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**SECOND AMENDMENT TO DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ALTA VALLE DEL SOL ESTATES**

This Second Amendment to Declaration of Covenants, Conditions and Restrictions for Alta Valle Del Sol Estates (hereinafter the "Second Amendment") is made on this 17<sup>th</sup> day of November, 2005 by Padilla Investments, LP as Successor Declarant to Haciendas Adobe Development, LP, a Texas limited partnership (hereinafter referred to as "Declarant"), in order to amend the Declaration of Covenants, Conditions and Restrictions for Alta Valle Del Sol Estates, recorded in Volume 4882, Page 928, El Paso County Real Property Records (the "Declaration") and the First Amendment to Declaration of Covenants dated February 21, 2005 recorded in as Document No. 20050015894, El Paso County Real Property Records (the "First Amendment") (the Declaration and the First Amendment are collectively referred to herein as the "Declaration").

1. Recitals. Whereas, due to changes in the Subdivision caused primarily by requirements of the City of El Paso and other development considerations, there are limited common areas and therefore no need for a home Owners association; and

Whereas, the Declarant desires to delete and eliminate from the Declaration all requirements for a home Owners association and all references to the duties, responsibilities and authority granted to the home Owners association; and

Whereas, the Declarant desires to make certain other provisions amending the Declaration, as follows:

2. The following provisions in the Declaration are hereby deleted: Sections 1.2, 1.3, 1.8, last sentence of 2.2, 4 (in its entirety), 5 (in its entirety) and 7.2. To the extent there are any references, or provisions relating to the home Owners association which have inadvertently not been deleted or eliminated, all such provisions are hereby eliminated and deleted.

3. Section 1.4 is hereby deleted and in its place the following provision is substituted:

1.4 Common Areas. The following Common Areas have been established by Declarant for the joint and collective use, benefit and enjoyment of the Owners, and which areas will be maintained by the Management Company: Subdivision entry signs and fence at the entry to the Subdivision on Borderland Road and Strahan Road, the irrigation ditch adjacent to Borderland Road, the walkway, gate and other facilities connecting the Subdivision with Damian Elementary School, and any landscaped areas or open areas located on Lots 1 and 2, Block 3 of the Subdivision owned by El Paso Electric Company, to the extent such areas are allowed by the Electric Company for use by the residents of the Subdivision.

4. The following provisions are added to the Declaration as revised Section 5:
  5. Assessments and Liens.
    - 5.1 Assessment Liens. There is hereby assessed against all Lots an assessment in the amounts determined in accordance with this Declaration secured by a lien on each Lot to secure payment of the assessments, for the purposes set forth herein.
    - 5.2 Purpose of Assessments. The assessments levied hereunder shall be used exclusively for the maintenance, repair and upkeep of Common Areas in the Subdivision which have been set aside for the joint and collective use and benefit of all Owners of Lots.
    - 5.3 Management Company. The Declarant does hereby hire DANA Properties, Inc. as the initial Management Company to collect the assessments and to provide maintenance, upkeep and repair on behalf of the Owners. The Management Company shall continue to provide such services until the resignation of the Management Company, bankruptcy or insolvency of the Management Company, or the Management Company is changed by the Owners of Lots in accordance with the terms hereof.
    - 5.4 Collection of Assessments. The Management Company shall collect the assessments imposed hereunder and shall take all actions necessary to enforce the liens granted hereunder to secure payment of the assessments.
    - 5.5 Assessment. The initial assessment on each Lot shall be the sum of \$80.00 per year, payable semi-annual installments. The assessments shall be secured by a lien on each Lot in the Subdivision.
    - 5.6 Changes in Assessments or Management Company. The vote, written consent, or written authorization of 40% of the Owners of Lots in the Subdivision shall be required to change the amount of annual assessments, change the Management Company or make other change required or necessary for the benefit of the Subdivision and the Owners under this section.
    - 5.7 Annual Budget; Annual Report. The Management Company shall mail to each home Owner at the commencement of each calendar year the proposed budget for the maintenance of the Common Areas which shall reflect all expected costs and the Management Company's fees for services provided hereunder. At the end of each year, the Management Company shall mail to each Owner a report on all funds received and all funds expended.

- 5.8 **Management Fee and Contracts.** The Management Company shall be entitled to charge for the actual cost of all services performed hereunder which shall include the payment for any labor and materials or services, the cost of reproduction and mailing reports and notices, the cost of reproduction and mailing statements for the assessments, the cost of maintaining the records for the collections and expenditures, plus a reasonable fee. The initial monthly amount due to the Management Company shall be \$250.00 per month.
- 5.9 **Surplus.** To the extent the Management Company, in its sole discretion, determines there is any surplus at the end of the year from the funds collected, the surplus shall be distributed to all Owners who are not then in default in payment of the assessments. Any Owner in default shall not receive a distribution of surplus.
- 5.10 **Owners Meetings and Approval.** The Owners of Lots may call an annual meeting to conduct the business required under this provision or may secure the consent or approval of a sufficient number of Owners by written instrument to take any action or make any decision required hereunder.
- 5.11 **Homestead Rights Inferior.** The lien created hereunder to secure the assessments for the maintenance, repair and upkeep of the Common Areas shall, at all times be superior to any claim of homestead by any Owner, such preexisting assessment liability being inherent characteristic of the property interest of each Owner.
- 5.12 **Effect of Transfer on Unpaid Assessments.** The lien for the unpaid assessments will be unaffected by any transfer of the full or partial Ownership interest in a Lot. In the event of full or partial sale or transfer of Ownership interest in a Lot, it shall be the sole obligation of the Owner selling or transferring such interest to disclose the assessments to any buyer or transferee of by written notice that an unpaid assessment and associated lien against the Ownership interest exists prior to the date that sale or transfer is consummated. A copy of such notice shall be sent to the Management Company. Upon written request, the Management Company shall provide an Owner with a statement reflecting the amount of the unpaid or delinquent assessments with respect to a Lot owned by said Owner. A sale or other transfer of title to a Lot shall not release a former Owner from personal liability for any unpaid assessment secured by a lien, notwithstanding an assumption of liability by the purchaser or transferee.
- 5.13 **Lien and Foreclosure.** Upon delinquency, all sums assessed in the manner provided in this Declaration, together with all interest, costs and reasonable

attorney's fees shall be secured by the lien provided herein. As further evidence and notice of such assessment lien, the Management Company may prepare a written notice of such lien setting forth the amount of delinquent indebtedness, the name of the Owner of the property covered by such lien and a description of the property and file such notice in the Real Property Records of El Paso County, Texas. Such lien for payment of assessments shall attach from the date such payment becomes delinquent and may be enforced by any one or more of the following methods: (i) Nonjudicial foreclosure of such lien on the Lot, (ii) suit against the Owner personally, and/or (iii) judicial foreclosure of the lien. Each Owner, for the purpose of securing its obligations hereunder and in consideration of the benefits received by virtue of its Ownership in the Subdivision, sells and conveys to the Management Company, as Trustee, such Owner's Lot in trust. The Management Company may enforce this trust by giving notice and conducting a sale of such defaulting Owner's Lot as required by Section 51.002 of the Texas Property Code, as amended. The Trustee shall sell such Lot to the highest bidder for cash and pay the money received from the sale in the following order: (i) to the expenses of conducting said sale, including, without limitation, a commission to itself not to exceed 5% of the sales price and attorney's fees, and (ii) to the amount of past due obligations, including interest and other charges due. In any foreclosure proceeding, whether judicial or nonjudicial, the Owner shall be required to pay the cost, expenses and reasonable attorney's fees incurred by the Management Company. The Management Company shall have the power to bid, by offset or otherwise, on the property being foreclosed on behalf of the Owners. To the extent the Management Company shall succeed in the bid, the Management Company shall hold the property in trust for the benefit of the other Owners of the Subdivision.

5.14 **Lien Subordination.** Any lien established as provided in this Declaration shall be subordinate and inferior to any first lien mortgage or deed of trust in favor of any lender making a loan for the purchase of a Lot and improvements thereon, provided however, such subordination shall apply only to the assessments which have become due and payable prior to the foreclosure sale of any Lot. No such foreclosure sale shall relieve a new Owner taking title at such sale from liability for the amount of any assessment thereafter becoming due from a lien arising from such subsequent assessments. Notwithstanding anything to the contrary contained herein, a lien for assessment shall be unaffected by a foreclosure of other than a first lien created by a mortgage or deed of trust in favor of a bona fide lender making a purchase money loan.

4. **Miscellaneous.** Except as amended by the Second Amendment, the Declaration and

First Amendment shall continue in full force and effect under its original terms. This Second Amendment is executed and effective prior to the Conversion Date:

**DECLARANT:**

PADILLA INVESTMENTS, LP, A TEXAS LIMITED PARTNERSHIP

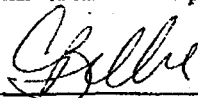
BY: PADILLA MANAGEMENT, LLC,  
ITS GENERAL PARTNER



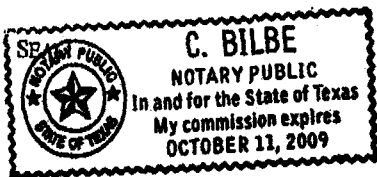
BY: RAFAEL PADILLA, PRESIDENT

THE STATE OF TEXAS     )  
  )  
COUNTY OF EL PASO     )

This instrument was acknowledged before me on the 4<sup>th</sup> day of November, 2005 by Rafael Padilla, President of Padilla Management, LLC, a Texas Limited Liability Company, as the General Partner of Padilla Investments, LP, a Texas Limited Partnership, on behalf of said limited partnership.



NOTARY PUBLIC, STATE OF TEXAS



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Filed & Recorded in  
Official Records of

EL PASO COUNTY

WALDO ALARCON

COUNTY CLERK

Fees \$32.00

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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

*Waldo Alarcon*