

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
WILLOW BEND UNIT THREE  
(A Residential Subdivision)**

THE STATE OF TEXAS    )  
  )  
COUNTY OF EL PASO    )

**THIS DECLARATION**, made on the date hereinafter set forth by UPPER VALLEY WILLOWS, INC., a Texas corporation, 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 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; and

**NOW, THEREFORE**, the Declarant declares that the real property described in Article III 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 WILLOW BEND UNIT THREE Property Owners' Association as herein provided, its successors and assigns.

(b) "The Subdivision" shall mean and refer to WILLOW BEND UNIT THREE 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 III hereof which are subject to this Declaration.

(d) "Subdivision Plat" shall mean and refer to the map or plat of WILLOW BEND UNIT THREE 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. By way of illustration, it is intended as of the date of this Declaration that the Common Facilities will include, but not necessarily be limited to, private streets, landscaping, decorative lighting, drainage works and other similar and appurtenant improvements. 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.

(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 III 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, or if such Lot is subject to a term purchase contract with Declarant, to the contract purchaser, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties, 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.

(i) "Member" and/or "Members" shall mean and refer to all those Owners who are members of the Association as provided in Article IV, Section 4.04 hereof, together with all the Owners in The Subdivision who are members of an association as provided in all Supplemental Declarations.

## ARTICLE II. EASEMENTS

Section 2.01. **Existing Easements.** The Subdivision Plat dedicates for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and such Subdivision Plat further establishes 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 easement and related rights affecting the Properties. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat 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, which such easements shall have a maximum width of five (5) feet on each side of such 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 and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service 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 Properties 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, which will be designated an underground residential subdivision, and which underground service area shall embrace all Lots in The Properties. The Owner of each Lot in the underground residential subdivision shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local government authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on the customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company, at the property line of each Lot. The electrical company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for

the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For as long as underground service is maintained in the underground residential subdivision the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase 120/240 volt, three (3) wire, sixty (60) cycle alternating current.

Section 2.05. **Surface Areas.** The surface of easement areas for underground utility services may be used for 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 this provision and the terms of the easement agreement with the 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 consists of the following:

All of WILLOW BEND UNIT THREE, being a portion of Tract 3E, Block 3, Upper Valley Surveys, 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 3.02. **Additions to Existing Property.** Additional lands may become subject to the scheme of this Declaration in the following manner:

(a) **Additions by Declarant.** 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 WILLOW BEND Subdivision 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 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 3.03. Density Restriction. The proposed use of the Existing Property is limited to a maximum of twelve (12) residential units on 10.731 acres of land, or a density of 1.12 residential units per gross acre.

Section 3.04. Private Streets. The streets and any entry gates within the Subdivision are "private" and constitute a portion of the Common Facilities which are subject to the jurisdiction or administration by the Association. The Board of Directors of the Association is specifically authorized to recommend, adopt, implement and enforce rules, regulations, mechanisms and procedures governing use of the streets and entry gates to include:

(a) identification and entry programs for Owners and Members, their respective immediate families, their guests and 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" systems through which the Association can levy and collect fines from its Members for violations of the applicable rules and regulations; and

(e) disclaimers of liability for any and all matters or occurrences on or related to the Common Facilities.

Section 3.05. Community Services Arrangements. Declarant and the Association may arrange for the employment and the utilization of a mechanical crossing gate and/or unarmed community services personnel. The Declarant and the Association hope that the gate and private streets concept will discourage undesired and unauthorized vehicular traffic within the Subdivision and foster a higher degree of peace and tranquility. However, the Subdivision is not entirely encompassed by a fence that cannot be traversed, nor are there any plans for such an enclosure. The gate is not designed to restrict or impede pedestrian traffic into, within or out of

the Subdivision, and will be left opened during construction of dwellings and during development of the Subdivision.

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

(a) the community services personnel and/or gate arrangements are sufficient and adequate to diminish or eliminate the commission of crimes against persons or property; and

(b) such acts will not be attempted or actually occur within the Subdivision.

These community services arrangements 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 seek to carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by employees, Members or authorized representatives of the Association. 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 each Owner and 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 and holds Declarant, the Association, and their respective officers, directors and agents, harmless from any uninsured liability, claims, causes of action or damages of any kind or character whatsoever, arising out of, or related directly or indirectly, to any and all aspects of the community services system and private streets within the Subdivision, 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 functioning (whether mis-, mal-, or non-) of the mechanical gate access devices;

(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 Subdivision and abide by any and all rules and regulations of the Association, as adopted and promulgated from time to time, related to the entry upon and use of any private streets and other common areas within the Subdivision.

#### 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 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 4.03. **Trustees.** The Association shall initially act through a two-member Board of Trustees, which shall manage the affairs of the Association. Until the Conversion Date, each 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 for an initial term as provided in the Bylaws of the Association and, thereafter, until his successor is duly elected and qualified. After the expiration of the term of the initial Trustees, the Members shall elect a 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 4.04. **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 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 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 (if Declarant continues to own lots under (ii) below) 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 as provided for the levying of Special Group Assessments under Article VI, Section 6.03 of this Declaration). 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 votes pertaining to Special Group Assessments), 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 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 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 4.06. **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 Section 6 below (except Special Member Assessments) 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 Section 6 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.

**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 the Subdivision and the Common Facilities, including without limitation, contracts covering any city right of way, public or private streets, medians, landscaping, decorative lighting, drainage works and other similar and appurtenant improvements. 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 or contracts to the Association, Declarant shall automatically be released from all duties and obligations under and pursuant to the assigned contract or contracts.

#### **ARTICLE V. PROPERTY RIGHTS IN THE COMMON FACILITIES**

**Section 5.01. Member's Easements of Enjoyment.** Subject to the provisions of Section 5.02 of this Article V, 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 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 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 maintenance charge 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 rights and easements existing, herein created or hereafter created in favor of others, as provided for in Article II of this Declaration and the Supplemental Declarations; and

(e) 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 may be had without the consent of at least two-thirds (2/3) of the Members.

(f) 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 Facilities for any period for which any assessment (including without limitation "fines") against a Lot resided upon by such Member remains unpaid, or during which noncompliance with this Declaration or any design guidelines exist, and otherwise for any period deemed reasonable by the Association for an infraction of the then existing rules and regulations and/or guidelines.

**Section 5.03. 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.

## ARTICLE VI. ASSESSMENTS AND LIENS

**Section 6.01. 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 6.02. 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 one (1) and the denominator of which is the total number of 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 6.03. Special Group Assessments.** In addition to the Regular Annual Assessments provided for herein, the Association by vote of its Members as provided for in the Bylaws may levy in and for any year, applicable to that year only, a Special Group Assessment for the purpose of:

(a) Defraying the cost of any new construction or reconstruction, unexpected repair or replacement of capital improvements for Common Facilities, including the necessary fixtures and personal property related thereto;

(b) Defraying the cost of repairs or replacements resulting from an uninsured loss or damage or insured loss or damage where there are insufficient insurance proceeds as provided for in the Declaration; and

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

Special Group Assessments shall be allocated and prorated among the Owners at the date each such Special Group Assessment is levied in the same manner as Regular Annual Assessments are allocated and prorated among the Lots under Sections 6.01 and 6.02 above.

**Section 6.04. Special Member Assessments.** In addition to the Regular Annual Assessments and any Special Group Assessments, the Association, by vote of its Board, 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, repairs, or replacement of improvements associated with a Common Facility or with a Lot not owned by the Member causing such damage or loss which damage or loss has been determined by the Board to have been caused, either directly or indirectly, by the willful or negligent acts of such Member or its agent, occupant or visitor. In reaching a decision to levy such Special Assessment upon any 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 a particular Member, or its agent, occupant or visitor. Prior to making such determination, the Board shall inform such Member of its findings and afford the Member the reasonable opportunity (not less than seven (7) days) to (i) introduce evidence regarding such damage or loss and the cause thereof, or (ii) remedy such loss or damage.

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

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

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

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

(iv) Due to the failure of the 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 to meet the maintenance requirements of the Declaration. In the event such member shall start corrective action on a Lot after the Association has either contracted for such work to be done or actually accomplished such work in whole or in part, such Member shall be obligated to the Association for the reimbursement of any costs actually incurred by the Association, including: release from contract settlements; design, legal or other professional fees; labor, equipment, materials or guarantees required to accomplish corrective work; management or supervisory services; and any other costs directly or indirectly attributable to the work.

**Section 6.05. 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 in quarterly installments, in advance, on the first day of the first month in each quarter of the fiscal year; provided, however, that if the commencement date of the initial Regular Annual Assessment for the Association shall not be the same as the first day of the first month of a quarter in the fiscal year, then the initial quarterly assessment installment shall be from the date of commencement to the first day of the next quarter, and payment shall be prorated for the number of days remaining in the quarter; and provided further that the Owner of a Lot acquiring title to the Lot from the Declarant shall have no obligation to pay the quarterly installment due immediately following the acquisition, but shall commence payment with the second quarterly installment date.

**Section 6.06. Payment of Special Assessments.** Special Group Assessments or Special Member Assessments shall be due and payable in full thirty (30) days following the date at 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 6.07. Enforcement and Personal Obligation of Owners For Payment of Assessments.** The Regular Annual Assessments, Special Group Assessments, and Special Member Assessments provided for herein shall be the personal and individual debt of the Owner of a Lot, 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 (and may include a vendor's lien retained by Declarant) 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 non-judicial, and including, but not limited to, reasonable attorney's fees and court costs.

To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner or Member for violation of such provisions or rules, the Board of Directors is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary "fines" systems 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.

Section 6.08. **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 6.07 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) nonjudicial 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 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) foreclosure of the aforesaid lien judicially. 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 6.09. **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 6.10. **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 6.11. **Mechanic's Lien.** Each Owner agrees to indemnify and to hold each of the other Owners harmless from any and all claims of mechanic's liens filed against the other Owner's property for labor, materials, services or other products incorporated in the Owner's improvements on his Lot.

Section 6.12. **Area Assessments.** The parties entitled to file this Declaration and Supplemental Declarations may in such documents designate a portion of the Properties as a separate area for assessment purposes and with the assessments being for the benefit of such area. Such areas when designated may be the subject of Regular and/or Group Assessments limited to and allocated among the Owners of Lots in such areas and with the assessments being levied by the Association or a separate area association as specified in the Declaration or Supplemental Declarations.

Section 6.13. **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, 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 City has rights to enforce collection of assessments and enforcement of liens independent of such delegation pursuant to the provisions of Article IX, Section 9.02 hereof.

## ARTICLE VII. ARCHITECTURAL CONTROL COMMITTEE

Section 7.01. **Approval of Plans and Contractors.** No building, structure, fence, wall, or other improvements shall be commenced, erected, constructed, placed or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the detailed plans and specifications therefor shall have been submitted to and approved in writing as to compliance with minimum structural and mechanical standards, location and situation on the Lot, and as to harmony of external design or location in relation to property lines, building lines, easements, grades, surrounding structures, walks, and topography (including the orientation of the front and rear of any such building with respect to the Lot lines) by the Architectural Control Committee constituted as provided herein. The submitted plans and specifications shall specify, in such form as the Architectural Control Committee may reasonably require, structural, mechanical, electrical, and plumbing detail and the nature, kind, shape, height, exterior color scheme, materials to be incorporated into, and location of the proposed improvements or alterations thereto. In the event said Architectural Control Committee fails to approve or disapprove such plans and specifications within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and the provisions of this Section will be deemed to have been fully complied with; provided, however, that the failure of the Architectural Control Committee to approve or disapprove such plans and specifications within such thirty (30) day period shall not operate to permit any structure to be commenced, erected, placed, constructed or maintained on any Lot in the Properties in a manner inconsistent with any provision of this Declaration. Without limitation of the powers herein granted, 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, driveways and mailboxes. The Architectural Control Committee also shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in the sole discretion of the Architectural Control Committee, with the design or overall character and aesthetics of the Properties. The Architectural Control Committee shall be entitled to charge any Owner a reasonable fee for review of plans. The Architectural Control Committee shall also in its discretion have the right to grant variances to minimum residence square footage requirement referred to in this Declaration.

Section 7.02. **Committee Membership.** The Architectural Control Committee shall be initially composed of Warren G. Kirwin and Russell Hanson, who may designate a representative or representatives to act for them [the term "Architectural Control Committee" as used herein shall refer to the individuals named above, their assignee as permitted herein, or the



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 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 7.03. **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 committee, to the Board of Trustees of the Association, and from and after the date of such assignment, the Board of Trustees and the Association 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 to act for it.

Section 7.04. **Retained Control.** The initial Architectural Control Committee appointed by the Declarant, including any replacement members appointed pursuant to Section 7.02 above, shall, notwithstanding any other provision in these Declarations to the contrary, have exclusive jurisdiction over all Lots in the Subdivision until a residential dwelling and initial landscaping have been constructed and finally completed on the Lot. This Section contemplates that there could be a time when two Architectural Control Committees will be formed and operating--one as described in the preceding sentence and another with jurisdiction over all completed dwellings and other improvements. If there is a dispute as to whether a dwelling and/or improvements have been completed, the decision of the initial Architectural Control Committee identified in Section 7.02 above shall be final and determinative.

Section 7.05. **Construction Requirements.**

(a) All 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 landscaping in front yards and side yards abutting streets shall be completed not later than one hundred eighty (180) days following commencement of construction, and all interior construction (including, but not limited to, all electrical outlets in place and functional, all plumbing fixtures installed and operational, all cabinet work completed, all interior walls, ceilings, and doors completed and covered by paint, wallpaper, paneling, or the like, and all floors covered by wood, carpet, tile or other similar floor covering) shall be completed not later than one (1) year following the commencement of 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 in any part of the Properties.

(c) Before any landscaping shall be done in the front of any newly constructed residential structure, the landscape layout and plans must be first approved by the Architectural Control Committee. Such landscaping is to be done in the parkway area

and on the front of the Lot at the time the residential structure is being completed and before occupancy.

(d) 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 two feet 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 the street than the minimum building setback lines as shown on the Subdivision Plat.

(e) No external television antennae will be placed or permitted to be maintained on any structure on any Lot. The Architectural Control Committee in its discretion may allow appropriate television reception facilities on any Lot, such as satellite dishes, provided such facilities are adequately screened as determined by the Architectural Control Committee.

**Section 7.06. Size of Residences.** 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 header curb elevation at the adjacent street to such Lot to the top of the gable). No residential structure with an exterior area of less than twenty eight hundred (2,800) square feet, exclusive of the area of attached garages, porches, servants quarters, or other appurtenances or appendages shall be erected on any Lot.

**Section 7.07. Building Location.** No structure shall be located on any Lot within thirty (30) feet from the front property line, twenty-five (25) feet from the rear property line, ten (10) feet from the side yard abutting a side street, and five (5) feet from any other side property line. Unless otherwise approved in writing by the Architectural Control Committee, each main residence building will face the front of the Lot.

**Section 7.08. Walls, Fences and Hedges.** No walls or fences shall be erected or maintained nearer to the front Lot line than the walls of the dwelling situated on such Lot, which are nearest to such front Lot line. All side or rear fences and walls must be at least four (4) feet in height (except for the garden walls permitted in Section 7.05(d)), unless otherwise approved in writing by the Architectural Control Committee; provided, however, fences and walls along or abutting any drainage ditches shall be six (6) feet in height. Fences and walls must be of ornamental iron or masonry construction, and all side walls must match the rear wall (i.e. be of the same material, color and quality). Any repairs, replacements or changes to the rear wall must be consistent with the original wall; that is, the color and appearance of the rear wall may not be changed. No chain link fences shall be permitted, except to enclose swimming pools and only if they are not visible from the street.

Ownership of any wall, fence or hedge erected as a protective screening on a Lot by Declarant shall pass with title to such Lot and it shall be the Owner's responsibility to maintain said protective screening thereafter. In the event of default on the part of the Owner or occupant of any Lot in maintaining said protective screening and such failure continuing after ten (10) days' written notice thereof, Declarant or its successors or assigns may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause said protective screening to be repaired or maintained or to do any other thing necessary to secure

compliance with this Declaration or any Supplemental Declaration, so as to place said protective screening in a satisfactory condition, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of such Lot to pay such statement immediately upon receipt thereof.

Side walls must be within the property line or may be centered on the property line of the adjoining Lots.

Section 7.09. **Ponding and Drainage.** All Lots in the Subdivision are subject to on-site ponding of storm waters in order to accommodate storm waters up to a maximum depth of eight inches (8") following the occurrence of the appropriate design storm. Lot elevations shall conform with any approved drainage plans for the Subdivision on file in the City Engineer's office of the City of El Paso. No Owner shall do or permit to be done any act which prevents, hinders or alters the on-site ponding of storm waters on any Lot. Permanent elevation markers have been placed to establish the elevation to which the ponding area shall be maintained. Owners shall not remove, cover or alter the elevation markers, and shall not fill or change the elevation of the Lot to raise it above the elevation of the markers. The calculations for on-site ponding for each Lot are attached hereto as Exhibit "A".

The City of El Paso and its employees, agents and independent contractors shall have the right at all reasonable times to enter upon any Lot in the Subdivision for the purpose of verifying conformance with the original or amended on-site ponding design of the Lot. Each Owner in the Subdivision shall be deemed to have waived any claim or cause of action against the City of El Paso, its elected officials or employees and the Declarant for any death, injury or property damage resulting from either the existence of on-site ponding in the Subdivision, or the alteration of the ponding capacity of any Lot in the Subdivision. No Owner shall place or construct on any unimproved portion of his Lot a permanent barrier which impedes or defeats percolation of water through the soil. In the event the original on-site ponding areas on a Lot become altered by reason of active or passive conduct of the Owner or some third person or by reason of Acts of God, the Owner of such Lot shall immediately restore the on-site ponding areas to their original design and capacities for the storage of storm waters and with this covenants to benefit all other owners in the Subdivision.

Each Owner of a Lot in the Subdivision shall by acceptance of his deed be deemed to have agreed to comply with any lawful order of the City of El Paso requiring the correction of a violation of the approved drainage plan insofar as it applies to his Lot within fourteen (14) days after being given written notice of the violation. These deed restrictions may be enforced by injunctive relief without the requirement for a bond or other security. Every deed in the Subdivision shall contain a conspicuous disclosure that the Lot is subject to on-site ponding in accordance with filed and approved drainage plans, that the Lot is subject to inspection by City of El Paso officials and that the Lot is subject to other restrictions as set forth in this Declaration. No Owner shall improve with building, patios or other impervious surface more than fifty percent of the gross area of his Lot, whether such structures be temporary or permanent.

The covenants set forth in this Section 7.09 are adopted to conform with on-site ponding requirements of the El Paso City Code, and shall not be released in whole or in part by the Owners, in the absence of a similar release from the City of El Paso, evidenced by the recording

of an instrument in writing to that effect in the deed records of El Paso County, Texas. The interest of the City of El Paso may be released without the consent of any third party who may be benefitted thereby. The Declarant and the Association shall have the right, but not the obligation, to go upon any Lot to correct any violations of the drainage plan, and the costs thereof shall be charged to the Owner as a Special Member Assessment.

**It is the responsibility of each Owner to determine the soils conditions 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. If deemed necessary by the Association, the Owner shall install and maintain french drains or injection wells to insure proper drainage.**

Each Owner acknowledges that the Subdivision is located within Flood Zone designated by the United States Department of Housing & Urban Development.

### **ARTICLE VIII. BUILDING AND USE RESTRICTIONS**

**Section 8.01. Residence Buildings and Garages.** No building or other structure shall be built, placed, constructed, reconstructed, or altered on any Lot other than a single family residence, with appurtenances, and no structure shall be occupied or used until the exterior construction thereof is completed. 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 such detached garage shall have more than one (1) story. No carport shall be built, placed, constructed or reconstructed on any Lot. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

**Section 8.02. Single Family Residential Use.** Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. No Owner or other occupant shall use or occupy his Lot, or permit the same or any part thereof to be used or occupied for any purpose other than as a private single family residence for the Owner or his tenant and their families. As used herein the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of Lots for duplex apartments, garage apartments, other apartment use, or group or communal housing. No Lot shall be used or occupied for any business, commercial, trade, or professional purpose either apart from or in connection with the use thereof as a private residence, whether for profit or not.

**Section 8.03. 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 residence house, 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 its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, construction and selling of residences and constructing other improvements in 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 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 in 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 his last residence in the Properties.

**Section 8.04. Nuisance.** No noxious or offensive activity shall be carried on or permitted upon any Lot or upon the Common Facilities, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to 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 three-quarters of a 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--no vehicle shall be parked on the landscaped area 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 Facilities. The use or discharge of firearms, firecrackers, or other fireworks in the Properties is prohibited. No motor bikes, motorcycles, motor scooters, "go-carts", or other similar vehicles shall be permitted to be operated in the Properties if, in the sole judgment of the Board of Trustees of the Association, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance.

**Section 8.05. Signs.** Except for signs, billboards or other advertising devices displayed by Declarant for so long as Declarant or any successors or assigns of Declarant to whom the rights of Declarant under this Section 8.05 are expressly transferred, shall own any portion of the Properties, no sign of any kind shall be displayed to the public view on any Lot or on the Common Facilities, except:

(a) Builders may display one (1) sign of not more than five (5) square feet on a Lot to advertise the Lot and any residential structure situated thereon for sale during the sales and/or construction period: and

(b) Any Owner may display one (1) sign of not more than five (5) square feet on a Lot improved with a residential structure to advertise the Lot and residence for sale or rent.

Declarant or its agent shall have the right to remove any sign not complying with the provisions of this section, and in so doing shall not be liable and is expressly relieved of any liability for trespass or other tort in connection therewith, or arising from such removal.

**Section 8.06. 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 8.07. **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 construction of improvements thereon.

Section 8.08. **Garbage and Refuse Storage and Disposal.** All Lots and the Common Facilities shall at all times be kept in a healthful, sanitary and attractive condition. No Lot or any part of the Common Facilities shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter 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. 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 the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot.

Section 8.09. **Septic Tanks.** No privy, cesspool, or septic tank shall be placed or maintained upon or in any Lot, or other portion of the Properties.

Section 8.10. **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 8.11. **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. 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 8.12. **Utilities.** Each residence situated on a Lot shall be connected to the water and sewer lines as soon as practicable after same are available at the Lot line.

Section 8.13. **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.

Section 8.14. **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, 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 8.15. 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 storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted or permit the accumulation of garbage, trash or rubbish of any kind thereon and shall not burn anything (except by use of any incinerator and then only during such hours as permitted by law). 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 drying yard or other 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 do any other thing 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, as the case may be, agrees by the purchase or occupancy of such Lot to pay such statement immediately upon receipt thereof.

#### ARTICLE IX. GENERAL PROVISIONS

**Section 9.01. Duration.** The covenants, conditions and restrictions of this Declaration 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 land subject to this Declaration or any Supplemental Declaration, their respective legal representatives, heirs, successors and assigns, for an initial term commencing on the effective date hereof and ending December 31, 2032. After the Conversion Date, the covenants, conditions and restrictions of this Declaration may be changed or terminated only by an instrument signed by the then owners of seventy-five percent (75%) of all Lots in the Subdivision 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 ten (10) year extension periods, the covenants, conditions and restrictions of this Declaration may be changed or terminated only by an instrument signed by the then Owners of not less than fifty-one percent (51%) of all the Lots in the Subdivision and properly recorded in the appropriate records of El Paso County, Texas. Notwithstanding the foregoing, any amendment or termination is subject to rights granted to the City of El Paso under this Declaration. In addition to any other approvals required to be obtained herein, changes of a material nature 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 that the Association notify them of any purposed 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 Facilities;
- (e) Contraction of the Subdivision or withdrawal of property from the Subdivision;
- (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 the Subdivision after a casualty damage or partial condemnation.

The approval of 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 the Subdivision may not be terminated for reasons other than substantial destruction or condemnation of the subdivision unless eligible mortgage holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots agree. Moreover, any amendment or termination is subject to rights granted to the City of El Paso under this Declaration, if any.

Section 9.02. **Enforcement.** The Association, as a common expense to be paid out of the Maintenance Fund, or any Owner at his own expense, shall have the right 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 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 City of El Paso shall have a like right of enforcement under this Section. The prevailing party in any enforcement action shall be entitled to recover his costs, including reasonable attorney's fees.

Section 9.03. **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 for record for any purpose prior to the Conversion Date.



Section 9.04. **Interpretation.** If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is more nearly in accordance with the general purposes and objectives of this Declaration shall govern.

Section 9.05. **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 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 9.06. **Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post-paid 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 9.07. **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 corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

Section 9.08. **Severability.** Invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in this 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 9.09. **Security.** Neither Declarant nor the Association shall be obligated to provide security services of any kind. The Declarant or the Association, upon two-thirds 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 service.

Section 9.10. **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 Facilities 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 Owners other than Declarant.

Section 9.11. **Insurance.** The Association shall obtain and pay the premiums upon, as a common expense, policies of insurance providing the coverage deemed necessary by the Board of Trustees. 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 the 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 expense, insurance covering the properties and liabilities of such Owner. In the event of loss or damage to the Common Facilities, 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 the Owners, their tenants, or members of their respective households.

**Section 9.12. Rights of Mortgage Holders, Insurers and Guarantors.** Any mortgage holder, insurer or guarantor of a mortgage may obtain a written notice of any of the items or events described below upon written request therefore to the Association setting forth the name and address of the mortgage holder, insurer or guarantor, as the case may be, as well as the Lot number or address of the Lot which is subject to said mortgage, insurance or guarantee. Upon submission of such request, the mortgage holder, insurer or guarantor will be entitled to receive notice of the following:

- (a) Any condemnation or casualty loss that affects either a material portion of the Subdivision or the Lot mortgaged, insured or subject to guarantee;
- (b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of the Lot mortgaged, insured or subject to guarantee;
- (c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) A proposed action that requires the consent of a specified percentage of eligible mortgage holders. A first mortgage holder, upon request, is entitled to written notification from the Association of any default in the performance by an Owner of any obligation set forth in this Declaration not cured within sixty (60) days from the date of said default.

**Section 9.13. Power of Attorney.** Each and every Owner and Member hereby makes, constitutes and appoints Declarant as his/her true and lawful attorney-in-fact, coupled with an interest and irrevocable, for him/her and in his/her name, place and stead and for his/her 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 and the Subdivision;
- (b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract, or abandon the terms within this Declaration, or any part hereof, 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 the Subdivision plat, or any part 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 exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Real Property Records of El Paso County, Texas, and shall remain in full force and effect until the Conversion Date.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed this Declaration to be effective as of the 1st day of MAY, 1996.

DECLARANT:

UPPER VALLEY WILLOWS, INC.

By: [Signature]  
Name: JOE G. HANSON  
Title: PRESIDENT

JOINED PROFORMA BY:

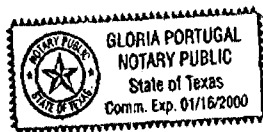
UPPER VALLEY LIMITED PARTNERSHIP

By: Its General Partner, UVW,L.C.

By: [Signature]  
JOE G. HANSON, Manager

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO   )

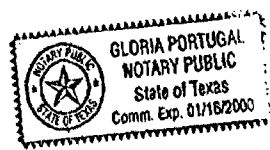
This instrument was acknowledged before on this 1st day of May, 1996, by Joe G. Hanson, President of UPPER VALLEY WILLOWS, INC., a Texas corporation, on behalf of said Corporation.



[Signature]  
Notary Public

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on this 1st day of May, 1996,  
by Joe G. Hanson, Manager of UWW, L.C., a Texas limited liability company, General Partner  
of Upper Valley Limited Partnership, a Texas limited partnership, on behalf of said partnership.



*Gloria Portugal*  
\_\_\_\_\_  
Notary Public

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Doc# 96036595  
# Pages: 28  
Date : 06-13-1996  
Time : 03:49:44 P.M.  
Filed & Recorded in  
Official Records  
of EL PASO County, TX  
HONORABLE HECTOR ENRIQUEZ, JR  
COUNTY CLERK  
Rec. \$ 63.00

ANY PROVISIONS HEREIN WHICH RESTRICTS THE SALE, RENTAL  
OR USE 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 herein by me and was duly recorded in the volume and page  
of the Official Public Record of Real Property El Paso County, Texas.

JUN 13 1996



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EL PASO COUNTY, TEXAS