

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
RANCHOS DEL SOL SUBDIVISION, UNIT 6**

(A Residential Subdivision)

THE STATE OF TEXAS }
 }
COUNTY OF EL PASO }

Doc# 20010016986

20010016986

THIS DECLARATION, made on the date hereinafter set forth by RANCHOS DEL SOL UNIT 5 L. P. , a Texas limited partnership, hereinafter referred to as "Declarant.

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential community with designated "Lots" and "Common Facilities" (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 community and for the maintenance of said Common Facilities; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which will be delegated and assigned the powers of maintaining and administering the Common Facilities and administering and enforcing the covenants and restrictions 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 II 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) "Association" shall mean and refer to the non-profit corporation which Declarant shall cause to be incorporated under the name of Ranchos del Sol VI Property Owners' Association as herein provided, its successors and assigns. The Declarant may change the name of the Association at any time prior to the Conversion Date.

(b) "The Subdivision" shall mean and refer to RANCHOS DEL SOL UNIT 6 and all subdivisions brought within the scheme of this Declaration, and any other real property (including specifically, but without limitation, all or portions of other subdivisions being or to be developed by Declarant or affiliated or subsidiary entities) brought within the scheme of this Declaration.

(c) "The Properties" shall mean and refer to the properties described in Article II hereof which are subject to this Declaration.

(d) "Subdivision Plat" shall mean and refer to the map or plat of RANCHOS DEL SOL UNIT 6 recorded in the Plat records of El Paso County, Texas.

(e) "Lot" and/or "Lots" shall mean and refer to each of the lots shown upon the Subdivision Plat. Reference herein to "the Lots (each Lot) in The Subdivision" shall mean and refer to Lots as defined respectively in this Declaration and all Supplemental Declarations.

(f) "Common Facilities" shall consist of improvements for the use and benefit of all or some Owners constructed on portions of one or more Lots or on the medians in public streets. By way of illustration, it is intended as of the date of this Declaration that the Common Facilities will include medians in public streets, and landscaping and signage in the entryway to the Subdivision. References herein to "the Common Facilities (any Common Facility) in The Subdivision" shall mean and refer to Common Facilities as defined respectively in this Declaration and all Supplemental Declarations. The Common Facilities shall be initially developed by the Declarant, at its sole cost and expense.

(g) "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions bringing additional property within the scheme of this Declaration under the authority provided in Article II hereof. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to the respective properties covered by such Supplemental Declaration.

(h) "Owner" shall mean and refer to the record owner of the fee simple title to any Residential Lot, or if such Lot is subject to a term purchase contract with Declarant, to the contract purchaser, whether one or more persons or entities, 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. References herein to "the Owners in The Subdivision" shall mean and refer to Owners as defined in this Declaration and all Supplemental Declarations. The term "Owner" shall not refer to the Owner of the Ponding Area (Lot 11, Block 20).

(i) "Member" and/or "Members" shall mean and refer to all those Owners who are members of the Association as provided in Article III, together with all owners of lots in other subdivisions brought within the scheme of this Declaration as provided in all Supplemental Declarations.

ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION

Section 2.01. **Description.** The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration consists of the following:

All of RANCHOS DEL SOL UNIT 6,
being all of Tracts 1E, 1G3, 1H and 1J2
and portions of Tracts 1A, 1A9, 1E2, 1G2, and 1J1,
O.A. Danielson Survey 312,
City of El Paso, El Paso County, Texas,

according to the plat thereof recorded in the Plat Records of El Paso County, Texas; all of which real property is sometimes hereinafter referred to as the "Existing Property."

Section 2.02. **Additions to Existing Property.** Additional lands may become subject to the scheme of this Declaration in the following manner:

(a) **Additions by Declarant.** At any time prior to the Conversion Date, the Declarant, its successors and assigns shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development (including, without limitation, subsequent sections of RANCHO DEL SOL Subdivisions and all or portions of other subdivisions being or to be developed by Declarant or affiliated or Subsidiary entities), upon the approval of the Board of Trustees of the Association in its sole discretion. Any additions authorized under this and the succeeding subsection and approved by the Board of Trustees of the Association shall be made by filing of record a Supplemental Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property and the execution thereof by members of the Board of Trustees of the Association shall constitute all requisite evidence of the required approval thereof by such Board of Trustees. Such Supplemental Declaration must impose at least an annual maintenance charge assessment on the property covered thereby, on a uniform, per lot basis, substantially equivalent to the maintenance charge and assessment imposed by this Declaration, and may contain such complimentary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional lands.

(b) **Other Additions.** Upon the approval of the Board of Trustees of the Association, in its sole discretion, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of record a Supplemental Declaration of Covenants and Restrictions 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 be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions applicable to the properties of the other association as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions established by this Declaration or any Supplemental Declaration.

Section 2.03. **Density Restriction.** The proposed use of the Existing Property is limited to a maximum of one hundred twenty three (123) residential units and one (1) ponding area lot on 42.1794 acres of land, more or less, unless modified by the Declarant.

ARTICLE III. THE ASSOCIATION

Section 3.01. **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 3.02. **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 the regular and special assessments, and to administer the funds so collected, to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Facilities in The Subdivision and such other purposes as are stated in the Articles of Incorporation consistent with the provisions of this Declaration and all Supplemental Declarations.

Section 3.03. **Trustees.** The Association shall initially act through a three-member Board of Trustees, which shall manage the affairs of the Association. Until the Conversion Date, any two of the members of the Board of Trustees may act on behalf of the Board of Trustees without the joinder of the other member. The initial Trustees of the Association 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 a Board of Trustees as provided for in the Bylaws. 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 3.04. **Members.** Each Owner, whether one or more persons or entities, of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and 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 3.05. **Voting Rights.** The Association shall have two classes of voting membership:

(a) **CLASS A.** The Class A Members shall be all Owners with exception of the Declarant. After the Conversion Date, Declarant shall also become a Class A Member to the extent 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 occurrence of the earlier of the following (the "Conversion Date"):

(i) When Declarant has sold or 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 include a sale or lease to joint ventures or partnerships that include Declarant as a co-venturer or partner; or

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

Until the Conversion Date, the Class A Members shall not be entitled to vote (except to the extent the Bylaws of the Association permit voting for Special Assessments). The Class B Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership.

From and after the Conversion Date (and at any time with respect to voting on Special Assessments to the extent provided in the Association's Bylaws), each Class A Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for Association membership. Where more than one person or entity holds an 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 aggregate no more than one (1) vote shall be cast with respect to each Lot.

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

Section 3.06. **Title to Common Facilities.** To the extent permitted by law, the Declarant may have and retain the legal title to the Common Facilities in The Subdivision until such time as it has completed the improvements and may thereafter convey such title as Declarant may have to the Association for maintenance. Until the interest of the Declarant in the Common Facilities has been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all rights and privileges it may have relating to such Common Facilities to the extent granted to the Association in this Declaration and all Supplemental Declarations. During such time, the Declarant (or the Board, at Declarant's request) may levy assessments for the purposes provided in Article V below and otherwise exercise all rights of the Association in connection therewith so long as such assessments are levied against Lots owned by Declarant (subject to the provisions of Article V below) and any such assessments levied and collected and not used shall be turned over to the Association when Declarant transfers its interest in the Common Facilities to the Association.

ARTICLE IV. PROPERTY RIGHTS IN THE COMMON FACILITIES

Section 4.01. **Member's Easements of Enjoyment.** Subject to the provisions of Section 4.02 of this Article IV, 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 Facilities in The Subdivision, and such right and easement shall be appurtenant to and shall pass with the title to each Lot in The Subdivision.

Section 4.02. **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 governing the use and enjoyment of the Common Facilities or any part thereof, all of which reasonable rules and regulations shall be binding upon, complied with, and observed by each Member; and

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

(c) The right of the Association to suspend the voting rights of a Member during the period he is in default in excess of thirty (30) days in the payment of any assessment against his Lot; and to suspend such rights for a period not to exceed sixty (60) days for any infractions of its published rules and regulations; 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 Declaration and Supplemental Declarations or in its Bylaws or at law or in equity on account of any such default or infraction; and

(d) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of constructing and maintaining the Common Facilities. Notwithstanding any other provision in this Declaration to the contrary, no action under this subsection (d) may be had without the consent of Members holding at least two-thirds (2/3) of the votes.

Section 4.03. **Delegation of Use.** Any Member may delegate his right of use and enjoyment of the Common Facilities in The Subdivision, together with all easement rights granted to Members in this 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 title of the Member by sale, grant, will, foreclosure, execution, or by any legal process, or by operation of law, or in any legal manner.

Section 4.04. **Alienation or Hypothecation.** Except as herein otherwise specifically provided, no portion of the Common Facilities may be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of Members present at any annual meeting (or special meeting called for such purpose) holding two-thirds (2/3) of the voting rights at which a quorum (as defined in the Bylaws) is present.

ARTICLE V. ASSESSMENTS AND LIENS

Section 5.01. **Purpose of Assessments.** The assessments levied hereunder by the Association shall be used exclusively for the purpose of maintaining the Common Facilities 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 Facilities, along with the cost of any associated management or supervisory services, fees, labor, equipment, and materials;
- (b) The design, purchase and installation of any Common Facilities;
- (c) The purchase of insurance coverage relating to Common Facilities, and other property of the Association;
- (d) The carrying out of the duties of the Board of Trustees as provided in the Bylaws and Articles of Incorporation of the Association and in this Declaration;
- (e) The carrying out of purposes of the Association as stated herein and in its Declaration and Articles of Incorporation; and
- (f) The carrying out of all other matters set forth or contemplated in the Declaration, or allowed by law for a Texas non-profit corporation.

Section 5.02. **Annual Budget and Regular Assessments.** Each fiscal year while this 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; and
- (b) Each Lot's pro rata share of the Regular Annual Assessment shall be determined by multiplying the Regular Annual Assessment by a fraction, the numerator of which is the number of votes to which the Member owning such Lot is entitled and the denominator of which is the total number of votes of all Members owning Lots subject to assessments. The Board in its discretion may adjust the annual budget and pro rata shares to provide for lesser assessments for unimproved lots. An improved Lot is one with a residence available for occupancy, whether occupied or not.

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

Section 5.03. **Payment of Regular Assessments.** The Regular Annual Assessments provided for herein shall commence on a date fixed by the Board and thereafter shall be due and payable bi-annually in advance on the first day of January and the first day of July for each bi-annual period of the calendar year; provided, however, that the Owner of a Lot acquiring title to the Lot from the Declarant or other Seller unless otherwise provided for or stipulated in the contract of sale or by separate instrument, shall have no obligation to pay the bi-annual installment for the period covering the date of the acquisition, but shall commence payment for the bi-annual period following the date of acquisition.

Section 5.04. **Special Assessments.** In addition to the Regular Annual Assessments provided for herein, Special Assessments may be levied and paid as provided in the Bylaws of the Association.

Section 5.05. **Enforcement and Personal Obligation of Owners For Payment of Assessments.** The Assessments provided for herein shall be the personal and individual debt 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 Declaration or the Bylaws. In the event that any assessment or installment thereof is not paid when due, and remains unpaid for a period of thirty (30) days thereafter, then the unpaid amount of any such assessment or installment thereof shall become delinquent and shall, together with interest thereon as herein provided and costs of collection thereof, become a continuing personal obligation and debt of the non-paying Owner secured by a self-executing lien with power of sale (including a vendor's lien retained by Declarant in the initial deed to an Owner which vendor's lien is automatically transferred and assigned to the Association) on the Lot or 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 a Lot during such Owner's period of ownership shall remain its 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 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 buyer or transferee that an unpaid assessment and associated lien against the ownership interest 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 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 charges thereon, and/or to foreclose the lien against the property subject thereto and/or to pursue any other legal or equitable remedy which the Association may have and there shall be added to the amount of unpaid assessment and interest charges thereon, any and all collection costs incurred by the Association, whether judicial or nonjudicial, and including, but not limited to, reasonable attorney's fees and court costs.

Section 5.06. **Lien and Foreclosure.** Upon delinquency, all sums assessed in the manner provided in this Declaration or in the Bylaws, together with all interest costs as herein provided shall be secured by the lien provided for under Section 5.05 above. 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 property covered by such lien, and a description of the property. 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. Such lien for payment of assessments shall attach from the date such payment becomes delinquent and may be enforced after recording said notice through (i) non-judicial foreclosure of such lien on the Lot, or 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 of a Lot expressly grants and conveys the Lot to the Association, in trust, to secure the payment of assessments and other sums owing hereunder, with a power of sale, through a trustee designated in writing by the Board of Trustees (ii) suit against the Owner personally obligated to pay the assessment, and/or (iii) foreclosure of the aforesaid lien judicially. In any foreclosure proceeding whether judicial or non-judicial, 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 5.07. **Lien Subordination.** Any lien established as provided for in this 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 assessment. Notwithstanding anything herein to the contrary, a lien for assessments shall be unaffected by a foreclosure of 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 as herein defined. The Association may from time to time, at its own initiative, elect to report delinquent assessments to such mortgage lenders.

Section 5.08. **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 subdivided portion thereof, other than for taxes and Assessments, and notice of every suit or other proceeding which may affect the title to his Lot or subdivided portion thereof, and such notice shall be given within five (5) days after the Owner has knowledge thereof.

Section 5.09. **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 assessments and/or for the enforcement and foreclosure of the liens securing the same.

ARTICLE VI. ARCHITECTURAL CONTROL

Section 6.01. **Architectural Control.** No building shall be erected, placed or altered on any of the Lots until the construction plans and specifications and a plat showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship, materials, colors, harmony of external design with existing and proposed structures, and as to location with respect to topography and finish grade elevation

Section 6.02. **Architectural Control Committee.**

(a) **Membership.** The Architectural Control Committee is composed of Joe G. Hanson and Russell Hanson, all of El Paso, Texas. A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members of the Committee shall have full authority to designate a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration. After the expiration of ten years from the date of this Declaration, or on a Date established by the Declarant through a duly recorded written instrument, or earlier upon the death or resignation of all of the members of the Committee, the Association shall have the power through a duly recorded written instrument to change the membership of the Committee or remove or restore to it any of its powers and duties.

(b) **Procedure.** The Committee's approval or disapproval as required in this Declaration shall be in writing, and in the event the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after final and complete plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related

procedural requirements of this Declaration shall be deemed to have been fully complied with. No action shall be taken against the Declarant, its officers, directors or shareholders, the Association, its officers, trustees, or members, or the Architectural Control Committee or its members for any action or failure to act on matters required of them by this Declaration.

ARTICLE VII. BUILDING AND USE RESTRICTIONS

Section 7.01. **Land Use and Building Type.** None of the Lots will be used except for the purposes permitted by the Zoning Ordinance of the City of El Paso in effect on the date this document is executed. No structure shall be erected, altered, placed, or permitted to remain on any of the Lots, or any part thereof, other than one single-family detached dwelling, together with any customary appurtenances to the private dwelling. Each single family residence situated on a Lot shall have an enclosed, attached or detached garage for not less than two (2) nor more than four (4) automobiles. No more than one residential structure shall be erected on any Lot or site shown on the plat map of the Subdivision. No Lot shall be used or occupied for any business, or commercial purpose either apart from or in connection with the use thereof as a private residence, whether for profit or not. The Architectural Control Committee shall be empowered to grant in its sole discretion, individual waivers of the above requirements, provided the proposed dwelling shall in general reflect credit to the neighborhood in the opinion of the Architectural Control Committee.

Section 7.02. **Dwelling Size.** Except as herein provided, no residential structure erected on any Lot shall have more than two (2) stories, nor exceed twenty-five (25) feet in height (measured from the highest top of curb elevation adjacent to the Lot to the top of the gable). The ground floor area of the single-family detached residence, exclusive of one-story open porches and garages, shall not be less than 2,000 square feet for a one-story dwelling, and the combined living areas of 1-1/2 or two-story dwellings shall not be less than 2,000 square feet for up and downstairs of which the downstairs shall not be less than 1200 square feet. The Architectural Control Committee shall be empowered to grant individual waivers of the above minimum area and height requirements, provided the proposed dwelling shall in general reflect credit to the neighborhood in the opinion of the Architectural Control Committee.

Section 7.03. **Building Location.** Without exception, all building setback lines will comply with setback requirements of the Zoning Ordinance of the City of El Paso. For the purposes of these Covenants, eaves, steps, and open porches shall not be considered as part of a building, provided however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 7.04. **Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

Section 7.05. **Nuisances.** No noxious or offensive activity shall be carried on upon any of the Lots, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or other Owners. The Board of Trustees of the Association shall have the sole and exclusive discretion to determine what constitutes a nuisance or annoyance. No trucks larger than one (1) 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 no larger than one (1) 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. 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 Facilities.

Section 7.06. **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any of the Lots at any time as a residence, either temporarily or permanently.

Section 7.07. **Fences and Garden Walls.** Unless otherwise approved by the Architectural Control Committee, no fence or wall (other than garden walls, fences and hedges between the front building setback line and the street, which are no more than 18 inches in height measured from the finished grade of the highest of the adjoining Lots) shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line, except that on corner lots a fence may be placed or erected along the rear lot line from the interior lot line to the side street lot line, and forward along the side street lot line not farther than within 10 feet of the front of the dwelling. This provision shall not preclude any necessary retaining walls. Masonry fences only shall be permitted across the rear of any Lot, the interior lot line of any Lot, or along the side yard of a corner Lot where such side yards abut on a side street. All side or rear fences and walls (except for the garden walls permitted above) must be a minimum of four (4) feet in height, unless otherwise approved in writing by the Architectural Control Committee. Fences must be of ornamental iron or masonry construction. Chain link fences are not permitted on any of the Lots where such fences are visible from a public street.

Section 7.08. **Completion of Structure.** Any residential or accessory structure once commenced shall be completed as to exterior in accordance with the provisions of this Declaration in not more than 180 days from the date of commencement, which shall be the date the foundation slab is poured.

Section 7.09. **Sight Distance at Intersections.** Nothing contained in these covenants shall supersede the applicable visibility code requirements of the City of El Paso.

Section 7.10. **Attached Structures, Exterior Maintenance.** Attached structures will at all times be maintained with a compatible scheme as to exterior treatment.

Section 7.11. **Miscellaneous.** No privy shall be placed upon any of the Lots. No signboard or other visible advertisement larger than one square foot may be placed upon any Lot, other than signs pertaining to the sale of Lots or the builders' signs which may be placed upon the premises during the construction of improvements on the property. Signs shall comply with the Zoning Ordinance of the City of El Paso. No excavation shall be made on any of the Lots for the purpose of obtaining sand, rock, clay, dirt, coal or gravel, whether for profit or otherwise. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any of the Lots, except that dogs, cats or other household pets

REC'D CIVIL 100

may be kept provided that they are not kept, bred, or maintained for any commercial purpose whatever.

Section 7.12. **Drainage.** All Lots, whether vacant, with buildings under construction or with completed buildings (occupied or unoccupied) shall be designed and constructed to provide positive lot drainage as required by the pertinent governmental authorities at the time from the rear of the Lot to the street in front of the Lot. This positive lot drainage to the street in front of each Lot must be maintained at all times by the Owner. Driveways, patios, walks, landscaping (including without limitation, grass, bushes, trees, brick, rock or other materials), and all other portions of each Lot shall be constructed, installed and shall be maintained to drain away from the main building structure, and swaled, sloped or slanted through the rear, side and front yards so as to drain to the street in front of the Lot. If necessary, roof drainage will be collected in gutters and diverted toward the front of the Lot. Walls or other structures should not be placed along the side of any dwelling in a manner that would block or impair drainage from the rear of the Lot to the street. Drainage of Lots shall be maintained in accordance with approved drainage plans on file at the City of El Paso Engineering Department. It is unlawful to alter or in any way change the drainage of any Lot, without prior approval of the City Engineering Department. FAILURE BY AN OWNER (INCLUDING BUILDERS) TO MAINTAIN THE PROPER DRAINAGE CAN RESULT IN DAMAGE TO THE IMPROVEMENTS (FOUNDATIONS, GARDEN AND/OR RETAINING WALLS, POOLS, WALKS, ETC.) FROM SETTLING AND/OR EROSION ON THE SUBJECT LOT AND ON SURROUNDING LOTS.

Section 7.13. **Soils Condition.** It is the responsibility of each Owner to determine the soils condition of the Owner's Lot prior to any construction, and to take appropriate action to insure the integrity of the foundation of any improvements constructed on the Lot.

Section 7.14. **Lot Area and Width.** No dwelling shall be erected or placed on any Lot having an average width of less than 60 feet, nor on a Lot having less than 6500 square feet without prior written approval by the Architectural Control Committee and the City of El Paso.

Section 7.15. **Sidewalks.** Each Owner of a Lot shall construct at Owner's expense, sidewalks along street right of ways across the front of each Lot, behind the rear wall on double front Lots, and on the side of each corner Lot. If requested by the City of El Paso the Owner of a Lot shall construct any portions of those sidewalks prior to the construction of the dwelling structure.

Section 7.16. **Landscaping.** All Lots shall be landscaped within ninety (90) days following substantial completion of construction of the residential structure, which shall be the date a Certificate of Occupancy is issued by the City of El Paso.

Section 7.17. **Lot Condition.** All Lots shall at all times be kept in a healthful, sanitary and attractive condition, free of garbage, trash, junk or other waste matter. 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 during construction.

ARTICLE VIII. GENERAL PROVISIONS

Section 8.01. **Term.** The covenants in this Declaration are to run with the land and shall be binding on all parties and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of the then current majority of the Lots has been recorded agreeing to change this Declaration in whole or in part.

Section 8.02. **Enforcement.** Enforcement shall be by procedure at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. In such event, the person violating or attempting to violate any covenant shall be charged with all costs of suit, including reasonable attorney's fees. Nothing in this Declaration requires the Declarant, the Association, or the Architectural Control Committee to take any action to enforce any of the covenants in this Declaration.

Section 8.03. **City of El Paso.** The City of El Paso shall have the right to enforce, by any proceeding at law or in equity, all restrictions and conditions now or hereafter imposed by the provisions in Article VII. Failure or delay to enforce any covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 8.04. **Severability.** The invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 8.05. **Encroachments.** It shall not be a violation of these covenants for a Lot owner to acquire, own, and use a portion of an adjoining Lot in order to comply with the building setback requirements to resolve problems resulting from encroachment of buildings, rock walls, or other permanent improvements.

Section 8.06. **Zoning.** Nothing contained in these covenants shall supersede the applicable zoning laws of the City of El Paso.

Section 8.07. **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 the Common Facilities, including without limitation, contracts covering any city right of way, public streets, medians, landscaping, drainage works and other similar and appurtenant improvements and liability insurance. Declarant shall have the further right at any time after the creation of the Association, to assign any such contracts and all duties and obligations thereunder to the Association, which shall thereafter be fully responsible for compliance with all such duties and obligations. Upon assignment of the contract(s) to the Association, Declarant shall automatically be released from all duties and obligations under and pursuant to the assigned contract(s).

Section 8.08. **Amendment.** The covenants, conditions, and restrictions of this Declaration may be amended as follows:

(1) By Declarant at any time and from time to time, prior to the Conversion Date, without the joinder of or consent of any other party;

(2) By Declarant at any time and from time to time with respect to any Lots owned by Declarant at the time, and no such amendment shall in any way serve to release, modify or effect these protective covenants as to any land theretofore conveyed; and

(3) After the Conversion Date, by an instrument signed by the Owners of sixty-six and two-thirds (66.67%) of the Lots.

No amendment shall be effective until recorded in the Real Property Records of El Paso County, Texas.

Section 8.09. **Ponding Area.** The owner of Lot 11, Block 20 (the Ponding Area) shall not be deemed an "Owner", shall not be a member of the Association, shall have no voting rights and shall not be obligated to pay assessments.

EXECUTED this 9th day of January, 2001.

RANCHOS DEL SOL UNIT 5 L. P., a Texas limited partnership

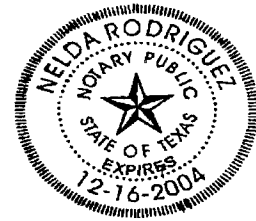
By: Chisholm Pass L.C., General Partner

By: *Russell Hanson*
Russell Hanson, Manager

STATE OF TEXAS }
 }
COUNTY OF EL PASO }

This instrument was acknowledged before me this 9th day of January, 2001, by *RUSSELL HANSON*, MANAGER OF CHISHOLM PASS L.C., GENERAL PARTNER of RANCHOS DEL SOL UNIT 5 L. P., a Texas limited partnership, on behalf of said limited partnership.

Nelda Rodriguez
Notary Public, State of Texas



NOTARY PUBLIC

5

PLEASE RETURN RECORDED DOCUMENT TO:
HANSON DEVELOPMENT CORPORATION
1715 B. WESTON BRENT
EL PASO, TEXAS 79935
Attn: Rick Green

Doc# 20010016986
Pages: 8
03/09/2001 03:17:55 PM
Filed & Recorded in
Official Records of
EL PASO COUNTY
HECTOR ENRIQUEZ, JR
COUNTY CLERK
FEES \$23.00

END OF INSTRUMENT

[Signature]

EL PASO COUNTY, TEXAS



MAR 09 2001

ANY PROVISIONS HEREIN WHICH RESTRICTS THE SALE, RENTAL OR LEASE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW. STATE OF TEXAS COUNTY OF EL PASO I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the Official Public Record of Real Property in El Paso County.

030301 03:17:55 PM 2001