

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

*Art. By Laws*

FOR

MOUNTAIN RIDGE ESTATES

Developers: WOLF & WECHTER JOINT VENTURE

Prepared By: CONDE, INC.

August 1, 1980

DECLARATION OF COVENENTS, CONDITIONS AND RESTRICTIONS

This Declaration is made on the date last entered and is by  
WOLF & WECHTER JOINT VENTURE, hereinafter called Declarant.

W I T N E S S E T H :

WHEREAS, Declarant is the Owner of certain property located in El Paso,  
El Paso County, Texas and more particularly described as follows:

MOUNTAIN RIDGE ESTATES, BEING A PORTION OF TRACT 17-A,  
SECTION 14, AND A PORTION OF SECTION 13, BLOCK 81, TOWNSHIP 2,  
CITY OF EL PASO, EL PASO COUNTY, TEXAS, ACCORDING TO THE MAP  
OF MOUNTAIN RIDGE ESTATES, PREPARED BY CONDE, INC., THEREOF  
ON FILE IN VOLUME \_\_\_\_\_, PAGE \_\_\_\_\_, PLAT RECORDS OF EL PASO  
COUNTY, TEXAS;

NOW, THEREFORE, Declarant hereby declares that all the property  
described above shall be held, sold and conveyed subject to the following  
easements, restrictions, covenants, and conditions which are for the pur-  
pose of protecting the value and desirability of, and which shall run with,  
the real property and be binding on all parties having any right, title or  
interest in the above described property or any part thereof, their heirs,  
successors and assigns, and shall inure to the benefit of each owner  
thereof.

ARTICLE I.

DEFINITIONS

Section 1. Association shall mean and refer to MOUNTAIN RIDGE ESTATES  
HOME OWNERS ASSOCIATION, INC., a non-profit corporation, its successors and  
assigns.

Section 2. Owner shall mean and refer to the record owner, whether one or  
more persons or entities, of a fee simple title to any lot which is a part  
of the property, including any purchaser under Contract of Sale, but  
excluding those having such interest merely as security for the performance  
of an obligation.

Section 3. Property shall mean and refer to that certain real property  
heretofore described, and such additions thereto as may hereafter be  
brought within the jurisdiction of the Association.

Section 4. Common area shall mean all real property owned by the  
Association and for the common use and enjoyment of the owners. The common  
area to be owned by the Association at the time of the conveyance of the  
first lot is Lots 75, 76, 77, and 78, Block 1, and Lot 9, Block 3, of the  
above described property.

Section 5. Common open space shall mean and refer to that part of the common area required by and defined in Section 25-41 of the City Code of the City of El Paso or as same may be hereinafter amended which is to be conveyed to the Association for the common use and enjoyment of the owners. Said common space is designated as Lots 75, 76, 77, and 78, Block 1, and Lot 9, Block 3, on the plat of MOUNTAIN RIDGE ESTATES, and shall not be used as a site for a residence or dwelling.

Section 6. Lot shall mean and refer to any plot of land shown upon recorded subdivision Map of the property with the exception of the common area.

Section 7. Declarant shall mean and refer to WOLF & WECHTER JOINT VENTURE, successors and assigns if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

## ARTICLE II.

### PROPERTY RIGHTS

Section 1. OWNER'S EASEMENTS OF ENJOYMENT: Every owner shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

a) The right of the Association to charge reasonable admission and other fees for the use and maintenance of the common area and of any recreational facility which may be situated upon the common area. So long as this Declaration is effective the Association shall maintain the common area in good order and condition as intended by Section 25-41 of the City code of the City of El Paso or as hereafter amended.

b) The right of the Association to suspend the voting rights and right to use any recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty days for any infraction of its published rules and regulations.

c) The right of the Association to dedicate or transfer all or any part of the common area to any consenting public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.

Section 2. DELEGATION OF USE: Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the common area and facilities to be situated thereon to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

a) Class A: Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lots shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot.

b) Class B: The Class B members shall be the Declarant and shall be entitled to three votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events whichever occurs earlier:

1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or;

11) On the 1st day of January, 1982.

ARTICLE IV.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS: The Declarant, for each lot owned within the property, hereby covenants, and each owner of any lot by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed is deemed to covenant and agree to pay to the Association: (a) Annual assessments or charges, and; (b) Special assessments for capitol improvements, such assessments to be established and collected as hereinafter provided. Annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person or persons who was or were the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the property and for the improvement and maintenance of the common area.

Section 3. MAXIMUM ANNUAL ASSESSMENT: Until January 1st of the year immediately following the conveyance of the first lot to an owner, the maximum

annual assessment shall be \$100.00 per lot. From and after January 1st of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership. From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. SPECIAL ASSESSMENTS FOR CAPITOL IMPROVEMENTS: In addition to the annual assessments authorized above, the Association may levy, in an assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capitol improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4: Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than thirty days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 60% of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

Section 6. UNIFORM RATE OF ASSESSMENT: Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS AND DUE DATES: The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. The Association shall also be entitled to collect a late charge in such amounts and upon such conditions as the Board of Directors may from time to time determine.

Section 8. EFFECT OF NONPAYMENT OF ASSESSMENTS - REMEDIES OF THE ASSOCIATION: Any assessments which are not paid when due shall be delinquent. If the

assessment is not paid within thirty days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 7% per annum, and the Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such owner, by his acceptance of a Deed to a lot, hereby expressly vests in the MOUNTAIN RIDGE ESTATES HOME OWNERS ASSOCIATION, INC., or its agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or Deed of Trust Lien on a real property, and such owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other lot owners. The Association, acting on behalf of the lot owners shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same; and to subrogate so much of its right to such liens as may be necessary or expedient to an insurance company continuing to give total coverage notwithstanding nonpayment of such defaulting owner's portion of the premium. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

Section 9. SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. EXEMPT PROPERTY: All properties dedicated to, and accepted by, a local public authority, the common area, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessment.

Section 11. 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 available to each owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled by an affirmative vote of 60% of the votes of each class of the members of the Association. In no event shall such management agreement be cancelled prior to effecting by the Association of its Board of Directors of a new management agreement with a party or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management

agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type.

Section 12. INSURANCE ASSESSMENTS: The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all of the building owned by the Association against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering all common areas, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be common expenses. All such insurance coverage shall be written in the name of the Association. It shall be the individual responsibility of each owner, at his own expense, to provide, as he sees fit, hazard insurance, homeowner's liability insurance, theft and other insurance covering real and personal property damage and loss.

In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Board of Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction, or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all townhouse owners, as established by Article IV, Section 4, above, to make up any deficiency for repair or rebuilding of the common area.

#### ARTICLE V.

##### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected, maintained or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design of existing structures and as to location with respect to topography and finished grade elevation. After such location with respect to topography and finished grade elevation has been approved and the finished grade of the lots has been completed, such finished grade shall not be altered, changed or disturbed. Whenever practicable, residences constructed on the lots shall be situated so that a

side wall of the residence will also serve as a retaining wall to provide lateral support to the adjoining lot next higher in elevation. Building location, setback requirements, frontages, and height requirements will be established by the Architectural Control Committee and will be controlled to optimize the overall appearance of the development and to enhance the common open space.

#### ARTICLE VI.

##### ARCHITECTURAL CONTROL COMMITTEE

The Board of Directors of the MOUNTAIN RIDGE ESTATES HOME OWNERS ASSOCIATION, INC. or Three or more representatives appointed by the Board shall constitute the Architectural Control Committee. Upon the death or resignation of a member of the Board or one of its designated representatives, the remaining members of the Board or the remaining representatives shall have full authority to act as the Architectural Control Committee until a successor is elected or appointed as the case may be. The Committee's approval or disapproval as required in these covenants shall be in writing and in the event that the Committee, or its designated representatives fail to approve or disapprove within thirty days after plans and specifications have been submitted to it, or in the event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

#### ARTICLE VII.

##### EASEMENTS

Section 1. EASEMENTS ON PLAT: No building or other permanent structure shall be erected or maintained on any part of any area designated as a utility or drainage easement as shown on the recorded plat.

Section 2. OTHER EASEMENTS: Residences constructed where a sidewall also serves as a retaining wall as provided in Article V., above, may also be constructed with a roof which extends over a portion of the adjoining owner's lot. In such event there is hereby created an easements over and across that part of the adjoining owner's lot five feet in width and running in length along the property line to a point ten feet beyond the end of the overhanging roof. This easement shall be for the sole purpose of allowing the owner whose roof extends over the adjoining lot access to repair and maintain the roof and sidewall. The owner of the adjoining lot shall not utilize that portion of his lot upon which the easements has been imposed so as to prevent access or the use described above. The owner in whose favor the easement lies shall promptly repair or replace any damage caused by his use of the easement.

#### ARTICLE VIII.

##### LAND USE

Section 1. BUILDING TYPE: No lot shall be used except for residential



purposes. No structure shall be erected, altered, or placed or permitted to remain on any of said lots, or any part thereof, other than one single family dwelling together with private garage or carport and other customary appurtenances to private dwellings.

Section 2. TEMPORARY STRUCTURES: No structure of a temporary character including trailers, tents, shacks, or other buildings shall be used on any lot at any time as a residence, either temporarily or permanently.

Section 3. RECREATIONAL VEHICLES AND BOATS: No recreational vehicles, motor homes, trailers, trucks, campers, or motorcycles of any kind or character and no boats or yachts shall be stored or parked on any lot closer to the street than the building setback line, and in any case shall be shielded from view from the street by fence, garage or other enclosure, Any such enclosure shall be constructed or erected in accordance with these restrictions and approved by the Architectural Control Committee prior to commencement of construction.

Section 4. NUISANCES: No noxious or offensive activity shall be carried on upon any lot including but not limited to excessive noise from motorcycles, cars, stereos, radios and pets nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood.

Section 5. SIGNS, BILLBOARDS, AND MISCELLANEOUS PROVISIONS: No drilling or excavation for oil, gas, water, sand, clay, dirt, coal, gravel or any other mineral shall be made on said property, whether for profit or otherwise. No signboard, billboard, posterboard or advertising of any kind may be placed on any part of any lot. No "For Sale" or "For Rent" or other similar signs shall be placed on any lot; except, with the prior approval of the Architectural Control Committee, one sign, not to exceed 36" x 24" may be placed on any lot. All fences and retaining walls must be suitable in design, material, and structure and are to be approved in writing by the Architectural Control Committee prior to the construction of such fences and retaining walls. No barbed wire or chain link fences shall be permitted. No radio, television towers or aerial wires shall be maintained over any part of any lot not occupied by a structure, and all such towers or wires must be approved in writing by the Architectural Control Committee prior to the creation or construction thereof.

Section 6. ALL BUILDINGS, including exterior finish walls, shall be erected in conformity with all ordinances of the City of El Paso, Texas.

## ARTICLE IX.

### EXTERIOR MAINTENANCE

Each owner of a lot shall maintain his lot and the improvements situated thereon in such a manner that they are always kept in good order, condition, and repair. In the event the owner of any lot shall fail to maintain his lot and the improvements situated thereon in good order, condition, and repair, the Association after approval by two-thirds of the Board of Directors shall have the right, through its agents and employees,

to enter upon said lot without being guilty to trespass and to repair and maintain and restore the lot and the exterior of the improvements situated thereon. The cost of such exterior maintenance and restoration of the lot shall be added to and become part of the assessment to which the lot is subject.

#### ARTICLE X.

##### ANNEXATION OF ADDITIONAL PROPERTY

Section 1. OTHER DEVELOPMENT: In accordance with Section 25-41 of the City Code of the City of El Paso, or as same may be hereinafter amended additional residential property and common area may be annexed to the property with the consent of two-thirds of each class of members who are voting in person or by proxy at a meeting called for this purpose. Notice and quorum shall be the same as is provided in Article IV, Section 5.

Section 2. TIME LIMIT: Declarant may annex and declare additional property to be part of this common operation without the consent of the members of the MOUNTAIN RIDGE ESTATES HOME OWNER ASSOCIATION, INC. within three years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them; said annexation is further subject to the approval of the City of El Paso in accordance with Section 25-41 of the City Code of the City of El Paso, or as same be hereafter amended.

#### ARTICLE XI.

##### USE OF THE PROPERTY BY DECLARANT

Notwithstanding anything herein to the contrary, Declarant, his agent, employees, successors or assigns may operate and maintain upon the property described herein a real estate sales and development business, and may place, erect and maintain upon the property such customary sales and advertising signs, and parking areas as are usual and reasonable for such real estate sales and development operations until all lots on the property have been sold and conveyed to grantees, or until the 1st day of January, 1982, whichever shall first occur.

Notwithstanding anything herein to the contrary, Declarant, his agents, employees, contractors, sub-contractors and other authorized personnel shall have the right to enter in and upon the property and to perform work, and all other related activities and other acts required thereon, in order to complete construction on the property and construction upon such additional property or adjacent property of Declarant and to perform work required by Governmental agencies having jurisdiction over the property or other adjacent properties of Declarant and during construction to direct and maintain and store upon the property such shacks, storage buildings, temporary toilets, storage yards and areas, materials, tools and machines, fabrication areas and other temporary installations for the requirements and convenience of construction. It is expressly provided that no owner shall in any manner interfere with any of the foregoing activities of

Declarant. No action shall be maintained by any owner for damage or inconvenience resulting from the exercise of the foregoing rights of Declarant.

## ARTICLE XII.

### GENERAL PROVISIONS

Section 1. ENFORCEMENT: The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In order to insure compliance with the intent of Section 25-41 of the City Code of the City of El Paso, or as the same may be hereafter amended, the City of El Paso may enforce these covenants for the benefit of any owner, the Association or its General Zoning Authority.

Section 2. SEVERABILITY: Invalidation of any one of these covenants or restrictions by judgment or Court Order shall in no wise affect any other provision which shall remain in full force and effect.

Section 3. DURATION: The covenants, conditions and restrictions of this declaration shall run with and bind the land for as long as the MOUNTAIN RIDGE ESTATES SUBDIVISION exists as a planned residential district under Section 25-41 of the City Code of the City of El Paso, or as hereafter amended. The City of El Paso's interest in these covenants, conditions, and restrictions may be sooner released without the consent of any third person benefitted thereby, by the City of El Paso, after recommendation by the City Plan Commission, upon the recording of an instrument in writing to that effect in the Deed Records of El Paso County, Texas. In the event the City of El Paso releases its interest as above provided these covenants, conditions and restrictions, shall nonetheless run with and bind the land for a term of thirty-five years from date of this declaration is recorded after which time shall be automatically extended for successive periods of ten years. This declaration may be amended during the first twenty-year period by an instrument signed by not less than 90% of the lot owners, and thereafter by an instrument signed by not less than 75% of the lot owners. Any amendment must be recorded in the Deed Records of El Paso County, Texas.

Section 4. FHA/VA APPROVAL: As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of common area, an amendment of this Declaration of Covenants, Conditions, and Restrictions.

IN WITNESS WHEREOF, THE UNDERSIGNED, BEING THE DECLARANT HEREIN HAS  
HEREUNTO SET ITS HAND THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1980.

WOLF & WECHTER JOINT VENTURE

By: \_\_\_\_\_  
                Clinton Wolf                                  Aaron Wechter

THE STATE OF TEXAS  
COUNTY OF EL PASO

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared C.E. WOLF, and AARON WECHTER, known to me to be the persons and officers whose names are subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said WOLF AND WECHTER JOINT VENTURE, and that they executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
19\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for El Paso County, Texas          Commission Expires \_\_\_\_\_