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SECTION 4  
SUBDIVISION

**DECLARATION  
OF  
COVENANTS, CONDITIONS  
AND  
RESTRICTIONS  
ON AND FOR  
RANCHOS DEL SOL UNIT SEVEN  
SUBDIVISION  
CITY OF EL PASO  
EL PASO COUNTY  
TEXAS**

4300/553

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
RANCHOS DEL SOL UNIT SEVEN  
(A Residential Subdivision)

THE STATE OF TEXAS

CITY OF EL PASO

THIS DECLARATION, made on behalf of Carefree Homes I, L.P., a Texas LIMITED PARTNERSHIP, hereinafter referred to as "Declarant."

WTTNESSETH:

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", "Common Facilities" and "Easements", as those terms are defined therein, 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 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 nonprofit corporation to be formed under the laws of the State of Texas for the purposes of exercising the aforementioned functions;

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 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 nonprofit corporation which the Declarant shall cause to be incorporated under the name VENTANAS DEL SOL, as herein provided, its successors and assigns.

(b) "The Subdivision," shall mean and refer to RANCHOS DEL SOL UNIT SEVEN and all subdivisions brought within the scheme of this Declaration, and any other real property (including specifically, but not without limitations, all or portions of other subdivisions being or to be developed by Declarant, its successors, or affiliated of subsidiary entities) brought within the scheme of this Declaration.

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(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 SEVEN 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, save and except the northeast Lot 1, located adjacent to the community gate, which is excluded from these Covenants Conditions and Restrictions.

(f) "Common Facilities" shall consist of improvements for the use and benefit of all Owners, which shall be constructed on portions of one or more Lots. 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 streets, lighting, sidewalks, driveway approach, curbs, drainage works, landscaping of each Lot to the rock wall return and gate of each residence, ponding area, gate at entrance together with the gate mechanism, keys or other entry devices and lighting and landscaping at the entry of the subdivision.

(g) "Supplemental Declaration" shall mean and refer to any supplemental Declaration under the authority provided in article II hereof. References herein (whether specific or general) to the provisions set forth in (any or all) "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 Lot(s) 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.

(i) "Member" and/or "Members" shall mean and refer to all those Owners who are Members of the Association as provided in Article III hereof together with all Owners in the subdivision(s) who are Members of the Association as provided in all Supplemental Declarations.

## ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION; EASEMENTS

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:

Being all of tracts 1F2, 1E and 6, and a portion of tracts 6B and 1F1, O.A. Danielson Survey No. 312, City of El Paso, El Paso County, Texas. Containing in all 428,698.21 square feet or 9.8416 acres more or less, save and except the northeast Lot 1 located adjacent to the community gate is excluded.

Section 2.02. 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.

RECORDS SECTION

Section 2.03. 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 (lie Properties, along and on either or both sides of any side Lot line, which such easements shall have a maximum width of ten (10) feet on each side of such side Lot line.

Section 2.04. Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Properties for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to water, sewer, telephones, electricity, gas, irrigation, and 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 nine (9) feet to (line 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' if 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 2.05. 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 Electric 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 2.06. 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 (lie 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.

Section 2.07. Private Irrigation Easements. The Subdivision Plat also dedicates certain private irrigation easements for the benefit of lands entitled to an allotment of Rio Grande surface waters from the El Paso County Water Improvement District No I for irrigation purposes. The Declarant makes no representation or warranty with respect to which lands, if any, within the Subdivision are entitled to irrigation water. At the time of platting, all surface irrigation water rights have been or will be transferred for a term of years and are not available. If any Lot Owner is in the future entitled to

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irrigation water and desires to construct irrigation ditches or other irrigation facilities within the private irrigation easements such Lot Owner must do so at this own expense, and shall be solely responsible for maintaining the irrigation ditches and/or other irrigation facilities. The Association shall have the right, but not the obligation to make rules governing the use of the private imitation easements.

### 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 any special assessments, and to administer the funds collected to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Facilities in the Subdivision (s) and such other purposes as stated in 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, selected by the Declarant, which shall manage the affairs of the Association. Until the conversion date, a majority of Members of the Board of Trustees may act on behalf of the Association. Each initial Trustee shall serve for an initial term as provided in the Bylaws of the Association and thereafter until such time as 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 become a Member of the Association and shall remain a Member thereof until such time as 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 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 the transfer of Membership in the Association, and no certificate of Membership will be issued.

Section 3.05. Voting Rights. Until the conversion date, the Declarant shall have the sole right to vote in matters concerning the Association. The conversion date shall be defined as the time when Declarant has sold its interest in 100% of the residential Lots in the subdivision to unrelated third parties and by Declaration, to be recorded, turns over control and management of the Association to a Board of Trustees established by the Association Members in accordance with the bylaws of the Association.

From and after the conversion date, each Member shall be entitled to one (1) vote for each Lot to which it holds the interest required for Association Membership. Where more than one person or entity holds such interest in any Lot, or portion thereof, all such persons or entities shall be a single Member and the vote for such Member shall be exercised as the parties shall determine among themselves, provided however, that in the 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 portion thereof.

Section 3.06. Title to Common Facilities. To the extent permitted by law, Declarant shall retain legal title to the Common Facilities in the subdivision until such time as it has completed or caused to be completed the improvements therein and may thereafter convey such title to the Association for Management and Maintenance.

Section 3.07. 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 3.08. 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 understand 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 an 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 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. PROPERTY RIGHTS IN THE COMMON FACILITIES**

**Section 4.01. Members Enjoyment of Common Facilities.** 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 pass with the title to each Lot in the Subdivision.

**Section 4.02. Common Facilities Penned.** Until such time, if ever, that the Association designates Additional Common Facilities, the only Common Facilities shall be as enumerated in I (f).

**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 right 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.

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workmanship and materials, harmony of external design with existing and proposed structures, and as to location with respect to topography and finish grade elevation. The Committee shall have broad, discretionary authority to interpret and apply the standards set forth in this Declaration.

Section 6/02. Architectural Control Committee.

(a) Membership. The Architectural Control Committee is composed of Francisco Arroyos III, George Thomas and Lupe Martinez, 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. Any time after the expiration of ten years from the date of this Declaration, or at any time after all of the Members resign, 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.

(a) 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 requirement for 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 for any action or failure to act on matters required of them in 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, not to exceed two stories in height, together with private garage or carport and other customary appurtenances to the private dwelling.

Section 7.02. Dwelling Size. The ground floor area of the single-family detached residence, exclusive of open or screened porches, terraces, patios, driveways, carports and garages, shall not be less than 1,200 square feet for a one-story dwelling, and the combined living areas of 1-1/2 or two-story dwellings, exclusive of open or screened porches, terraces, patios, driveways, carports and garages, shall not be less than 1,200 square feet for up and downstairs, with a minimum of 800 square feet on the first floor.

Section 7.03. Building Location. Without exception, all building setback lines will comply with setback requirements as reflected in the special permit issued by the City of El Paso. For the purposes of these Covenants, eaves, steps, fireplaces, bay windows, box windows, two feet projections 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.

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Section 7.06. Temporary Structures and Trailers. 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, and no buses, trailers, motor homes, mobile homes, recreational vehicles, boats, or stored or disabled vehicles shall be stored or kept on any Lot.

Section 7.07. Fences and Garden Walls. No fence or garden wall shall be erected, placed, or altered on any of the Lots 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 and forward along the side street Lot line. This provision shall not preclude any necessary retaining walls. All walls shall be solid masonry, except that rear-property walls and side walls abutting a public street may have columns and ornamental iron curtains not more than five feet in height. Chain link fences are not permitted.

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. Attached Structures. Exterior Maintenance. Attached structures will at all times be maintained with a compatible scheme as to exterior treatment. If an Owner of any Lot fails to maintain the premises in a neat and orderly manner, the Declarant or the Association shall have the right, through its agents and employees, to enter the Lot in order to repair, maintain, and restore the Lot, including landscaping, and the exterior of any buildings and other improvements located on the Lot, all at the expense of the Owner.

Section 7.10. 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 for 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 may be kept provided that they are not kept, bred, or maintained for any commercial purpose whatever.

Section 7.11. Drainage. Drainage of Lots and the subdivision will be according to approved City of El Paso Drainage Plans. It is unlawful to alter or in any way change the drainage of any Lot, without prior approval of the Architectural Control Committee.

Section 7.12. Landscaping. All Lots shall be landscaped in the front yard within sixty (60) days following substantial completion of construction of the residential structure.

Section 7.13. 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. Each Member shall provide water adequate to maintain the front yard landscaping and electricity necessary to operate an electrical timer attached to the sprinkler system.

#### ARTICLE VIII. GENERAL PROVISIONS

Section 8.01. Duration. These Covenants are to run with the land and shall be binding on all parties or persons claiming an interest in any portion of the property herein mentioned and shall inure to the benefit and be enforceable by the Association or the Owner of any land subject to this declaration or any supplemental Declaration, and shall run with the land for a period of Forty (40) years from the date these covenants are recorded or record after which time said covenants shall automatically extend



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Official Records of  
EL PASO COUNTY  
REGISTRAR ENRIQUEZ, JR  
COUNTY CLERK  
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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  
hereon by me and was duly recorded in the volume and page of the Official  
Public Record of Real Property El Paso County.



It 

JUL 23 2002

EL PASO COUNTY, TEXAS

Return to:  
Carpenter Thomas  
1500 Goodview  
El Paso TX 79932

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