

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
SUNSTONE ADDITION REPLAT "A"**

THIS DECLARATION, made on the day hereinafter set forth by CORONADO OAKS CORPORATION, a Texas corporation.

WHEREAS, Declarant is the owner of that certain subdivision of real property in the City of El Paso and County of El Paso, Texas, known as SUNSTONE ADDITION REPLAT "A," as described and set forth on the plat thereof, recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, Plat Records of El Paso County, Texas and desires to create thereon a planned unit single-family residential development, including but not necessarily limited to attached single-family homes having a zero lot line configuration, for the benefit of the present and future owners thereof; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities of the subdivision and for the maintenance of the common areas and common area facilities to be developed as a part of the subdivision and therefore desires to subject said subdivision to the covenants, restrictions, easements, charges and liens hereinafter set forth, for the benefit of said subdivision and each owner of a portion thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said subdivision, to create an agency to which will be delegated and assigned the powers of maintaining and administering said common areas and common area facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant desires to provide for the preservation of values and amenities in the subdivision and to provide a means to control the maintenance and use of the buildings, facilities and other improvements within the subdivision so that the design and integrity of the subdivision will be maintained. Declarant therefore desires to subject the subdivision, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, easements, liens and charges hereinafter set forth, all of which are for the benefit for said subdivision and each owner of any part thereof, or of a building erected thereon, and shall run with the land and be binding upon the subdivision and all parties acquiring any right, title or interest in or to the subdivision, or any part thereof, or any building erected thereon; and

WHEREAS, Declarant intends to incorporate under the laws of the State of Texas, as a non-profit corporation, SUNSTONE OWNERS' ASSOCIATION, for the purpose of maintaining and administering the subdivision, administering and enforcing this declaration and the covenants, conditions and restrictions herein contained, and collecting the assessments created hereinafter,

NOW THEREFORE, Declarant does hereby declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land, shall apply to Declarant, its successors and assigns and any person or entity acquiring or owning an interest in the subdivision, their grantees, successors, assigns, heirs, executors, administrators and devisees.

## ARTICLE I

### DEFINITIONS

The following words, unless the context otherwise requires, have the following meanings:

*"Articles and bylaws"* shall respectively mean the articles of incorporation and bylaws of the association, as may be amended.

*"Association"* shall mean Sunstone Homeowners' Association, a Texas non-profit corporation and its successors and assigns, and to any non-profit corporation which succeeds to all or substantially all of its assets by merger, consolidation or conveyance of assets.

*"Attached single-family residence"* shall mean a residential structure intended for occupancy by only one family, but which shares a common fire wall with one or more similar residences.

*"Board"* shall mean the Board of Directors of the association.

*"Building Design Requirements"* see "Site Work and Building Design Requirements."

*"Committee"* shall mean the Architectural Design Committee for the subdivision.

*"Common Area or Common Area Lot"* shall mean any of Lots 33 through 37, inclusive, of Block 1 of the subdivision, ownership of which shall be vested in the association for the benefit of all owners in the subdivision.

*"Common Area Facilities"* shall mean improvements made in the common areas, such as but not limited to private streets, street paving and curbing, entry gates, vehicular parking spaces, lighting, landscaping (whether native or cultivated), a gazebo or other shade structure, and drainage structures.

*"Declarant"* shall mean Coronado Oaks Corporation, a Texas corporation, its successors and assigns or any person to whom Declarant's rights hereunder are hereafter assigned by recorded instrument.

*"Declaration"* or *"Declaration of Covenants, Conditions and Restrictions"* shall mean this document as may be amended.

*"Detached Single-Family Residence"* or *"Free-standing Single-Family Residence"* shall mean a single-family residence which does not share a common wall with another single-family residence, thereby allowing the use of a side yard setbacks from side lot lines.

*"Director"* shall mean a member of the board of directors for the association.

*"Lot or Building Lot"* shall mean any of Lots 1 through 32, inclusive, in Block 1, of the subdivision.

*"Member"* shall mean a member of the association.

*"Officer"* shall mean an officer of the association.

*"Owner"* shall mean the record owner, whether one or more persons or entities, of the fee simple title to any of Lots 1 through 32, Block 1, of the subdivision, but shall not include persons or entities having such interest merely as security for the performance of an obligation.

"Plan & Specification Check List" shall mean a questionnaire adopted by the Architectural Design Committee for use by a Lot Owner in submittal of his site plans and building plans, to help ensure such plans address the intended site work and building design requirements<sup>4</sup>.

"Single-family Residence" shall mean a residential dwelling structure designed to be occupied by only one family.

"Site Work and Building Design Requirements" shall refer to a document by that title, prepared by the Declarant, which is to be used by the Architectural Design Committee as a reference for site work and building design and appearance and is to be considered as an expression of the Declarant's design goals and intent for the subdivision's overall appearance. The Site Work and Building Design Requirements shall be an appendix (and exhibit) to this declaration and may be filed of record anytime on or after the date of filing of this declaration. Once filed, it shall be made a part of this declaration as if it had originally been part thereof. Such appendix may include additional attachments, which shall not be filed of record and may be modified, from time-to-time, by the Architectural Design Committee, Project Architects and Engineers, or Declarant, to the extent not inconsistent with these declarations or articles and bylaws of the association.

"Subdivision" shall mean Sunstone Addition Replat "A," a subdivision of the City of El Paso, El Paso County, Texas as shown on the map and plat thereof recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the Plat Records of El Paso County, Texas.

"Zero lot line Single-Family Residence" or "Attached Single-Family Residence" shall refer to a single-family residence structurally joined to another by a common fire wall located on the common property line of such residences, thereby precluding the use of a side yard building setback between such residences as measured from their common property line.

## ARTICLE II

### ASSOCIATION MEMBERSHIP, VOTING RIGHTS AND POWERS

2.01 *Creation and Purpose.* The association has been or shortly will be formed to serve as the governing body for all the owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the common areas, the assessment of proceeds, and other matters as provided in this declaration and the articles and bylaws. The association shall not be deemed to be conducting a business of any kind, and all funds received by the association shall be held and applied by it for the owners in accordance with the provisions of this declaration and the articles and bylaws.

2.02 *Membership and Voting Proxy Statements.* Membership in the association shall be composed of and limited to all the owners in the subdivision. An owner's membership shall automatically cease upon transfer of ownership and shall automatically pass to that owner's successor in title. A membership shall not be transferred, pledged or alienated in any way, except to successive owners of the lot to which it pertains, whether ownership is acquired by purchase, intestate succession, testamentary disposition, foreclosure of a mortgage, sale by deed of trust, conveyance by deed in lieu of foreclosure or other legal process transferring fee simple title. Provided however, an owner may assign his voting rights by a written proxy statement delivered to the board and unless such proxy statement is made irrevocable, either permanently or to a date certain, a member's proxy statement bearing the latest date shall be deemed effective and a revocation of any of that member's proxy statements dated prior thereto.

2.03 *Classes of Membership and Voting Rights of Classes.* The association shall initially have two classes of voting membership, Class A and Class B. Class A members shall be all owners, except for Declarant, so long as there exists a Class B membership. Class B membership shall be limited to Declarant. There shall be as many Class A votes as there are lots owned by Class A members, and the owner of each such lot shall be entitled to cast the vote for that lot; provided however, that if there are

multiple owners of such a lot, they must either cast the vote for that lot unanimously or abstain. Class B membership shall be entitled to cast four votes for each lot owned by Declarant. Class B membership shall cease on consummation of the sale of eighty percent (rounded to the next whole lot) of the lots by Declarant, five years from the date on which this declaration is originally recorded, or upon Declarant's voluntary relinquishment thereof, whichever first occurs, at which time there shall then be only one voting class, having the rights of the former Class A. If the number of lots increase prior to extinguishment of the Class B membership, the eighty percent rule shall apply to the increased number; provided however, that if the number of lots increase after extinguishment of the Class B membership, an increase in the number of lots will not revive the extinguished Class B membership.

**2.04 Board of Directors.** The business, property and affairs of the association shall be managed, controlled and conducted by a board of directors. Whenever the association is charged with any responsibility or obligation hereunder, the association may carry out or perform such responsibility or obligation by and through the board or its authorized agents. The number of directors, who shall serve without compensation, shall be as specified in the articles or bylaws. Notwithstanding anything to the contrary, during the first year beginning with the date this declaration is originally recorded, all members of the board shall be elected by Declarant.

**2.05 Board's Authority.** The board shall conduct its activities in accordance with these declarations and its articles and bylaws. The board may also adopt from time to time rules and regulations to assist in its administrative duties, provided that such rules and regulations are in accordance with these declarations and the articles and bylaws. In the event of any dispute or disagreement between any owners relating to the subdivision or any question or interpretation of application of the provisions of this declaration, the articles, bylaws or rules and regulations of the association, the determination thereof by the board shall be final and binding on each all of such owners.

**2.06 Accounting.** The board, at all times, shall keep or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all owners at reasonable times, such books which shall specify in reasonable detail all expenses incurred and funds accumulated from assessments and otherwise. Upon written request by owners holding at least one-third of the votes then entitled to be cast by members, the board shall cause an audit of the books and records to be prepared.

**2.07 Budget.** At least sixty days prior to the commencement of each fiscal year, the board shall prepare an operating budget setting forth an itemized statement of the financial needs for the new fiscal year, taking into account the general condition of the subdivision and the current maintenance and management costs and the future needs of the association. The budget shall contain an estimate of funds projected to remain at the end of the fiscal year and anticipated receivables and payables for the new fiscal year, and shall clearly set forth any anticipated increases in assessments for the new fiscal year. The budget shall separate ordinary expenses for routine operation and maintenance from reserve funds maintained for repair or replacement of capitalized expenses. A copy of the proposed budget shall be made available to each owner prior to its final adoption by the board. Excluding expenditures and liabilities approved in the operating budget, the board shall neither authorize nor incur liabilities (direct or contingent), which will at any time exceed the aggregate for any one occurrence in excess of an amount equal to \_\_\_\_\_ percent of the operating budget for Sunstone Owner's Association, or any liability maturing more than one year from the creation of such liability, without first obtaining the approval of owners holding at least a majority of the votes then entitled to be cast.

**2.08 Reserve Fund.** The board shall maintain a capital fund for the repair and replacement of street paving and other common area improvements which have a relatively long life span but relatively high replacement cost. The board shall keep itself informed as to the condition and anticipated remaining life of the street paving and other common area improvements and the anticipated costs of repair or replacement when required. The board shall then endeavor to keep the reserve fund at an adequate level to meet those needs so that the need for special assessments will be minimized.

**2.09 Indemnification.** Every director and every officer shall be indemnified by the association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which that person may be a party, or in which that person may become involved by reason of holding such position, or any settlement thereof, whether or not the person is still a director or officer at the time such expenses are incurred, provided that that board shall determine in good faith, that such person did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of that person's duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such directors and officers may be entitled. The board may purchase errors and omissions insurance for the purpose of providing funds for such indemnification, but the level of indemnification shall not be limited to the amount of the insurance coverage.

### ARTICLE III

#### PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

**3.01 Maintenance.** Each owner shall furnish and be responsible for, at that owner's expense, all of the maintenance and repairs necessary to keep that owner's lot and the improvements thereon (excluding certain front and side yard landscaping which shall be the obligation of the association and for the cosmetic appearance of any building interiors which shall be within the owner's discretion), in good condition and repair at all times, consistent with reasonable maintenance standards and guidelines adopted by the board and standards associated with first-quality planned unit residential subdivisions. Each owner of an attached single-family dwelling sharing a common fire wall shall maintain the integrity and fire rating capacity of his side of the fire wall at all times. All such maintenance, repairs or replacements shall be equal in quality to the original work and materials of any improvements on the lot and shall be performed in compliance with the rules and regulations of the association and all governmental laws, ordinances, orders and requirements.

**3.02 Easement Rights of Owners.** Every owner shall have an easement and right of reasonable use and enjoyment of the common area and common area improvements, equal to the rights of every other owner and consistent with the intended purpose of the common area and common area improvements. Each owner's right includes but is not limited to a right of vehicular and pedestrian access to that owner's lot, a right to park vehicles in the street in front of his lot (but not to obstruct the flow of vehicular traffic) or in common area parking spaces, and a right to have the owner's lot served by subdivision utilities. Every owner of a zero lot line single-family residence shall have a right of access and easement to maintain his zero lot line wall, across and on the property of the other owner of the zero lot line wall. Every owner of common property line improvements shall have a right of access and easement to maintain such improvements, across and on the property of the other owner of the common property line improvements. Such rights of access and easements on the property of another owner of a zero lot line wall or common property line improvement shall be used at reasonable times and with reasonable notice when possible. The user of such an easement shall not be responsible for incidental damage to another owner's property, when such damage cannot be reasonably avoided and is the natural result of the use of the easement; however, nothing herein shall be construed to permit damage which is reasonably unnecessary or which constitutes wilful indifference to the property of another. All such easements shall be appurtenant to and shall pass with the title to each lot, subject to the following provisions:

(a) The right of the association to establish uniform non-discriminatory rules and regulations pertaining to use of the common area and common area improvements.

(b) The power of the association to suspend the voting right of any owner for any period during which any assessment against such owner remains unpaid and delinquent, and for a period not to exceed thirty days for any single infraction of the rules and regulations of the association, provided that

any suspension of such voting rights, except for failure to pay assessments, shall be made only by a duly appointed committee of the association after notice and opportunity for hearing in accordance with the bylaws.

(c) The rights of enjoyment to the common area and common area improvements enjoyed by any owner shall also extend to the owner's employees, guests and invitees, and to the owner's tenants, sub-lessees or contract purchasers and their respective employees, guests and invitees.

(d) No owner may become exempt from personal liability for assessments, nor release the owner's lot from the liens and charges hereof by waiver of the use and enjoyment of the common area or common area improvements or by abandonment of said lot or the improvements thereon.

#### ARTICLE IV

#### COVENANT FOR ASSESSMENTS

4.01 *Creation of Lien and Personal Obligation for Assessments.* Each owner by acceptance of a deed or other conveyance, whether or not it is expressed therein, is deemed to covenant and agree to pay to the association those assessments or charges as provided in this declaration, including regular and special assessments. If any owner shall fail or refuse to make any payment of any assessment when due, the unpaid portion of the assessment together with such interest, costs of collection, reasonable attorneys' fees and reasonable late charges as the board may impose by rule or regulation, shall constitute a continuing lien, from the date such amount was due until paid, upon the lot against which the unpaid assessment was made. Each such assessment, together with interest, costs of collection, reasonable attorneys' fees and such reasonable late charges as the board may impose by rule or regulation, also shall be the personal obligation of the owner of such lot at the time when the assessment fell due. If a lot has more than one owner, all such owners shall be jointly and severally liable. The personal obligation, however, shall not pass to the owner's successors in title unless expressly assumed by them.

4.02 *Purpose of Assessments.* Assessments levied by the association shall be used for the improvement, maintenance, repair and replacement of the common area facilities and for such other purpose and obligations as may be imposed upon the subdivision or association by this declaration, including but not limited to engineering, legal, accounting or other professional fees incurred in administration of the subdivision by the association and reasonable reserves for payment of the above.

4.03 *Regular Assessments.* The amount and time of payment of regular assessments shall be determined by the board from time to time with consideration to its operating budget and future needs of the association. Regular assessments shall be payable monthly. Written notice of the setting of the amount of regular assessments and their due date shall be sent to each owner as soon as reasonably practical, but monthly renotification in the absence of change in the assessments shall not be required. A portion of each month's regular assessment shall be set aside in the reserve fund.

4.04 *Date of Commencement of Regular Assessments.* For any lot acquired by a Class A member, regular assessments shall commence on the first due date following the month in which the owner received title to the lot. As for any lot owned by Declarant as a Class B member, assessments shall be as follows: no assessments for the first six months following the date of filing of this instrument, followed by assessments at the rate of one-half the regular assessment for the second six months, and regular assessments thereafter. After extinguishment of the Class B membership, all regular assessment shall begin on the first due date following the month in which the owner received title to the lot, or if owned at the time of extinguishment of the Class B membership, then on the first due date following the time of extinguishment of the Class B membership, if not already at the regular assessment rate.

4.05 *Reserve Fund.* The board shall include a reserve fund in its operating budget to be used for the purpose of meeting the costs and expense of maintenance, repairs and replacement of common area

facilities which must be maintained, repaired and replaced on a periodic basis. To the extent reasonably possible the board shall maintain the reserve fund from the regular assessments. If, however, a shortfall occurs in the reserve fund or can reasonably be expected to occur, the board may either increase the amount of regular assessments or levy one or more special assessments as provided herein.

4.06 *Special Assessments.* In addition to regular assessments, the board may levy special assessments from time to time as determined by the board as being reasonably necessary for the association to meet unforeseen financial obligations, including budgetary shortfalls; provided however, a special assessment levy shall not be effective until approved by two-thirds voting majority of the members then entitled to vote, at a meeting duly called for that purpose, written notice of which shall be sent to all owners not less than thirty days nor more than sixty days in advance of the meeting, setting forth the time, place and purpose of the meeting and special assessment.

4.07 *Penalty Assessments.* The board may impose reasonable fines as provided in the rules and regulations for the violation thereof by any owner, or the lessees, guests or invitees thereof. Each such owner, except those exempted from assessments, covenants and agrees that any fine so imposed with respect to the use or occupancy of a lot shall constitute an assessment hereunder and, if not promptly paid as herein provided, shall constitute a lien thereon and personal obligation in the manner set forth in Section 4.01 of these declarations.

4.08 *Proportion of Assessment.* All regular and special assessments shall be levied equally among all owners, except those owners exempted from assessments, in proportion to the number of lots owned by such owner. Penalty assessments shall apply only to the lots and owners thereof which the board finds to be in violation.

4.09 *Exemptions.* Any local public authority or governmental entity to whom any part of the subdivision has been dedicated shall be exempt from any assessments. Declarant shall not be liable for special assessments while a Class B member. At no time shall Declarant be liable for penalty assessments. Provided however, that so long as Declarant remains a Class B member, Declarant shall be financially responsible for operation of the association to the extent that regular assessments are inadequate to meet operating expenses not including establishment of a reserve fund.

4.10 *Certificate of Payment.* The association shall, upon written request, furnish to any owner a certificate in writing signed by an officer, setting forth whether all assessments on that owner's lot have been paid and the amount of the delinquency, if any, that may exist. A reasonable charge may be made by the board for the issuance of such certificates. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid.

## ARTICLE V

### NON-PAYMENT OF ASSESSMENTS

5.01 *Delinquency.* Any assessment which is not paid when due shall be delinquent. The board may require the delinquent owner to pay a reasonable late charge for delinquencies older than fifteen days. Any delinquency not cured within thirty days shall bear interest from the date due compounded at the rate of one percent per month, but in no event in excess of the maximum rate of interest for which it shall be lawful to contract.

5.02 *Notice of Delinquency to Interested Third Parties.* Each owner grants the board the right, at any time the board determines that the owner's lot is subject to a continuing assessment lien arising from the present or a past owner's delinquency and further determines that said lot is in the process of being sold or conveyed to another owner or being offered for sale, to give notice of said delinquency and lien to any or all of the following; the prospective owner, the prospective owner's attorney, the prospective owner's real estate agent, the prospective owner's mortgage company and the

company insuring the title to the lot, and each such owner hereby further waives any claims or causes of action arising from said disclosure. Failure of the board to reveal such information prior to closing shall not constitute a waiver of the lien

**5.02 *Suit for Damages.*** The association may, at its option, bring an action at law against the owner personally obligated to pay a delinquency, and there shall be added to the amount of damages being sought any late charges, interest, all attorneys' fees or related costs incurred by the association, and the cost of preparing, filing and prosecuting the complaint in such action.

**5.03 *Filing of Notice of Lien.*** The association may, at its option, file a notice of lien in the real property records for El Paso County, Texas, against a lot for which there is a delinquency, setting forth the original amount of the delinquency and the legal description of the lot, naming the record owner thereof, and identifying the name and address of the association as claimant. Such notice of lien may also include or make general reference to any late charges, interest, attorneys' fees or related costs which may be incurred by the association in filing the notice of lien, attempting to collect such delinquency from the owner of the lot, or from foreclosing lien thereon.

**5.04 *Foreclosure of Lien.*** A lien for a delinquency may be foreclosed by the association in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Texas, thirty days after filing of the notice of said lien and deposition of a copy of said notice in the United States Mail, certified or registered, postage prepaid, addressed to the owner of the lot (subject to the notice of lien) as set forth in the association's records. Each owner hereby expressly and irrevocably grants to the association the powers of a trustee to sell the owner's lot to satisfy said liens thereon in accordance with sales made under deeds of trust in the State of Texas. The association, through its duly authorized agents, shall have the power to bid on the lot at the foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

**5.05 *Curing of Default.*** At any time prior to foreclosure of a lien, the owner of the lot subject to the lien may cure the default by payment of the delinquency and all late charges, interest and other charges thereon, including costs of preparing and filing of the notice of lien and the release thereof, and thereby terminate the pending foreclosure. Payment for delinquencies for which foreclosure of a lien in pending shall be in the form of a certified check or guaranteed money order payable to the association, issued by a financial institution authorized to conduct business in the State of Texas. Upon curing of the default, the officers of the association are authorized to file an appropriate release of such notice of lien.

**5.06 *Cumulative Remedies.*** The remedies set forth in this declaration shall be cumulative and the use of a specific remedy by the association shall not constitute waiver of any other remedy to which the association may be entitled by this declaration or by action of law.

**5.07 *Subordination of Liens.*** If a lot is subject both to an assessment lien and a lien of a prior recorded mortgage, the assessment lien shall be subordinate in right, title, claim and interest to such mortgage lien, except for the amount of the unpaid assessment (together with any interest, costs, reasonable attorneys' fees and any late charges related thereto), which accrues from and after the date on which the Mortgagee comes into possession of or acquires title to the lot, whether by foreclosure, trustee's sale, acceptance of a deed in lieu of foreclosure or otherwise, but such Mortgagee shall not be liable to unpaid assessments arising prior to the aforesaid date and upon written request, said assessment lien shall be released in writing by the association. Any such unpaid assessments shall be deemed to be an expense of the association. If, however, the owner against whom the original assessment was made is the purchaser or redemptionor, the assessment lien shall continue in effect and may be enforced by the association for the full amount of the assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings.



## ARTICLE VI

### ARCHITECTURAL DESIGN AND CONTROL

6.01 *Approval Required.* No building, fence, wall or other improvement shall be constructed, erected or maintained upon any lot, or shall any exterior addition, change or other alteration of any kind be made without the prior written approval of an Architectural Design Committee, which may, in making its decision, consider the general compatibility of the proposal with the subdivision and the harmony of external design, appearance and location thereof in relation to surrounding or adjacent structures and topography, as well as conformity with the Site Work and Building Design Requirements. The provisions set forth in the Site Work and Building Design Requirements shall be adhered to as much as reasonably possible by the Committee and deviated therefrom only when necessary.

6.02 *Plans and Specifications.* The committee may, at its election, require the submission of complete plans and specifications showing in detail the nature, color, kind, shape, height, materials and location of the proposed construction, improvement, alteration or addition. The committee may require the use of a Plan & Specification Submittal Check List as part of the submittal. The committee may also require the payment of a reasonable fee for professional services in connection with the review and approval of such plans and specifications.

6.03 *Time for Review and Approval.* If the committee fails to approve or disapprove a proposal submitted for its review and approval within sixty days after delivery to the committee of all plans and specifications, and payment of all fees for professional services, required by the committee, then approval will not be required and this paragraph will be deemed to have been fully complied with, provided that such proposal and the plans and specifications are in accordance with any reasonable architectural or design guidelines or requirements set forth in these declarations or previously adopted by the board or the committee and with all applicable governmental laws, ordinances, codes and regulations.

6.04 *Architectural Design Committee.* The committee shall consist of three members, who shall each serve for a term of one year. Declarant shall appoint, and may remove without cause, all members of the committee until all lots are occupied by substantially completed buildings or five years after the recordation of this declaration, whichever first occurs. Thereafter the committee members shall be appointed by the board. In the event a member fails or refuses to act, the member may be removed and the remainder of the member's term filled by a replacement. Except for members appointed by Declarant, all committee members shall be owners, or if an owner is not a natural person, the owner's authorized representative. No committee member shall be liable to any person for any decisions or failure to act in making decisions as a committee member and shall be indemnified and held harmless by the association in the same manner as directors and officers. No committee member shall be compensated for services performed in that capacity. Declarant may, at any time, assign to the association in writing its powers of removal and appointment with respect to the committee, subject to such terms and conditions regarding the exercise thereof as Declarant may lawfully impose.

## ARTICLE VII

### POWERS AND DUTIES OF THE ASSOCIATION

In addition to the powers and duties of the association set forth elsewhere in this declaration and in the articles and bylaws and without limiting the generality thereof, the association shall have the additional powers and duties.

7.01 *Maintenance of Landscaping in Common Areas.* The association shall maintain the landscaping in all common areas, whether such landscaping be preexisting indigenous plants or cultivated plants, in a manner reflecting a high degree of care and attention, including but not limited to performing the following activities on a regular basis: watering, trimming, mowing, fertilizing, replanting for

seasonal and annual color, controlling disease and insects, replacement of diseased, dying or dead plants with healthy plants, the removal of weeds, trash, litter and debris and the performance of all other similar services to ensure a continuously attractive landscape within the common areas in the subdivision with due consideration as to the function of the various common areas.

**7.02 Maintenance of Front and Side Yard Landscaping.** Each owner hereby grants to the association the exclusive right to maintain the front and side yard landscaping on his lot if such landscaping is visible from the curb grade of Sun Point Drive from in front of the lot, as if such yards were common areas and the cost of maintenance of the landscaping therein was a common area expense; provided further, that the such landscaping shall be maintained by the association in accordance with the landscaping design or plan adopted by the committee for that purpose. Each owner further covenants not to alter, modify or otherwise interfere with said landscaping on his lot and grants to the association any and all easements reasonably necessary for the performance of such front yard landscaping, including without limitation the right of ingress and egress.

**7.03 Maintenance of Common Area Facilities.** The association shall maintain all common area facilities, in a manner reflecting a high degree of care and attention, and with due consideration as to their function, including but not limited to performing the following activities on a regular basis or as needed in common areas: control of erosion resulting from stormwater runoff, cleaning of drainage structures, sealing of cracks and patching of potholes in street paving, repair of broken curbing, repair of rock walls, repainting of subdivision entry signs, and supervising the operation of both the main and emergency vehicle access gates to the subdivision.

**7.04 Maintenance of Private Security Alarm Services as a Common Expense.** Each owner hereby agrees to have the residence of his lot connected to a security alarm service to be contracted for by the association, the cost of which shall be a common expense of the subdivision/

**7.05 Maintenance of Private Property in the Subdivision.** The association shall have the right, but not the obligation, to maintain and repair the exterior of any building, (including the roof thereto) and any fire walls on common property lines at the expense of the owner or owners thereof, if the board first reasonably determines that the building exterior or fire walls have not been maintained in good repair or condition by the owner or owners thereof in accordance with reasonable maintenance standards adopted by the board or with standards generally associated with first-quality residential subdivisions. If the board elects to exercise the authority conferred herein, it shall, except in the case of an emergency, give written notice to the owner or owners stating with reasonable specificity how the owner or owners have failed to properly meet the required standard of maintenance, providing a reasonable opportunity (but not less than five days) in which to cure or correct any such failure, and stating the intention of the board, if the owner or owners fail to timely cure or correct any such failure, to exercise its rights to perform or cause to be performed, at the owners' expense, such maintenance or repairs as the board in its sole discretion, deems necessary. Such expense shall be paid promptly by the owner or owners on demand by the association and failure to do so shall constitute a penalty assessment to be secured by a lien as set forth in these declarations.

**7.06 Insurance.** The association shall maintain such policy or policies of insurance as the board deems necessary or and in such amounts as the board deems advisable. The use of master fire and/or hazard policies may be employed.

**7.07 Management Agent.** The association shall have the right to employ a manager or other persons, or to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the association. Any such agreement shall be terminable by the association or the other contracting party with or without cause and without payment of a termination fee upon thirty days written notice.

7.08 *Common Area Easements.* The association, acting as trustee for the benefit of the owners, shall possess all easements shown on the plat in common areas as general private easements, easements not dedicated to the public, easements dedicated to the association, as well as any easements dedicated by separate instrument to the association. All such easements shall be supervised and used by the association for the benefit of the owners in conformity with the stated purposes of such easements. Such easements shall include, but not be limited to street easements, lighting easements, sign easements, drainage easements, slope control easements, greenspace easements, garden wall easements, retaining wall easements, landscaping maintenance easements, and pathway easements.

7.09 *Drainage Easements Appurtenant.* One or more lots may require French drains or other specifically engineered drainage controls or structures be located thereon for the benefit of such lots and lots downgrade therefrom, as set forth in the plans and specifications for the subdivision. In such event, the owner of any such lot shall install and maintain such drainage controls and structures as required at no expense to the association or any owner, and owners of any lot downgrade from such drainage controls or structures, shall deemed to be holder of an easement appurtenant for that purpose.

7.10 *Encroachments on Easements, into Common Areas and across Property Lines.* No owner shall knowingly encroach upon an easement or common area or otherwise hinder or interfere with their intended use. No owner shall knowingly encroach across a property line onto the lot of another owner. Provided however, in the event of any such encroachments into common area, the board may determine whether such encroachment is materially detrimental and therefore significant, and if so may order its removal or compensation for allowing such encroachment, or if not, may declare it to be a *de minimus* violation and of no significance, in which case the board shall issue a variance letter describing the limits of the encroachment. Once any required compensation is paid or if the violation is delared to be *de minimus*, the owner of the encroaching improvements or uses shall be deemed to be there as a matter of right and shall suffer no further sanctions.

7.11 *Control of Storm Water.* Each lot is subject to a drainage and grading plan approved by the City of El Paso, one purpose of which is to control the flow of storm water. No owner shall modify his lot in contravention of the drainage and grading plan, or otherwise interfere with the engineered drainage patterns contained in such plan, which provides in general that rainfall onto a lot is designed to drain off the lot and onto easements without the necessity of such water moving across another lot. Consequently, each building constructed on a zero lot line must be designed so that rainfall onto such building's roof is channeled through gutters and downspouts onto the building's lot and not be allowed to spill across the zero lot line. The design of such gutters and downspouts shall be subject to the control of the Architectural Design Committee.

7.12 *Privacy along Zero Lot Lines.* Because buildings will be constructed on zero lot lines, and because lots and buildings will be constructed at differing elevations, the Architectural Design Committee shall review all building plans to ensure that to the extent reasonably possible, windows are not placed so that the occupants of one lot may visually intrude upon the privacy of the occupants of adjacent lots. In such circumstances, the use of translucent (but not transparent) windows and skylights shall be a permissible alternative, although their use shall not be mandatorily limited to those applications.

## ARTICLE VIII

### USE RIGHTS AND RESTRICTIONS

8.01 *Permitted Uses.* Except as expressly prohibited elsewhere in this declaration, each lot shall be occupied exclusively by one single-family residence having an attached garage capable of housing two automobiles and having paved on-site parking for two additional automobiles. Each such residence may either be detached and free-standing from adjacent residences or may be part of a series of two or more attached residences built with a zero lot line configuration and sharing a fire wall on a common

property line with an adjacent residence. Except as prohibited herein, there shall also be permitted incidental to each residence such uses as are normally found in association with residential subdivisions, such as but not limited to swimming pools, cabafias, gazebos, and greenhouses.

**8.02 Prohibited Uses.** The following uses shall be prohibited:

**Commercial Uses.** Except for model homes offered for sale in the subdivision and sales offices contained in such model homes, no lot or building thereon shall be used for any commercial purpose to which the general public is invited.

**Secondary Living Quarters.** No "mother-in-law" quarters, maid's quarters, guest quarters or similar uses shall be permitted in any building detached from the main or principal residence and in no event shall any such quarters be used in a main or principal residence in such way to create a two-family residence.

**Signs.** No sign or billboard of any kind shall be displayed to the public view on or from any lot or building without the approval of the committee, except such signs as may be used by Declarant for a period of time not to exceed five years from the date of recordation of these declarations, in connection with the development of the subdivision and sale of lots or buildings thereon. One "for sale" or "for lease" sign of reasonable dimension for each lot or building may be posted in the area designated by the board for that purpose; provided however, that all signs must conform with applicable sign ordinances of the City of El Paso, Texas.

**Animals.** No animals may be kept or maintained on any lot or in any residence other than common household pets in such number as the board may allow and for animals trained to assist handicapped persons residing at such residence. Dogs must be confined by leash or by enclosure at all times and shall not be permitted to create a disturbance to neighbors by loud or lengthy barking or baying. Each residence or lot on which animals are permitted shall be kept reasonably free from accumulations of animal feces, odors produced thereby and flies and vermin attracted thereto.

**Vehicles.** Except as permitted by the board, passenger automobiles, vans and pickup trucks shall be parked either in the owner's residential garage or on paved on-site parking on the owner's lot. Garage doors shall be kept closed when not being used for ingress or egress. Other vehicles, including recreational vehicles, busses, trailers, boats and any commercially used vehicles may be parked indefinitely in a residential garage on the owner's lot, or on paved on-site parking on the owner's lot for a period of time not to exceed three consecutive days, or in a frequent and habitual manner. Parking of vehicles in the street shall be limited to guests and invitees of the owner and only on a temporary basis as reasonably needed. Common area parking shall be principally reserved for guests and invitees of owners in the same manner as on-street parking, but may be subjected to other and additional rules and regulations by the board. No junked, patently inoperative, or patently dismantled vehicles or trailers or parts thereof shall be stored in the subdivision outside the owner's residential garage. No owner shall perform mechanical work on any vehicle or trailer at the owner's residence other than for tune-ups and other minor repair or maintenance. No used vehicle fluids shall be disposed of in the subdivision.

**Rubbish, Trash and Debris.** No owner shall permit or allow the accumulation of rubbish, trash, debris or other waste materials on that owner's lot. All owners shall individually contract for the removal of all waste materials by the Sanitation Department of the City of El Paso or as otherwise permitted by the City of El Paso and the Board. All waste to be removed by contracted service shall be kept in closed, commonly available waste containers in good condition and appearance. No owner shall permit or allow his empty waste containers or their lids to remain in any other owner's front yard or in the street. No owner shall permit or allow his waste containers to be stored in view from the curb grade of Sun Point Drive in front of the lot, although they may be stored in the front or side yard if properly screened, which screening shall be subject to the approval of the Architectural Design Committee. No outside storage of

materials, whether having any useful purpose or being rubbish, trash or debris shall be permitted on any lot, except for the temporary storage of construction materials being used on that lot.

*Radio and Television Antennas.* No radio, television or other electronic antenna or device of any type shall be erected, constructed, placed or permitted or remain on any lot or building unless and until the same have been approved in writing by the committee and the board.

*Wire Fencing.* No wire fencing shall be used on a lot, and specifically no chain link fencing or barbed wire or razor wire may be used. No electrified security wire shall be used on a lot. No electrified wire to confine animals to a yard shall be used on any property line fence or wall.

*Fire Safety Requirements.* In order to permit the ingress of fire trucks through the main entry, no vehicles or trailers shall be parked in the entry drive or next to the median identified as Lot 34, Block 1 of the subdivision. In order to permit the ingress of fire trucks through the secondary emergency entry drive to the subdivision as shown on the plat, no vehicles or trailers shall be parked in that entryway. Further, Sun Point Lane, identified as Lot 33, Block 1 of the subdivision, shall be maintained as a divided residential street having a one-way counterclockwise circulation pattern around the medians identified as Lots 35 and 35A, Block 1 of the subdivision.

*General Nuisances.* No owner shall use or permit the owner's lot or residence to be used in such way as to create a general nuisance to other owners in the subdivision, as determined by the board whether such nuisance be created by noise, dust, vibration, light, odors or in any other way which would reasonably obstruct or interfere with the right of other owners, or for any illegal use or in any illegal way or manner.

**8.03** *Owner's Right to Sell or Lease.* Nothing in this declaration shall be construed to prohibit an owner from reselling a lot and any residence located thereon, or leasing the same for single-family residential purposes; provided however, than any such subsequent owner shall be subject to these declarations and in the event of leasing the lessor shall remain subject to these declarations as well as any lessee who shall be deemed an invitee of the owner.

## ARTICLE IX

### DAMAGE AND DESTRUCTION; CONDEMNATION AND SALE OR DISPOSAL OF COMMON AREA

**9.01** *Damage to Buildings.* If any building or part thereof is damaged or destroyed by fire or other casualty, or by any act caused by the owner, the owner shall promptly cause the building to be repaired or restored in conformance with the original plans and specifications unless the committee determines that adherence to the original plans and specifications is impracticable or not in conformance with applicable laws, building codes or other governmental rules then in effect, in which case such repair or restoration shall be of a kind or quality substantially the same as the condition in which such building existed before the damage.

**9.02** *Damage to Common Area or Common Area Facilities.* In the event of damage or destruction by fire or other casualty to any common area or common area facilities covered by insurance written in the name of the association, the association shall contract with a licensed contractor or contractors to repair or otherwise reconstruct from such damage or destruction in substantial conformance with the original plans and specifications, or, if the board determines that adherence to such original plans and specifications is impracticable or not in conformance with applicable laws or codes then in effect, then such repairs or reconstruction shall be of a kind substantially equivalent to the original condition of the common area or common area facilities. All of the insurance proceeds received by the association shall be paid directly to a bank located in El Paso County, Texas, as trustee for the association and the

owners, as their interests may appear. In the event the insurance proceeds are insufficient to pay all costs of repair or reconstruction, the board shall levy a special assessment to make up any deficiency.

9.03 *Condemnation.* If a portion of the common area or common area facilities should be taken by exercise of the power of eminent domain, or should be transferred and conveyed to a condemning authority in anticipation of such exercise, the entire award made as compensation shall be paid to the board as trustees for all owners and the holders of mortgages on the lots and improvements thereon as their interests may appear. If such condemnation results in damage to any remaining common area or common area facility, the board shall correct any such damage and pay for such work with the proceeds from condemnation, but if such proceeds are insufficient, the board may levy a special assessment to the extent necessary to make up such deficiency.

9.04 *Sale or Disposal of Common Area and Common Area Facilities.* Whenever the association determines that it would be in the best interest of the association, when approved by two-thirds of the votes cast by those members then eligible to vote, the board may sell or otherwise dispose of any common area or common area facility, subject to the written approval of the City of El Paso, Texas and the holders of any mortgages on property in the subdivision. Provided however, that the board upon written request by Declarant, and without the necessity of approval of the owners, shall release Lot 37 as common area and shall convey the same to Declarant or its nominee, at no cost, who may then cause the same to be replatted as an additional residential subdivision unit to the subdivision, with Lot 37 as replatted to be subject to these declarations and with these declarations to be deemed amended as necessary to permit their incorporation. Provided further, that if the addition of such residential subdivision unit results in a mandatory parkland dedication or payment to the City of El Paso in lieu thereof, such dedication or payment shall be the sole obligation of Declarant or its nominee.

## ARTICLE X

### GENERAL PROVISIONS

10.01 *Amendments.* This declaration may be amended in whole or in part by an instrument in recordable form executed by the president, and shall be attested by the secretary, of the association, when approved by three-fourths of the votes cast by those members then eligible to vote.

10.02 *Duration.* This declaration shall remain in force for a term of thirty years from the date this declaration is recorded in the real property records of El Paso County, Texas, after which this declaration shall be extended automatically for successive periods of ten years unless and until an instrument signed by the holders of three-fourths of the votes of the members then eligible to vote has been similarly recorded. Any such instrument shall be subject to the prior written approval of the City of El Paso, Texas, and shall become effective on the date stated therein.

10.03 *Severability.* Invalidation of any term or provision of this declaration by judgment or otherwise shall not affect any other term or provision of this declaration.

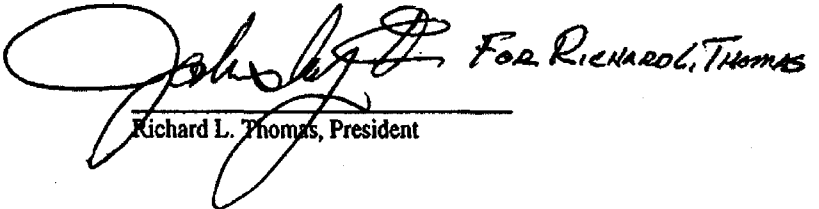
10.04 *Gender and Grammar.* The singular wherever used herein shall be construed to include the plural and the masculine wherever used herein shall be construed to include the feminine.

10.05 *Laws of the State of Texas.* This declaration shall be construed in accordance with the laws of the State of Texas and shall be performable in El Paso County, Texas.

10.06 *Successors in Title.* The terms and provisions of this declaration shall apply to, be binding upon and inure to the benefit of Declarant and the association and their respective successors and assigns.

DATED this 28 day of APRIL, 1995.

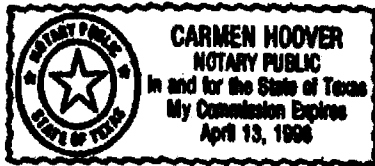
CORONADO OAKS CORPORATION,  
Declarant

  
Richard L. Thomas, President

THE STATE OF TEXAS

COUNTY OF EL PASO

This instrument was acknowledged before me on the 28<sup>th</sup> day of April, 1995  
by Richard L. Thomas, President of Coronado Oaks Corporation, on behalf of said corporation.



  
Notary Public, State of Texas

My commission expires:

Prepared in the Law Office of:

Leon G. Bean  
821 Brisa Del Mar  
El Paso, TX 79912

After filing return to:

John Ivey  
% J. P. Ivey, Inc.  
P.O. Box 13247  
El Paso, TX 79913