Mc Math Survey No. 298 and H.G. Foster Survey No. 262, North 00°00'48" East a distance of 1526.46 feet to a point for The "TRUE POINT OF BEGINNING";

Thence North 00°00'48" East a distance of 787.67 feet to a point;

Thence North 00°01'06" East a distance of 460.49 feet to a point;

Thence South 89°57'49" East a distance of 2711.40 feet to a point;

Thence South 02°22'06" East a distance of 666.35 feet to a point;

Thence North 89°59'01" West a distance of 855.10 feet to a point;

Thence South 00°00'37" East a distance of 304.42 feet to a point;

Thence North 75°58'29" West a distance of 331.81 feet to a point;


Thence North 88°44'31" West a distance of 542.21 feet to a point;

Thence South 74°27'44" West a distance of 711.03 feet to a point;

Thence South 61°59'06" West a distance of 379.66 feet to the "TRUE POINT OF BEGINNING" and containing 54.976 acres of land more or less.

NOTE: Bearings based on plat of Chaparral Park Unit 39 recorded in Volume 72, Pages 34 and 34A, Plat Records El Paso County, Texas

Not a ground survey


Ron R. Conde
R.P.L.S. No. 5152
Job No. 406-72

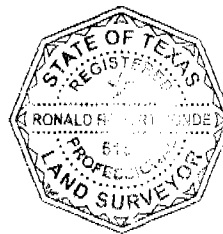


Exhibit "A"

OCTILLO ESTATES

ARCHITECTURAL GUIDELINES

Ocotillo Estates Unit Two

EXHIBIT "A"

How to use these Guidelines

These Architectural Design Guidelines (“Design Guidelines”) establish minimum standards for construction as well as goals for building in Ocotillo Estates Unit Two. This is intended to stimulate your creativity in designing your home in Ocotillo Estates Unit Two, while protecting the environment. This document is structured for easy review and reference.

These Design Guidelines are in addition to the conditions and restrictions posed in the Master Declaration of Covenants, Conditions and Restrictions for Ocotillo Estates Units Two, Five and Six (the “Master Declaration”).

These Design Guidelines begin by introducing the objectives for Ocotillo Estates Unit Two and describe the standards that must be met in site planning, architecture and landscape architecture for homes. The Design Guidelines define the steps for review and approval of projects within Ocotillo Estates Unit Two and present the procedures to be followed during construction.

The role of the Ocotillo Estates Architectural Control Committee

The Ocotillo Estates Architectural Control Committee (ACC) will review and approve all plans for new construction in Ocotillo Estates Unit Two by Owners and Builders and will administer the Design Guidelines for Ocotillo Estates Unit Two. The ACC acts under the authority of Article VII, of the Master Declaration.

Each proposed building design shall be checked for compliance with these Design Guidelines. The ACC in accordance with these Design Guidelines shall also review any plans for remodeling or exterior modifications to homes after the initial construction has been completed.

The Design Guidelines and the building and approval procedures set out herein are the criteria that must be met in order to build or remodel within Ocotillo Estates Unit Two. Compliance with these Design Guidelines in no way guarantees any particular construction result within Ocotillo Estates Unit Two.

In addition, these Design Guidelines are not, and are not to be construed as, a recommendation or endorsement by Declarant (as defined in the Master Declaration), the Ocotillo Estates Homeowners Association (Association), the Association’s Board of Directors (Board) or the ACC of any particular plan, design, or building material, which may be contained herein. Neither the Declarant, the Association, the Board, nor the ACC shall be held liable or bear any responsibility for any injury, damage, or loss arising out of the manner or quality of construction on any property within Ocotillo Estates Unit Two or any modification thereto.

Ocotillo Estates Homeowners Association

The complete set of documents for the Ocotillo Estates Homeowners Association includes:

- Master Declaration of Covenants, Conditions and Restrictions ;
- Declaration of Covenants, Conditions and Restrictions for each Ocotillo Estates Subdivision governed by the Master Declaration;
- Architectural Guidelines for Ocotillo Estates Unit Two;
- Bylaws of the Ocotillo Estates Homeowners Association;
- Certificate of Formation for the Ocotillo Estates Homeowners Association.

Please refer to these documents for more information on the operation of the Association.

Site Planning

Blending Development with the Natural Environment

Site Planning at Ocotillo Estates Unit Two is the combination of design and land planning principles that allow the vision for this exceptional neighborhood to become a reality. Commitment to conservation with preservation and enhancement of the natural environment is balanced with sensitivity to the economy and efficiency of contemporary building and construction. Respect for El Paso's building heritage is also included.

Ocotillo Estates Site Planning

Construction Area & Temporary Protective Fencing

The "Construction Area" shall be the area within the home-site that is required for construction for the home, garage, auto courts, game courts, driveway and private areas. The Builder will establish this area and must erect temporary fencing to enclose the Construction Area prior to commencing foundation work. The fencing is intended to protect the Natural Areas from damage during construction and reduce costs of restoring the desert.

Combining Lots

Commonly owned contiguous lots might be combined into a single home-site in conformance with the Master Declaration and, additionally, with the consent of the ACC. However, it is possible that such a location could negatively impact existing homes and thereby be unacceptable. In any event, the Owner shall submit to the ACC any requested reconfiguration of the Building Envelope early in the design phase. Approval by the ACC must be received prior to final construction plan submittals. For purposes of these Guidelines, combined lots shall be considered as one home-site. For purposes of the Association, refer to the Master Declaration for the voting, assessments and fees that will apply.

Grading

Design Objectives: To retain the natural character of the home-site and eliminate the need for excessive retaining walls.

- The lots are not pre-graded, which allows the Owner to choose the location of their home and the size of Private Areas that they need and choose to maintain. In designing the

home and Private Areas, the following measures must be taken to reduce excessive grading:

- Building with internal steps and multiple levels
 - Low retaining walls and building stem walls
 - Berms and landscaping to blend cuts and fills
- Consideration should be given to using parts of exterior walls of the home as retaining walls to blend the home into the site. Use of stem walls may be necessary to minimize grading and to preserve natural landform.
 - Cuts and fills must be kept to a minimum to reduce visual impact. (Refer to Site Wall section on page 8 for retaining wall requirements.)
 - Slopes shall be stabilized with riprap or other erosion control methods.
 - Each individual lot Owner is responsible for conducting a soils analysis for determining construction methods to implement.
 - Areas to be filled with off-site material or site generated cut shall be within the Construction Area.

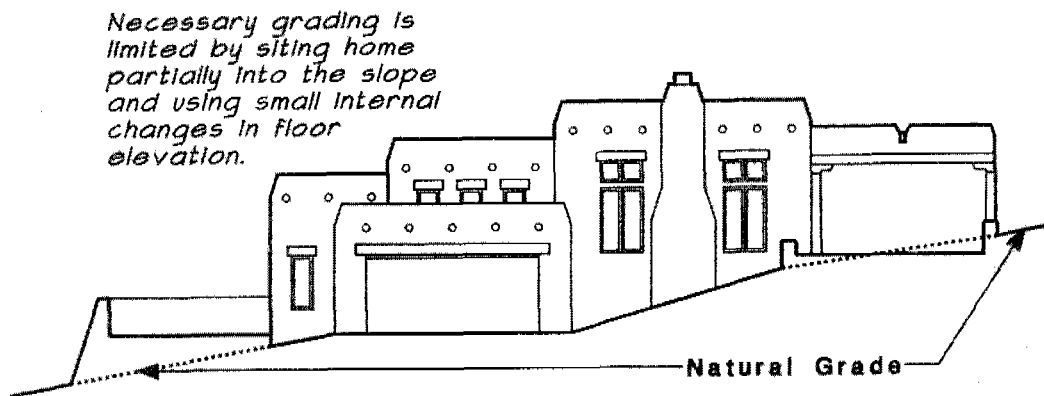


Exhibit 1: Elevation of 1-story home sited partially into natural grade

Grading minimized by building one level on front/side of the home-site and two levels on the rear/opposite side of the home-site.

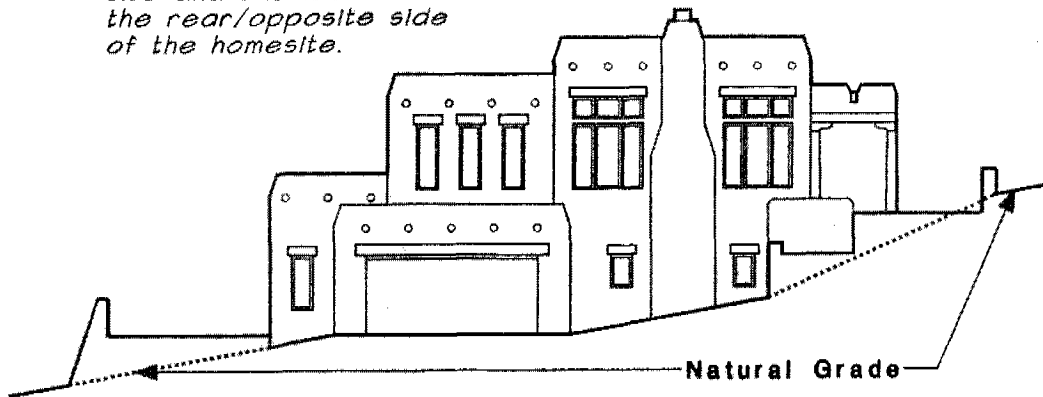


Exhibit 2: Elevation of 2-story home with lower level sited into natural grade

- Fill stockpiles shall be stored within the Construction Area. Stockpiles must be placed in such a manner as to avoid erosion problems and shall not remain after home completion.
- Planting of disturbed Natural Areas shall be completed within 30 days of final grading unless otherwise approved by the ACC. Consideration must be given to the best planting times for plant survival. If the planting will not be accomplished within 30 days, Owner or Builder must submit a letter to the ACC for approval. The letter must confirm when planting will be completed.
- The primary function of the natural canyons in the Ocotillo Estates Subdivisions is to safely convey the upland storm water flows through the Subdivisions and to receive free discharge of storm water flows from lots. Water flows must be managed on each lot through water dispersion, harvesting and/or other techniques that prevent negative impacts to other lots and to the Ocotillo Estates Unit Two subdivision as a whole. Techniques to assure compliance with these provisions shall be defined in drainage plans for each lot and must be approved by the ACC prior to the start of construction.
- A certified professional engineer must prepare the drainage plan to City of El Paso standards. The ACC and the City of El Paso (if required) must approve any and all drainage plans.
- Owners shall accept natural drainage from the undisturbed area of the upslope, adjacent lot. Runoff from the street immediately in front of the lot shall be conveyed onto the lot.
- Storm water must be addressed in the landscaping plan. Incorporation of small retention ponds is encouraged.

- All drainage from walled areas to Natural Areas shall be dispersed from pipes through the Privacy or View Walls at no more than four (4) foot intervals. These openings shall be placed at the same elevation and be approximately 1-34 inches below the finish yard elevation. This will help prevent erosion of natural terrain below the walls and encourage absorption of rainwater.
- Care and attention must be given to the grading of driveways and drive pads to insure storm water run-off will not enter the garage or the house. Where concentrated flows collect on driveways and drive pads, retention ponding and/or dispersion techniques shall be provided to eliminate down-slope erosion in the Natural Areas.
- The Owner and their architect/designer shall be responsible for foundation design and its relationship to drainage management techniques employed. Finish floor elevations should be set to conform to grading concepts previously discussed.

Parking: Garages, Driveways, Auto Court & Visitor Parking

Design Objective: To allow each home adequate parking while minimizing the impact of the parking areas.

Garages:

- Each home-site shall contain a minimum two-car garage, either attached or detached from the home structure.
- Storage area for recreational vehicles, trailers, boats and other recreational equipment must be screened from view of streets, neighboring home-sites and common areas. Enclosed storage is encouraged. Recreational vehicle garages using oversized doors shall not be visible from a street. Rear or screened side entrances, recessed floors and other techniques must be used to keep the residential scale.

Driveways & Auto Courts:

- Driveways must be located so as to minimize their visual impact on the home.
- Driveway widths and surface area should be minimized.
- Use of gravel, decomposed or crushed stone or other such materials is encouraged and acceptable for driveways with minimal slopes (The increased porous surface area will increase infiltration of rain water.)
- For driveway slopes that would produce erosion problems, exposed aggregate concrete, concrete, flagstone, brick or other hard surface materials must be used.
- The use of colored concrete, flagstone or other hard surface materials is encouraged. The material chosen must reflect the warm rich desert hues, be low in reflectivity, and compatible with the surrounding natural environment.
- With the approval of the ACC, freestanding walls, planters or gateposts may be allowed at the driveway entrances to the street with appropriate setbacks and clearances. If properly approved, none of these items shall be built within the 10'

utility easement. No driveway entrance shall be designed as a “drive under” using beams or arches spanning the driveway entrance.

Visitor Parking:

- A minimum of two (2) additional parking spaces must be provided on the home-site to accommodate guest parking. On-street parking shall not be counted in satisfying this requirement.

Game Courts Design Objective: To create game courts that provide for family entertainment and do not interfere with views.

- Grading needed to create a level-playing surface shall be achieved with a balance of cut and fill.
- Solid walls and/or nylon containment fencing is recommended. The ACC must approve color and type of fencing. The height of nylon containment fencing shall not exceed 10'. The height of perimeter protection may be limited if, in the sole opinion of the ACC, such devices would be unattractive or would unreasonably block the view of a neighboring property. Galvanized fencing shall not be allowed.
- Additional landscaping with indigenous trees may be required to mitigate the court's visibility from nearby streets, homes and common area.
- Ramadas, cabanas, storage rooms, and connecting walkways must be visually integrated with the main house and surrounding landscape.
- Game court lighting shall comply with lighting standards on page 11 of these Design Guidelines.
- Walls, fencing and other structures must be within the Building Envelope, not within any setbacks.

Building Envelope

The home-sites have been configured so that each home can be located in a manner that allows the enjoyment of the scenic beauty, extraordinary views and surrounding natural environment.

To ensure that these qualities are protected, each home-site has a designated area within which building shall occur called the “Building Envelope.” This boundary delineates the maximum area in which any proposed building or improvement must fit. The Building Envelope for the home-sites shall be the area created by the following setbacks:

- Front setback as described on Attachment A, Building Envelopes for Ocotillo Estates Unit Two;
- 15-foot combined side yard setbacks, minimum on any one side shall be 5' from the side property lines;
- Rear setback as described on Attachment A, Building Envelopes for Ocotillo Estates Unit Two.

Driveways must provide a minimum of 20-feet for parking cars in front of the garage doors as required by City of El Paso Municipal Code.

No structure may be installed, constructed or placed, and no landscaping taller than 6 feet may be installed or permitted, outside the Building Envelope. The term "structure" includes, without limitation, buildings, sheds, fences, walls, antennas, playground equipment, basketball backboards and poles, satellite dishes, and improvements that protrude above 6 feet.

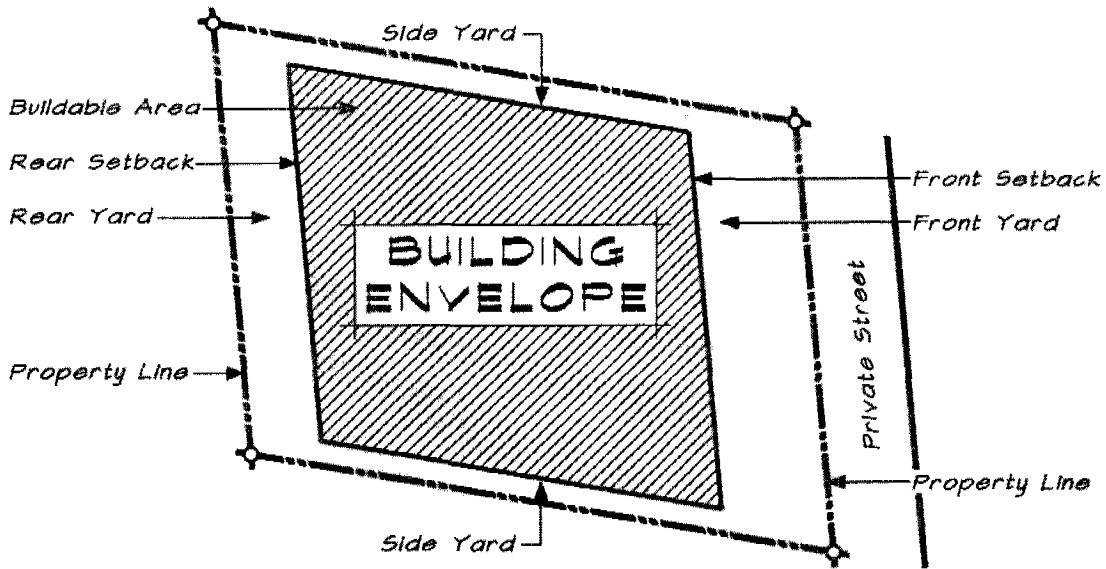


Exhibit 3: Building Envelope and other designated areas of the Ocotillo Estates Unit One Lots

Front Yard

The Front Yard of each home-site shall be the area between the front property line and the front of the home. The 10' utility easement is provided for the placement of utility connections and underground electric lines. The following utility connections, at a minimum, will be placed behind the curb and within the 10' easement:

- water meter near the middle of the front of the home-site;
- sewer tap at the low side of the home-site;
- electrical transformers at one corner of selected home-sites, as required by the El Paso Electric Company.

The Declarant shall determine the locations of the utility connections for each home-site.

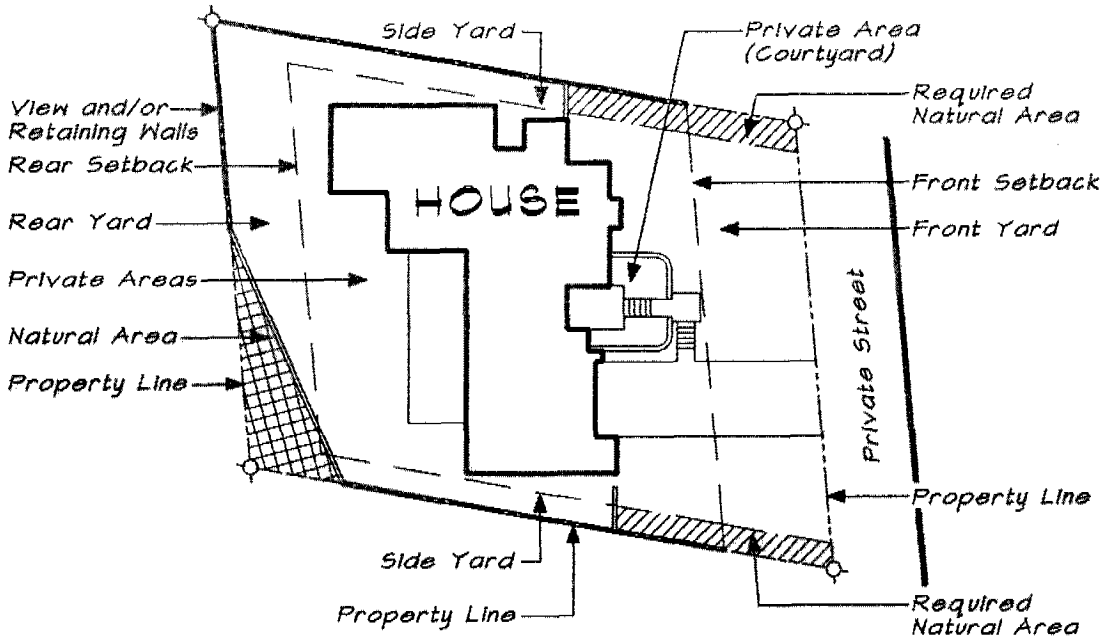


Exhibit 4: Possible site plan for Ocotillo Estate Unit One Lots

Private Areas

Private Areas are those outdoor living areas enclosed by low walls or privacy walls to separate the areas from the Natural Areas and Front Yard. These include courtyards, backyards, side yards and pool areas.

Natural Areas

Natural Areas are those portions of a lot not graded, remaining in its undisturbed state.

The area within 5 feet of the side property lines of each homesite, forward of the front setback line, must remain a Natural Area. See Exhibit 11, attached hereto.

The Owner can choose to leave the rear area of the home-site that is not graded in its natural state, or incorporate it into the rear yard by following the Grading and Site Wall Guidelines.

If an area is left in its natural state, it shall be protected with temporary or permanent fencing during construction of the improvements to reduce the need for repair and re-vegetation.

Site Walls

Design Objective: El Paso has a tradition of using walls to enclose outdoor spaces and to extend building masses and living areas into the landscape. Ocotillo Estates Unit Two seeks to apply this tradition without creating the harsh maze found in many area developments. Where possible, view walls and low walls are preferred to promote an open and inviting residential community and help preserve enjoyment of the natural environment. Therefore, no walls shall be permitted on any portion of a side property line located forward of a front setback line.

All site walls shall conform to City of El Paso Building Code, Chapter 18.08.240, Section 2114.

Following are the site wall types for Ocotillo Estates Unit Two:

Retaining Walls: Walls that structurally create transitions between grade changes, integrate grade changes, integrate buildings with their site and which minimize the impact of grading. Privacy and view walls may be constructed on top of retaining walls.

Privacy Walls: Walls placed to provide privacy between homes, to provide screening or enclose an area such as a front courtyard and rear yards. Privacy walls enclose private space and often are attached to buildings.

View Walls: Walls that provide security but allow views through to vistas and open space with the use of wrought iron or other materials.

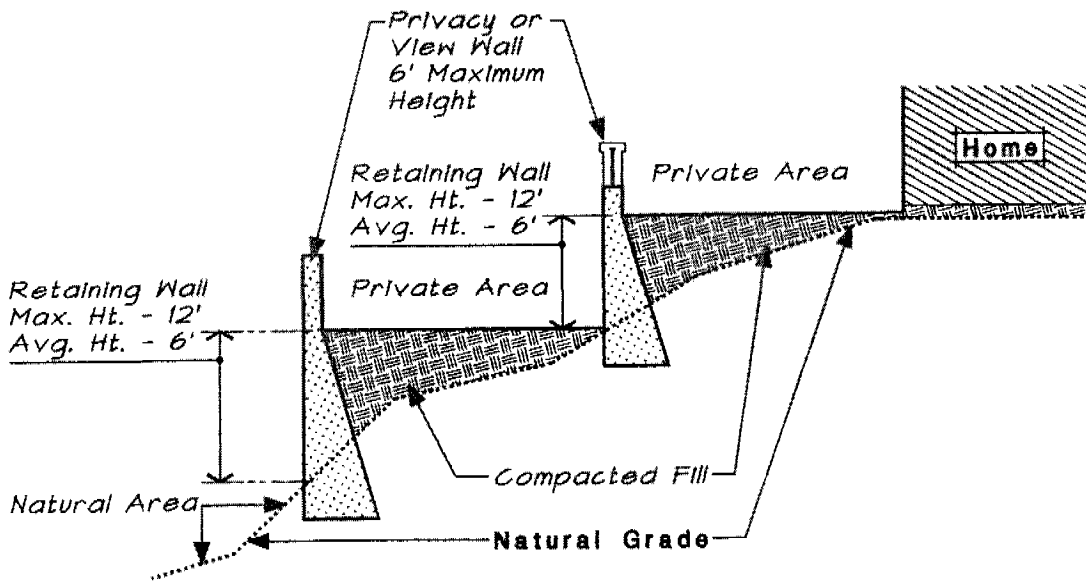


Exhibit 5: Wall heights and types

- Privacy and View walls shall be as low as possible with a maximum height of six (6') feet for the specific property line on which such wall is built.
- The average height of a retaining wall shall not exceed six (6') feet for the specific property line on which the retaining wall is built. Retaining walls may be as high as twelve (12') feet in height for small sections as long as the average height for the retaining wall for the specific property line does not exceed six (6') feet.
- Grade changes that require retaining walls exceeding the average six (6') feet must instead be terraced with a minimum three (3') feet horizontal separation between each wall. The ACC shall have authority to grant variances as long as the design retains the natural character of the site.
- Buttressed (slightly sloped exposed face) retaining walls are encouraged.
- Additionally, every effort should be made to integrate walls into the natural landscape by the use of angles and corners. Walls shall not be built uniformly at a maximum height.
- Wall materials that are permitted for use on common privacy walls at Ocotillo Estates Unit Two shall be limited to the following:
 - ❑ Quarried rock with cap of the same type as used at the entrances to Ocotillo Estates Unit Two.
 - ❑ Ornamental iron or metal. Design and color must blend with architectural style of the home. The ACC must approve all ornamental iron design.
 - ❑ Horizontal Pipe rail, 1-1/2" or larger, with color to blend with home and landscaping.
 - ❑ Tube rail with color to blend with home and landscaping.
- Wall materials that are permitted for use on privacy walls with a physical attachment to homes at Ocotillo Estates Unit Two shall be limited to the following:
 - ❑ Quarried rock with cap of the same type as used at the entrances to Ocotillo Estates Unit Two.
 - ❑ Plaster or stucco finish or material integral in texture and color with the home
 - ❑ Granite.
 - ❑ Stone tile.
 - ❑ Pre-cast concrete balusters and rails.
 - ❑ Colored split-face concrete block.
 - ❑ Ornamental iron or metal. Design and color must blend with architectural style of the home. The ACC must approve ornamental iron design.
 - ❑ Horizontal Pipe rail, 1-1/2" or larger, with color to blend with home and landscaping.
 - ❑ Tube rail with color to blend with home and landscaping.

- Unless otherwise agreed to by the ACC, the following wall materials and designs shall not be used at Ocotillo Estates Unit Two:
 - ❑ Field Stone or Rubble Rock.
 - ❑ Siding or wood picket.
 - ❑ Chain link fencing, with or without metal/fiberglass slates (other than temporary construction fencing).
 - ❑ Other wire fencing.
 - ❑ Unfinished concrete block.

- Walls must be constructed of materials and colors that match or blend with the home's exterior.

- Quarried rock shall be laid to emphasize the color and texture of the rock. Heavily recessed mortar or "mortar-less" techniques are preferred to create distinctive walls.

Lighting Standards

Views of evening sunsets, the twinkling night- lights of the El Paso area and the great southwestern night sky are among the most enjoyable features of living at Ocotillo Estates. Views can be ruined by excessive light from streetlights, game courts and homes. In order to protect these valued views, Ocotillo Estates lighting standards focus on limiting the kind and quantity of light from these sources. Careful attention to the selection of fixtures that are shielded or filtered to minimize ambient light is essential to preserving night views.

Plans for lighting the yard areas and exterior of the home must be carefully studied during the planning stage using these Design Guidelines.

- Exterior fixtures not mounted on a building must be located and oriented to focus light inward to minimize light encroachment onto neighboring areas and homes.

- Building mounted exterior lighting must be directed downward and away from adjacent homes, streets and open spaces. The fixtures shall be mounted no higher than the line of the first story eave or, where no eave exists, no higher than 12 feet above finished grade.

- Outdoor lighting is permitted in Front Yards and Private Areas.

- Lighting from the street to the front door and around the driveway should be the minimum necessary for safe passage.

- Lighting of plant materials shall be achieved with hidden light sources. These can include surface mounted fixtures on the ground and lamps hidden by plant materials.

- Game court light fixtures must be fully shielded with sharp cut-off lighting, and comply with all other type and shielding requirements outlined in these Design Guidelines.

- Security lighting directed away from the home and activated by heat, movement, etc. are permissible but must not remain on constantly or be used as general lighting. Placement should be shown on the plans. Alternatives to floodlight type security lighting must be used.
- Warm white and natural lamps are preferred.

Shielding and Filtering Requirements

Proper shielding and filtering must be considered in the selection of light fixtures to reduce ambient light.

Definition: **Fully Shielded:** Exterior light fixtures shielded or constructed so that the installed fixture emits no light rays at angles above the horizontal plane.

Definition: **Partially Shielded:** Exterior light fixtures shielded or constructed so that the installed fixture emits no more than 10% of light rays at angles above the horizontal plane.

Lamp Fixture Substitution

- A change request must be submitted for approval by the ACC in order to substitute any outdoor light fixture or the type of light source after the ACC has issued its initial approval.

<u>Fixture Lamp Type</u>	<u>Shielding Required</u>
Low Pressure Sodium	Partially
High Pressure Sodium	Fully
Fluorescent	Fully
Incandescent (greater than 160W)	Fully
Incandescent (160W or less)	Partially
Other sources	As approved on a case by case basis

Exhibit 6: Fully & Partially Shielded Lighting Requirements

Other Site Design Features

Mailboxes

- Postal service group mailboxes shall be located at the entrances or other location Declarant negotiates with the U.S. Postal Service.

Basketball hoops and backboards

- May be installed at any home. Locations must be on Auto Courts on the side of the home, on a game court or in the backyard. Particular attention should be given to the privacy of adjacent home-sites.

Antennae

- Antennae and satellite dishes must be shielded from view from Common Areas and streets, unless otherwise approved by the ACC.

Service Yard

- All garbage and trash containers, clotheslines, mechanical equipment, and other outdoor maintenance and service facilities must be screened by walls from other homes, Common Areas and streets.

Signage

- Each builder shall be allowed the following signs:
 - One sign no larger than 8 square feet mounted on posts in the front yard of the home being constructed.
 - One standard 18" x 24" Realtor sign mounted on 4" x 4" posts with an arm or within a rectangular frame in the front yard of the home.
 - During initial build-out, Declarant may provide a backdrop sign for each community.
- For resale of homes, real estate signs shall be limited to one (1) 18"x 24" standard real estate signs mounted on 4" x 4" posts with an arm or within a rectangular frame.
- Lender/financing institutions shall be allowed one 18"x 24" sign.
- Signs must be properly mounted and installed. Signs must be able to withstand strong winds and must be replaced promptly if damaged.
- Owner must install address identification. Address numbers must be integrated into building walls or freestanding walls and must be of materials and colors that harmonize with the home design.

Ocotillo Estates Architecture

The architectural goal for Ocotillo Estates is to establish the highest standard of quality for the design of homes. The architectural character of Ocotillo Estates should reflect the casual elegance of southwestern living. Southwestern character is derived from a wide variety of historic, geographic, cultural, climatic and thematic influences including Spanish, Native American, Mexican and the American West. Architectural character results from a composite of form, materials, colors and detailing.

At Ocotillo Estates, no residence should stand so apart in its design or construction as to detract from the visual harmony of the community. Builders and architects/designers are required to design homes to capture the qualities of Traditional and/or Contemporary Southwestern architecture.

Architectural Style

At Ocotillo Estates, the following architectural styles are permitted:

- **Pueblo Style** is reminiscent of the low adobe, flat roofed dwellings of the northern New Mexico Pueblo Indians. It typically incorporates deep set doors

and windows, dramatically recessed portals or patios, rounded corners and edges, and is always finished in earth tone colors.

- ❑ **Territorial Style** is characterized by low, flat roofs, with brick or tile copings on parapet caps, wood columns and decorative wood door and window casings.
- ❑ **Spanish Mission Style** with pitched tile roofs, stucco finishes, exposed beams and soffits and open porches. This style may also be referred to as Santa Barbara style or California Mission.
- ❑ **Spanish Colonial Revival Style** is characterized by tile roofs, simple forms subtly embellished at doorways and ornamental ironwork. This style often incorporates interior courtyards similar to the classic western haciendas.
- ❑ **Northern New Mexico Ranch Style** characterized by pitched metal roofs, stucco finishes and decorative wood door and window casings.
- ❑ **Italian Villa and Italianate Styles** are characterized by shallow pitched tile roofs with broad overhangs decorated with exposed rafters, stucco walls with tall often arched windows and informal covered verandahs or porches. Italianate incorporates a cupola on the roof. These styles may be referred to as Mediterranean.
- ❑ **Prairie Style** features open planning; shallow-pitched roofs with broad, sheltering overhangs, casement windows and a strong horizontal emphasis. Porte-cocheres and raised porches extending out from the main core of the house are typical of this style.
- ❑ **Craftsman Style** is characterized by textured natural building materials, broad overhangs with exposed rafter tails at the eaves and often-extensive trellises over the porches. Lower portions of walls and columns are often battered or sloped near the ground.
- ❑ **Wrightian** homes use natural materials in a way that make the home an integral part of the site. These homes usually feature coursed stone or brick, tall French doors, flat or shallow-pitched roofs, often with a dentilled fascia, and geometric shapes.
- ❑ **Contemporary Southwestern Style** at Ocotillo Estates refers to homes whose interpretive form shall be based on one historical or artistic style. Contemporary design embraces the modernist's exploration of technology and results in homes of lighter weight and often unusual or non-classical geometry's. To make them compatible with other styles, contemporary homes shall incorporate set backs, overhangs, interesting use of windows, and use of natural finishes and colors.

Unless otherwise approved by the ACC, the following styles are not permitted in Ocotillo Estates:

- ❑ Beaux-Arts
- ❑ Colonial (Dutch, English, French, New England, New-Colonial, Revival, Southern, Williamsburg.)

- Deconstructionist
- Elizabethan
- Exotic Eclectic
- Federal
- French Napoleon/Second Empire
- French Rural, Neo-French
- Georgian
- Mansard
- Nouveau Traditional
- Revival (Greek, Gothic)
- Shingle, Neo-shingle
- Super mannerist
- Tudor, Neo-Tudor
- Victorian/Stick/Queen Anne

Definitions for these styles have been developed from the book "American House Styles, A Concise Guide" by John Milnes Baker, AIA 1994.

Building Heights

The topography and natural features of Ocotillo Estates are dramatically varied from the mesas to the canyons contributing immeasurably to the quality of the environment. Homes should be designed to minimize intrusion and impact on the views and visual beauty of Ocotillo Estates.

The maximum overall building height (exclusive of the chimneys) shall not exceed thirty-five feet (35') measured from the lowest existing grade, which is the lowest point at which the home comes into contact with the existing grade. Pitched roofs are measured to the ridge.

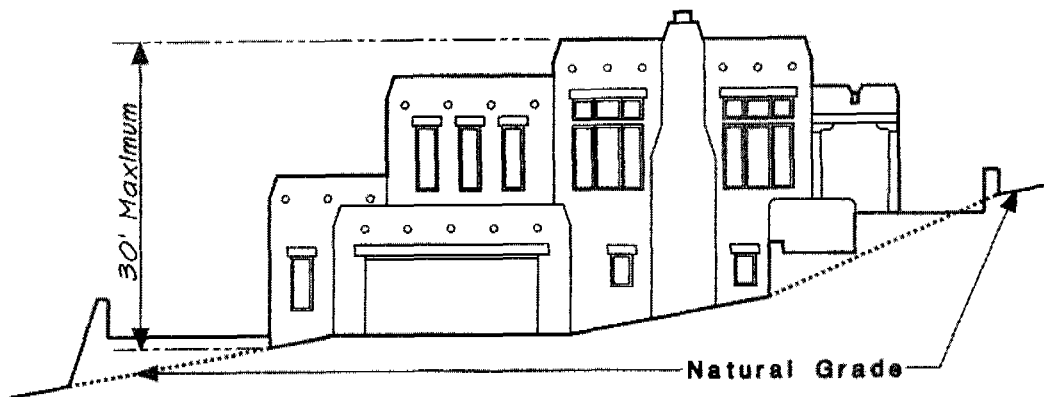


Exhibit 7: Measurement of heights

Building Massing

Definition: A volume of space that visually appears as a rectilinear form consisting of a roof and at least 3 walls.

Building Massing is important to ensure that the elevations of the homes will have visual interest from all views. Design elements must be carried through the elevation to avoid “store-front” or movie set type elements.

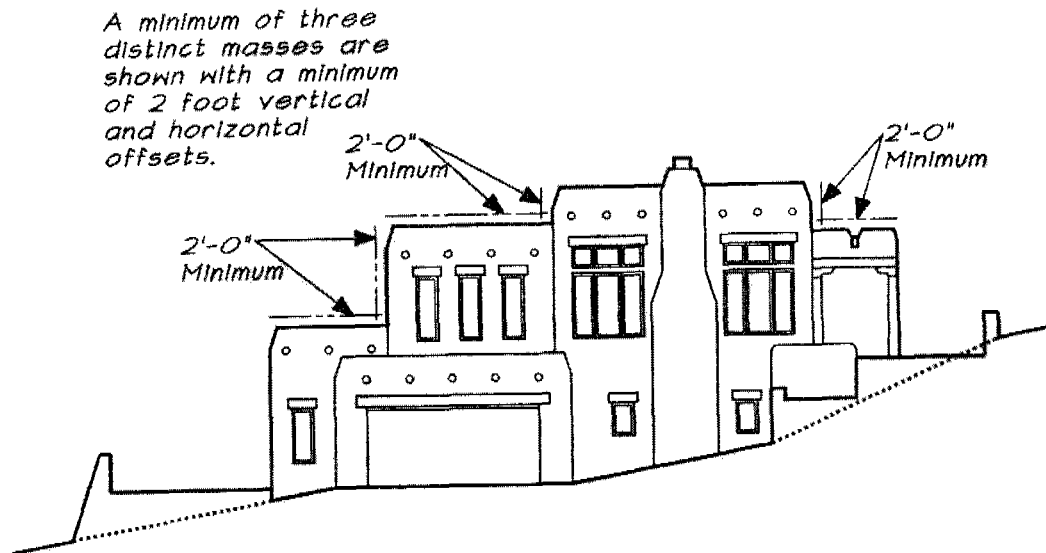


Exhibit 8: Building Massing example

- Each home must have at least 3 distinct masses visible from front and rear elevations.
- Each home mass must be offset from adjacent masses by at least 2'-0" vertically and 2'-0" horizontally.

Accessory Living Quarters

Accessory Living Quarters are permitted in Ocotillo Estates Unit Two. Such structures may be attached or detached but shall be in the same architectural style as the residence, and should be visually related to it by walls, courtyards or landscape elements. Any accessory living quarters must comply with these Design Guidelines and all zoning regulations and set back requirements.

Colors

Southwest colors are warm, rich, and desert hues with accents of complementary tones reflecting the landscape of the Southwest desert. Colors for exterior walls and roofs in Ocotillo Estates shall reflect the color of Ocotillo Estate's earth and vegetation. Accent colors to make an area or architectural feature more prominent shall not be used on more than ten percent (10%) of the exterior to avoid being visually distracting. These colors include the bright hues of desert flowers.

Materials

Exterior surfaces must be materials that harmonize with the natural landscape as well as provide an outer skin to withstand El Paso's climate extremes.

The following exterior materials are permitted for use at Ocotillo Estates:

- Stucco
- Wood
- Natural and/or man-made stone
- Adobe
- Split face block
- Stone or concrete columns
- Ceramic tile
- Glass Block
- Brick
- Ornamental Iron (with approval of design)
- The ACC, in its sole discretion, may review and approve other materials. Unless so approved, no other exterior materials other than those provided above shall be used.
- Exposed standard concrete block may **not** be used at Ocotillo Estates

Accent materials should be specified on the plans submitted to the ACC.

Roofs

Desert architecture is most commonly a "walled" architecture rather than the "roofed" architecture more common in other regions. Ocotillo Estates encourages the use of flat or parapet roofs, semi-flat or low-pitched roof designs.

- Maximum slope of 8 inches of rise for 12 inches of run. The ACC may grant variances for small accent roofs that meet other view considerations in these Design Guidelines.
- Roofs must have a non-reflective surface.
- Flat roofs must be painted to match the stucco or exterior wall color.
- Roof mounted appurtenances (air conditioning/heating units, solar panels, vent pipes, etc.) shall be totally screened from view as part of the architectural style of the home and not visible from the streets.
- Parapet copings shall be either, integral stucco, brick, pre-cast concrete or stone.
- Gutters, down spouts, scuppers, overflows, canals and other water capture/control devices must be an internal component of the home's design.

Permitted Roof Materials:

- Concrete or clay roof tiles
- Built-up roofing (non-reflective) for flat roofs
- State tile Extruded "S" shape tiles
- Metal (standing seam)
- Single-ply membrane (non-reflective) for semi-flat roof only
- Copper

- The ACC, in its sole discretion, may review and approve other materials. Unless so approved, no other roof materials other than those provided above shall be used.

Chimneys

Metal flue stacks must be hidden, and the chimney details should match the architectural style of the home.

Columns and Arches

Columns and arches should enhance the architectural theme by using contemporary lines within massive or monumental forms. Attention to detail must be given without appearing unnecessarily ornamental. Columns and arches should provide a feeling of strength, depth and interest at windows and entries.

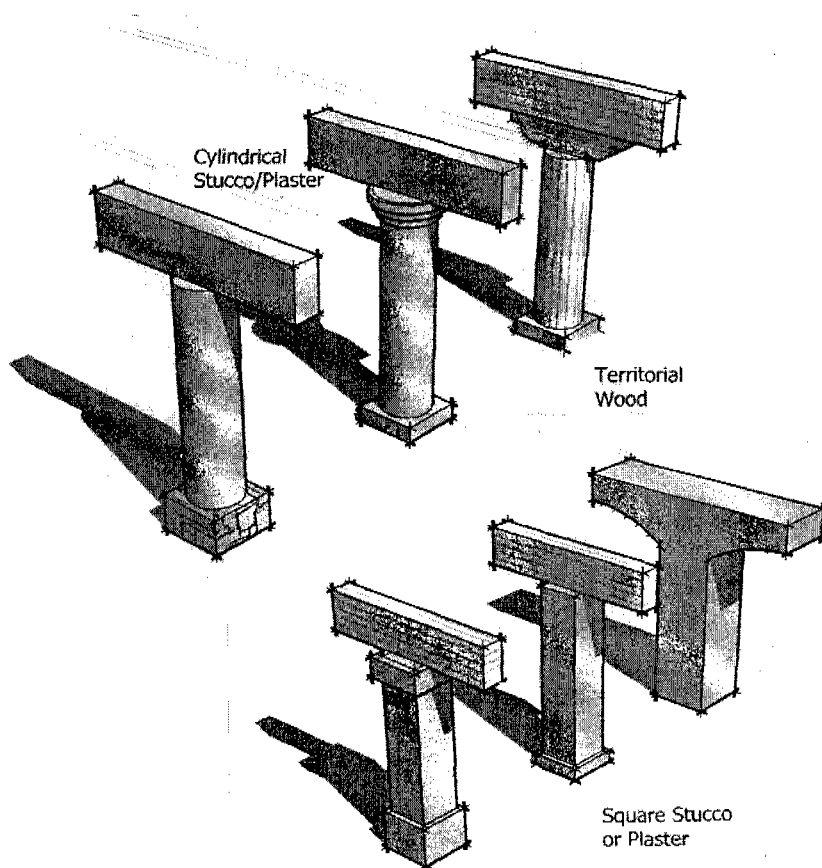


Exhibit 9: Appropriate Column Styles

These columns are permitted for use at Ocotillo Estates:

- Square stucco/plaster
- Stone
- Exposed wood
- Rectangular stucco/plaster

- ❑ Cylindrical stucco/plaster
- ❑ Metal
- ❑ Other styles as may be approved by the ACC, in its sole discretion. Unless so approved, no other columns may be utilized other than those provided above.

Arches

Arches should be simple and integrate with the architectural style of the house.

These arches are appropriate for use at Ocotillo Estates:

- ❑ Massive
- ❑ Segmented
- ❑ Full Arch
- ❑ Other styles may be approved by the ACC, in its sole discretion. Unless so approved, no other arch style may be utilized other than those provided above.

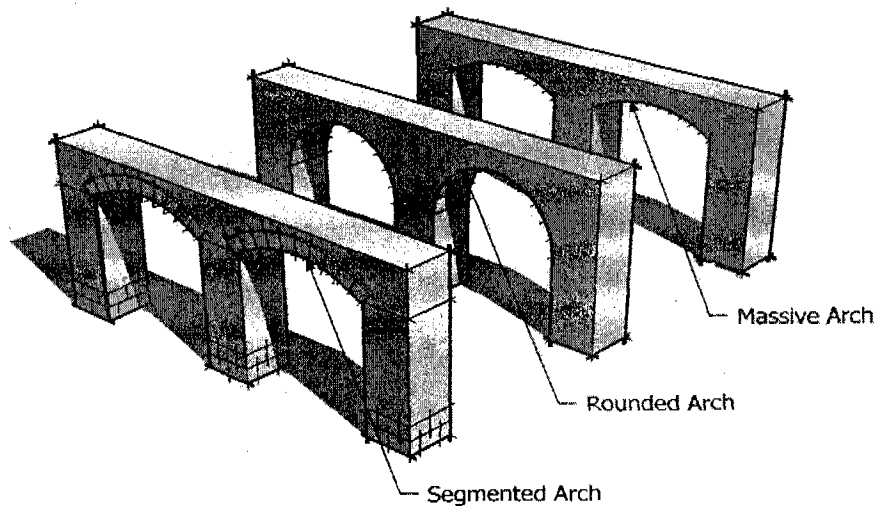


Exhibit 10: Appropriate Arch Styles

Elevated Decks

- Deck support columns must have visual mass and size to give the appearance of substance.
- Second story or elevated decks shall be of materials and colors integral to the home.
- Detail of the flashing and scuppers to handle drainage should blend with the rest of the home. Sheet metal must be coated with a non-reflective coating.

- If the undersides of the decks are visible, they should be detailed to blend with the architectural style of the home.
- Deck lighting shall comply with the lighting standards in these Design Guidelines.

Garage Doors

- Design and materials must be integrated with those of the home.
- Side entry garages are preferred to those fronting the street.
- If the garage faces the street, no more than two vehicle entrances shall be in the same plane.
- Garage doors shall be recessed from the face of the main wall a minimum of 12 inches.

Patio Roofs and Shades

Patio roofs, shade covers and other similar structures must have the same architectural lines and be constructed of materials and colors to match or complement the architectural style of the home. Patio roofs must not appear as additions.

Approval Process

The following design review process has been established to assist each Owner in the planning of their home and to take full advantage of the unique opportunities of their home-site.

Design Review Procedures

The Design Review Process provides the Owner checkpoints to confirm that their home is designed to meet these Design Guidelines. Each step is intended to minimize costs, time and delays. Each Owner is responsible for complying with the Design Guidelines and all other applicable provisions of the Master Declaration and applicable Supplementary Declarations, as well as all the rules and regulations of the City of El Paso, in order to bring the design review process to a speedy and satisfactory conclusion.

Until otherwise notified, all Owners or their Architects/Designers shall submit plans and specifications to the Architectural Control Committee at Jeff Huff, Design Alliance LLC, 1719 E. Wyoming, El Paso, Texas 79902. Office phone: 915-833-8833.

The design and building review process is divided into five required phases:

1. **The Pre-Design Meeting**
2. **Conceptual Plan Review**
3. **The Final Plan Review**
4. **Front Yard Landscape Plan Review**
5. **Post Construction Submittal**

1. Pre-Design Meeting

A member of the ACC shall be available to meet with the Owner and/or Architect/Designer at the home-site prior to preparing any drawings for the home. The purpose of this meeting is to:

- discuss ideas, concepts and goals for the proposed home in relation to actual site conditions;

- resolve any questions about interpretation of these Design Guidelines;
- clarify the design review process; and
- explore and resolve any questions regarding the construction process requirements.

This informal review is intended to facilitate an efficient planning and design process and to offer guidance prior to the initiation of preliminary design. The Owner and/or Architect/Designer can call the Declarant's office for an appointment for the Pre-Design Meeting.

2. **Conceptual Plan Review Submittal**

The ACC will review conceptual plans for their conformance to these Design Guidelines. The Owner may choose to schedule a conference to review the conceptual plans prior to submitting them for review.

Two sets of the following plans must be submitted for conceptual plan review:

- Site Plans
- Floor plans, including floor plans of any accessory improvements
- Elevations, showing both existing and proposed grade lines and indicating heights of all parapets and roof ridgelines.

The Conceptual Plan Review is preliminary. ACC comments will be more thorough the more information that is supplied.

3. **Final Plan Review Submittal**

Two (2) sets of the following must be submitted to and approved by the ACC prior to the commencement of any grading or construction:

- **Construction Documents:** All information as submitted for the City of El Paso Building Permit and necessary to show compliance with these Design Guidelines. Any requested variances for the home must be submitted in writing with these documents.
- **Final grading and drainage plans:** These must be designed and prepared by a registered civil engineer.
- **Samples:** General description of materials must be described on the Construction Documents. Samples of all exterior finish materials and colors and information on exterior lighting shall be submitted prior to installation.
- **Preliminary landscape plan:** This preliminary plan shall show a general plan defining the Front Yard and Natural Areas. Specific plants need not be identified at this time. A final front yard landscape plan must be submitted to the ACC prior to the start of irrigation and planting.

Checklist for Final Plan Review Submittals (2 sets of each)

- Complete construction documents
- Color and material samples
- Final grading and drainage plan
- Preliminary landscape plan

Non-Waiver

Any approval by the ACC of plans, drawings, specifications or work done or proposed, or in connection with other matters requiring approval under these Design Guidelines, the Master Declaration or the applicable Supplementary Declaration, including a variance by the ACC, shall not be deemed to constitute a waiver of the right to withhold subsequent approval. For example, the ACC may disapprove an item shown on the Final Plan Submittal even though it may have been evident and could have been, but was not, disapproved of during the Conceptual Plan Review stage. An oversight by the ACC of non-compliance at anytime during the review process, construction process or during its final inspection does not relieve the Owner from compliance with these Guidelines and all other applicable codes, ordinances and laws.

Building Permit

If the City mandates any changes for issuance of any Building Permit, the ACC shall be informed of the changes and shall check for any conflicts with these Design Guidelines. If the changes conflict with these Design Guidelines, the ACC will work with the Owner on a mutually satisfactory solution.

All construction shall be in accordance with the approved plans and all applicable governmental rules and regulations.

Re-submittal of Drawings

In the event of ACC disapproval of the Final Plan Submittals, the resubmission by the Owner must adequately demonstrate that items not previously in compliance have been adequately addressed.

Additional Construction and/or Exterior Changes

All changes to the site plan or exterior of the home made before or during construction must first be submitted for approval by the ACC prior to construction or integration. If such additional construction or change is initiated prior to ACC approval, the ACC may take all steps that are available at law or in equity to stop such construction or integration.

4. Landscape Plan Review Submittal

A final landscape plan must be submitted to the ACC prior to the start of any landscaping. The ACC suggests this be submitted shortly after flatwork is in place when it is easier to visualize landscaping for the Owner, Landscape designer and the ACC. The plans must show the landscape treatment of the Front Yard and any supplemental plantings of the Natural Areas. A landscape plan for the Private Areas is not needed.

The landscape plan for the Front Yard and supplemental planting of Natural Areas shall be the same or larger scale as the site plan. The plan shall indicate:

- 1) areas to be irrigated (Front Yard only);
- 2) list of all proposed plants;
- 3) locations and sizes of all proposed plants;
- 4) type of gravel mulch (Front Yard only); and
- 5) location of Natural Areas

The ACC shall review the submitted Landscape Plan for conformance with these Design Guidelines and provide a written response to the Owner indicating either

approval of such items or disapproval if the items are not in compliance with the Design Guidelines.

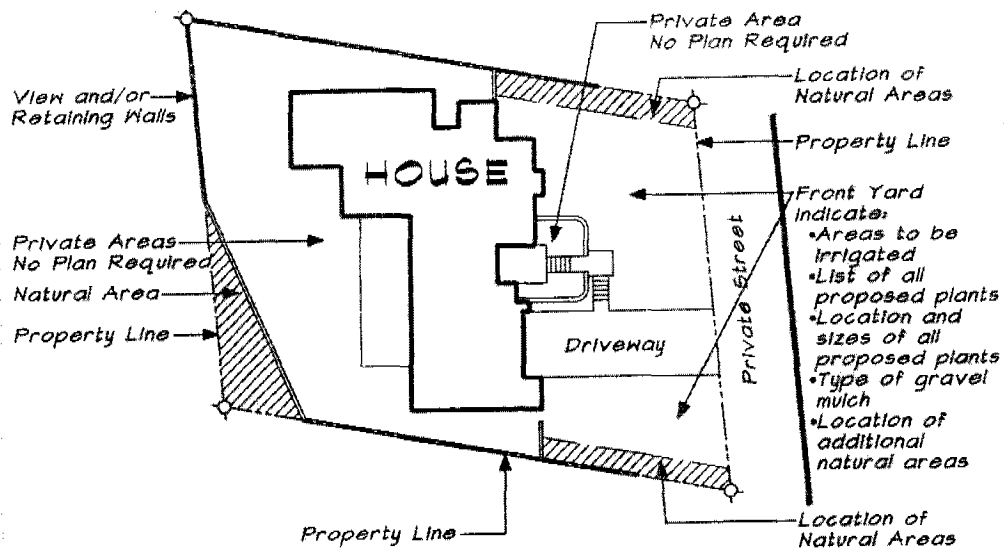


Exhibit 11: Elements Included in Typical Landscape Plan

5. Post Construction Submittal

The following items must be submitted before closing or move-in, whichever occurs first, after construction is complete:

- Copy of the final survey.
- Copy of signed-off City of El Paso Building Card or Certificate of Occupancy
- Certification from a professional engineer certifying that grading and drainage construction was completed in accordance with City of El Paso and ACC approved plans.

If such items are not submitted before such time, the ACC may take all steps as are available at law or in equity to prevent closing and/or move-in.

Construction Regulations

To ensure that the intent of these Design Guidelines is incorporated into the building process and that the natural landscape of Ocotillo Estates Unit Two is not unduly damaged during construction, the following Construction Regulations shall be a part of the contract documents. The Declarant and/or the ACC will conduct a monitoring program during the course of construction to assure that construction is proceeding in accordance with the Guidelines.

Owners will be notified of any inconsistencies, and such inconsistencies shall be corrected within a reasonable time of such notification.

Pre-construction Conference

The Builder and/or Owner must meet with a representative of the ACC prior to any grading or construction activity to review procedures and clarify logistics. The Builder may be asked to submit a list of subcontractors who will be participating on their project.

Access, parking, trash control and preservation of the environment will be the major topics for discussion.

Debris and Trash Removal

- Trash and Debris shall be stored in a container on each construction site and be removed at appropriate times. Special care must be taken to avoid trash blowing to other home-sites, yards or into the canyons. Contractors shall promptly pick-up and remove any trash that blows into the canyons.
- Materials shall not be stored on neighboring home-sites without written permission of the ACC and that Owner.
- Lightweight materials, packaging and other items subject to blowing shall be weighted down or stored in a container to prevent their being blown out of the construction area.
- Builders, their subcontractors and suppliers are prohibited from dumping, burying or burning trash anywhere in Ocotillo Estates, including, without limitation, Unit Two.
- Concrete equipment cleanup must be done so as not to affect the Natural Areas of the home-site or allow run-off to flow into Natural Areas.
- Removal of accumulated mud or debris on the streets must be done promptly, and it is the responsibility of the Builder to clean up and/or remove such items.

Vehicles and Parking Areas

- Private and construction vehicles and machinery shall be parked in the construction area and must not disturb the Natural Areas.
- All vehicles shall be operated and parked so as not to inhibit traffic.

Conservation of Landscape Materials

Builders are advised that the home-sites and open spaces of Ocotillo Estates contain valuable native plants and other natural features that should be absolutely protected during construction. As such, all Owners and their builders shall take all steps as are reasonable and necessary to protect such items.

Excavation Materials

- Excess excavation materials must be hauled away from Ocotillo Estates.
- Fill material must be spread and compacted when generated by excavation or deposited to avoid the appearance of a dumpsite, with the following exception: the creation of stockpiles of excavated material from foundations or footing pending use as backfill for retaining walls is permitted. Stockpiles may be on the home-site, or another home-site if written approval is received from that home-site Owner and the ACC. Upon backfilling of the wall, surplus material must be removed and the area returned to clean and level condition. This must be accomplished along with the completion of the home.

Restoration or Repair of Property Damages

Any damage and scarring to any property, open space or other home-site, including, but not limited to streets, driveways, concrete curbs, gutters, utilities, vegetation and/or other improvements, resulting from construction operations must be repaired and/or restored promptly.

Any expenses are those of the Builder, and in the event of default by the Builder in meeting these obligations, the Owner who has retained the Builder shall be responsible.

Miscellaneous and General Practices

All Owners will be responsible for the conduct and behavior of their agents, representatives, builders, contractors, and subcontractors while on the premises of Ocotillo Estates. The following practices are prohibited:

- Allowing concrete suppliers or any subcontractors to clean their equipment anywhere but on their own home-site. Natural Areas must, on any home site, not be damaged during such cleaning.
- Removing any rocks, plant material, topsoil, or similar items from any other property within Ocotillo Estates, including other construction sites, without written permission of that Owner and the ACC.

Construction Access

Standard procedures and operation of the entrance gate may be changed from time to time. Each Builder working within the area shall be notified in advance so Builders have access.

Architectural Control Committee Reviews

- All changes to the site plan or exterior of a home made before or during construction must first be submitted for approval by the ACC.
- A representative of the ACC may review the construction when retaining walls are being built and during framing for conformance with these Design Guidelines and the approved plans.

Revisions to the Architectural Guidelines

These guidelines are subject to change without notice. For the most current version contact

Acknowledged by Owner as to Receipt

By: _____

Name: _____

Its: _____

Lot No. _____

Address: _____

ATTACHMENT A

**BUILDING ENVELOPES FOR
OCOTILLO ESTATES UNIT TWO**

LOT #	BLOCK #	FRONT SETBACK	REAR SETBACK
1	4	20 Feet	15 Feet
2	4	25 Feet	15 Feet
4	4	25 Feet	15 Feet
5	4	30 Feet	15 Feet
6	4	30 Feet	20 Feet
7	4	25 Feet	15 Feet
8	4	25 Feet	15 Feet
9	4	25 Feet	15 Feet
10	4	20 Feet	15 Feet
1	6	40 Feet	30 Feet
2	6	40 Feet	30 Feet
3	6	30 Feet	20 Feet
4	6	30 Feet	20 Feet
5	6	30 Feet	15 Feet
6	6	25 Feet	15 Feet

**SUPPLEMENTAL DECLARATION AND DESIGN GUIDELINES FOR
OCOTILLO ESTATES UNIT TWO
A Residential Subdivision**

This Supplemental Declaration, made on the date hereinafter set forth by **EP PARK HILLS II, LTD.**, a Texas limited partnership, hereinafter referred to as "Declarant".

Declarant has previously caused to be filed that certain Declaration of Covenants, Conditions and restrictions for Ocotillo Estates Unit Two, being recorded on April _____, 2007 under document No. 200700_____, Official Public Records of El Paso County, Texas, hereinafter referred to as the "Declaration". All capitalized terms used in this Supplemental Declaration, unless otherwise defined, shall have the meaning ascribed to them in the Declaration.

Declarant has filed a subdivision Plat for Ocotillo Estates Unit Two, hereinafter referred to as "Ocotillo Two", and desires to set forth additional covenants, conditions and restrictions for Ocotillo Two and desires to give notice of the Design Guidelines particular to Ocotillo Two.

NOW, THEREFORE, the Declarant, hereby supplements the Declaration by adopting the following additional covenants, conditions and restrictions for Ocotillo Estates Unit Two, El Paso County, Texas:

1. **Additional Covenants.** None
2. **Design Guidelines.** The Design Guidelines attached hereto as Exhibit "A" shall apply to all Lots in Ocotillo Two.

Except as supplemented by this Supplemental Declaration, the original Declaration is hereby confirmed and ratified in all respects.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Supplemental Declaration to be effective as of the 9th day of April, 2007.

DECLARANT:

EP PARK HILLS II, LTD.

By: EP Park Hills, Inc.

Its General Partner

By: 

Robert F. Foster, Vice President

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 9th day of April, 2007, by ROBERT F. FOSTER, Vice President of EP Park Hills, inc., a Texas corporation, on behalf of said corporation.

Susan McMillan
Notary Public

AFTER RECORDING RETURN TO:

EP PARK HILLS II, LTD.
1790 Lee Trevino, Suite 601
El Paso, Texas 79936



Doc# 20070034186
#Pages 62 #NFPages 1
04/10/2007 03:06 PM
Filed & Recorded in
Official Records of
EL PASO COUNTY
DELTA BRIONES
COUNTY CLERK
Fees \$260.00

CO
b

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded by document number in the Official Public Records of Real Property in El Paso County.



EL PASO COUNTY, TEXAS

Delta Briones