

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
ON AND FOR
EMERALD SPRINGS RETREAT
A SUBDIVISION IN
EL PASO COUNTY, TEXAS

TABLE OF CONTENTS

	<u>Page</u>
Preamble	1
Declaration.....	1
ARTICLE I. CONCEPTS AND DEFINITIONS	2
ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION	7
Section 1. Existing Property	7
Section 2. Additions to Existing Property.....	7
ARTICLE III. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.....	7
Section 1. Membership	8
Section 2. Voting Rights	8
Section 3. Board of Directors.....	8
Section 4. Notice and Voting Procedures	9
ARTICLE IV. RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES	9
Section 1. Easement	9
Section 2. Extent of Members' Easements.....	9
Section 3. Restricted Actions by Members.....	10
Section 4. Damage to the Common Properties	10
Section 5. Rules of the Board	10
Section 6. Use of Common Properties	11
Section 7. User Fees and Charges.....	11
Section 8. Encroachments.....	11
Section 9. Private Streets	11
ARTICLE V. COVENANTS FOR ASSESSMENTS.....	12
Section 1. Creation of the Lien and Personal Obligation of Assessments.....	12
Section 2. Purposes of Assessments	13
Section 3. Basis and Amount of Annual Assessments	13
Section 4. Special Group Assessments.....	14
Section 5. Rate of Assessments	14
Section 6. Date of Commencement of Assessments; Due Dates.....	14
Section 7. Duties of the Board of Directors with Respect to Assessments	14
Section 8. Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; and Remedies of Association	15
Section 9. Power of Sale	16
Section 10. Subordination of the Lien to Mortgages	17
Section 11. Exempt Property	18

ARTICLE VI. GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION.....	18
Section 1. Powers and Duties.....	18
Section 2. Board Powers.....	20
Section 3. Maintenance Contracts.....	20
Section 4. Liability Limitations.....	21
Section 5. Reserve Funds.....	21
ARTICLE VII. INSURANCE; REPAIR; RESTORATION; COMMUNITY SERVICES ARRANGEMENTS.....	21
Section 1. Right to Purchase Insurance.....	21
Section 2. Insurance and Condemnation Proceeds.....	21
Section 3. Insufficient Proceeds.....	22
Section 4. Community Services Arrangements.....	22
ARTICLE VIII. ARCHITECTURAL REVIEW.....	23
Section 1. Architectural Review Committee.....	23
Section 2. ARC Jurisdiction.....	23
Section 3. Design Guidelines.....	24
Section 4. Preliminary and Final Plan Submissions.....	25
Section 5. General.....	26
ARTICLE IX. USE OF LOTS IN THE SUBDIVISION; PROTECTIVE COVENANTS.....	27
Section 1. Residential Lots.....	27
Section 2. Minimum Floor Space; Alarms.....	28
Section 3. Garages; Parking.....	28
Section 4. Setback Requirements.....	28
Section 5. Height Limitations; Elevations.....	29
Section 6. Fences; Signs.....	29
Section 7. Easements; Utilities.....	29
Section 8. Temporary Structures and Vehicles.....	30
Section 9. Site Maintenance, Garbage and Trash Collection.....	31
Section 10. Offensive Activities; Pets.....	31
Section 11. Landscaping; Maintenance.....	32
Section 12. Exterior Surfaces.....	32
Section 13. Yard Maintenance; Sprinkler System.....	33
ARTICLE X. EASEMENTS AND TELECOMMUNICATION SERVICES....	33
Section 1. Utility Easements.....	33
Section 2. Sign Easements.....	33
Section 3. Ingress, Egress and Maintenance by the Association.....	33
Section 4. Telecommunication Services.....	33

ARTICLE XI. REGISTRATION	35
Section 1. Registration with the Association	36
Section 2. Special Assessment on Transfer	36
ARTICLE XII. RIGHTS OF CERTAIN MORTGAGEES AND MORTGAGE INSURERS... 37	
Section 1. Notices of Action	37
Section 2. Joinder to Documents	38
Section 3. Special FHLMC Provision.....	39
Section 4. Approval of Amendments.....	39
Section 5. Inspection of Books	40
Section 6. Financial Statements	40
Section 7. Enforcement.....	40
Section 8. Attendance at Meetings.....	40
Section 9. Annexation.....	40
Section 10. Working Capital Fund.....	40
ARTICLE XIII. GENERAL PROVISIONS.....	41
Section 1. Power of Attorney.....	41
Section 2. Further Development	41
Section 3. Duration	41
Section 4. Amendments	42
Section 5. Enforcement.....	42
Section 6. Validity	42
Section 7. Proposals of Declarant.....	43
Section 8. Service Mark.....	43
Section 9. Headings	43
Section 10. Notices to Resident/Member/Owner.....	43
Section 11. Notices to Mortgagees	43
Section 12. Disputes.....	43

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, CHARGES AND LIENS ON AND FOR EMERALD SPRINGS RETREAT, A SUBDIVISION IN EL PASO COUNTY, TEXAS is made effective as of the ____ day of _____, 2005, by View Point Acreage, L.L.C., a Texas limited liability company, and Sunny View, L.L.C., a New Mexico limited liability company, as their interests may appear (sometimes collectively referred to herein as the "Declarant"):

PREAMBLE

Declarant is the owner and developer of a 40.4062 acre tract of land (the "Subdivision") now commonly known and described as:

EMERALD SPRINGS RETREAT, a subdivision in El Paso County, Texas, according to the plat or map thereof filed on the day of _____, 2005, recorded in Plat Book _____, Page _____, Real Property Records, El Paso County, Texas.

Declarant is the owner and developer of 93 residential lots (the "Lots") within the Subdivision, which lots are now commonly known and described as:

Lots 1-18, Block 1; Lots 1-12, Block 2; Lots 1-32, Block 3; and Lots 1-31, Block 4, EMERALD SPRINGS RETREAT, a subdivision in El Paso County, Texas, according to the plat or map thereof filed on the ____ day of _____, 2005, recorded in Plat Book _____, Page _____, Real Property Records, El Paso County, Texas.

In addition to the Lots, there is included within the Subdivision certain Common Areas (as defined hereinafter) including but not limited to the streets, two detention basins, a stilling pond, and a desilting pond, utility easements, and drainage easements. The Common Areas and the Lots are together referred to as the "Properties", and include all land within the platted Subdivision.

Declarant proposes to establish and implement plans for residential living, aesthetic and quality-of-life considerations. The purposes of this Declaration are to: protect the Declarant and the Owners against inappropriate development and use of Lots within the Properties; utilize private streets; assure compatibility of design of improvements within the Subdivision; secure and preserve sufficient setbacks and space between buildings so as to create an aesthetically pleasing environment; provide for landscaping and the maintenance thereof; and in general to

"Articles" shall mean and refer to the Articles of Incorporation (and a amendments thereto and restatements thereof) of the Association on file in the Office of the Secretary of State of the State of Texas, Austin, Texas.

"Assessable Property" shall mean and refer to each and every lot, parcel and tract within the entire Properties which: (i) the Declarant has subjected to and imposed upon a set of restrictive covenants calling for, *inter alia*, the payment of an Annual Assessment to the Association; (ii) may have been or will be given a separately identifiable tax or parcel number by the Central Appraisal District ("CAD") or a similar governmental agency; (iii) is not designated an "open space" or otherwise a portion of the Common Properties. The Declarant proposes to cause each residential Lot within the Properties to constitute an Assessable Property. However, the Declarant reserves the right and discretion to include or exclude any non-residential Lot from the concept of "Assessable Property" and/or to prescribe a different assessment and/or valuation scheme(s) for any non-residential Lot which is subjected to covenants which require the payment of assessments to the Association.

"Association" shall mean and refer to the Emerald Springs Retreat Homeowners Association, Inc., a non-profit Texas corporation which has the power, duty and responsibility of maintaining and administering certain portions of the Properties and all of the Common Properties, administering and enforcing the Covenants and otherwise maintaining and enhancing the quality of life within Emerald Springs Retreat subdivision.

"Board" shall mean and refer to the Board of Directors of the Association.

"Bylaws" shall mean and refer to the Bylaws of the Association, as adapted and amended from time to time in accordance with the provisions of the Texas Non-Profit Corporation Act and this Declaration.

"Central Appraisal District" ("CAD") shall mean and refer to the governmental and/or quasi-governmental agency(ies) (including without limitation the Central Appraisal District of El Paso County) established in accordance with Texas Property Tax Code Section 6.01 et seq. (and its successor and assigns as such law may be amended from time to time) or other similar statute which has, as one of its purposes and functions, the establishment of an assessed valuation and/or fair market value for various lots, parcels and tracts of land in El Paso County, Texas.

"Common Properties" shall mean and refer to any and all areas of land within the Properties which are known, described or designated as common areas, private streets, gate house and gate apparatus, parks, recreational easements, detention basins, desilting ponds, stilling ponds, perimeter fences and columns, monuments and directional signs, landscape easements, greenbelts, open spaces, paths and trails, including without limitation those shown on any recorded subdivision plat of portions of the Properties, if any, as well as those not shown on a recorded subdivision plat but which are intended for or devoted to the common use and

enjoyment of the Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. The Declarant reserves the right to use, during the Development Period, portions of the Common Properties (e.g. a sales information center) for business matters directly and indirectly related to Emerald Springs Retreat subdivision. The concept of Common Properties will also include: (i) any and all public right-of-way lands for which the County of El Paso has required that the Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as but not limited to: street medians, streetscape, hike and bike trails, park areas and quasi-governmental service facilities; and (ii) any and all facilities provided by the Declarant and/or the Association to or for the benefit of the local police, fire and similar governmental departments for which no reimbursement via public funds is requested or anticipated. Declarant shall convey record title to some or all of the Common Properties to the Association if, as and when deemed appropriate by Declarant or as may be required by governmental officials, and Declarant shall at all times have and retain the right to effect minor redesigns or minor reconfigurations of the Common Properties (particularly along the edges).

"Consumer Price Index" ("CPI") shall mean and refer to the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers (El Paso Area). In the event the compilation and/or publication of the CPI shall be substantially revised, transferred to any other governmental department or bureau or agency or shall be discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices) most nearly the same as the CPI shall be used to make the calculations envisioned herein, or in the event no such alternative index exists or a dispute arises concerning the selection of such alternative index, the Board shall have the final right and power to select and/or formulate such an alternate index.

"Covenants" shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration.

"Declarant" shall mean and refer to View Point Acreage, L.L.C., a Texas limited liability company, and Sunny View, L.L.C., New Mexico limited liability company, as their interests may appear, and any or a successor(s) and assign(s) of View Point Acreage, L.L.C. and/or Sunny View, L.L.C., with respect to the voluntary disposition of all (or substantially all) of the assets and/or membership interest of View Point Acreage, L.L.C. and/or Sunny View, L.L.C., and/or the voluntary disposition of all (or substantially all) of the right, title and interest of View Point Acreage, L.L.C. and/or Sunny View, L.L.C. in and to the Properties. However, no person or entity merely purchasing one or more Lots from View Point Acreage, L.L.C. and/or Sunny View, L.L.C. in the ordinary course of business shall be considered a "Declarant".

"Declaration" shall mean and refer to this particular instrument entitled "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens on and for Emerald Springs

Retreat, a subdivision in El Paso County, Texas", together with any and all amendments or supplements hereto.

"Deed" shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

"Design Guidelines" shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Properties, and all amendments, bulletins, modifications, supplements and interpretations thereof. The initial Design Guidelines are attached hereto as Exhibit "A".

"Development Period" shall mean a period commencing on the date of the recording of the Declaration in the public real estate records of El Paso County, Texas and continuing thereafter until and ending the earlier to occur of: (i) substantial completion of all development within the Properties, as determined by the Declarant; or (ii) the tenth (10th) anniversary of the date of recordation of this Declaration in the public real estate records of El Paso County, Texas or (iii) Declarant's recordation in the real property records of El Paso County, Texas of an instrument specifying the end of the Development Period at such earlier date than otherwise established by (ii), in Declarant's sole and absolute discretion.

"Dwelling Unit" shall mean and refer to any building or portion of a building situated upon the Properties which is designed and intended for use and occupancy as a residence by a single person, a couple, a family or a permitted family size group of persons.

"Easement Area" shall mean and refer to those areas which may be covered by an easement specified in Article IX and in Article X below.

"Eligible Insurers" is defined in Article XII below.

"Eligible Mortgagees" is defined in Article XII below.

"Exempt Property" shall mean and refer to the following portions of the Properties: (i) all land and Improvements owned by the United States of America, the State of Texas, El Paso County, or any instrumentality, political subdivision or agency of any such governmental entity acting in a governmental (rather than a proprietary) capacity; (ii) all land and Improvements owned (including legal and beneficial ownership, whether now or in the future) by the Association or constituting a portion of the Common Properties; (iii) all land and Improvements which are not only exempt from the payment of ad valorem real property taxes by El Paso County, the Socorro Independent School District, and the State of Texas, but also are exempt from the payment of any assessments hereunder as expressly determined by written resolution of

the Declarant and/or the Association; and (iv) such other land(s) and/or Improvement(s) and/or Lot(s) which are specifically exempted from the payment of annual Assessments in accordance with a special resolution of the Board.

"Fiscal Year" shall mean each twelve (12) month period commencing on January 1 and ending on the following December 31, unless the Board shall otherwise select an alternative twelve month period.

"Greenway Frontage" shall mean and refer to community facilities, common green space, recreational facilities (including hike and bike trails and the like), floodway easement areas, which are adjacent to rear or side yard Lot lines and/or clearly visible from public streets, sidewalks and rights-of-way.

"Homebuilder" shall mean and refer to each entity and/or individual which: (i) is regularly engaged in the ordinary business of constructing residential dwellings on subdivision lots for sale to third-party homeowners as their intended primary residence; and (ii) has entered into a contract with the Declarant to purchase one or more Lots.

"Improvement" shall mean any physical change to raw land or to an existing structure which alters the physical appearance, characteristics or properties of the land or structure, including but not limited to adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape or physical appearance of any land or structure.

"Institutional Mortgage" shall mean and refer to any bona-fide mortgage, lien or security interest held by a bank, trust company, insurance company, savings and loan association or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or their successors, or guaranteed or subsidized by the FHA and/or VA.

"Lot" shall mean and refer to each separately identifiable portion of the Assessable Property which is platted, filed and recorded in the office of the County Clerk of El Paso County, Texas and which is assessed by any one or more of the Taxing Authorities and which is not intended to be an "open space" or a portion of the Common Properties.

"Member" shall mean and refer to each Resident who is in good standing with the Association and who has filed a proper statement of residency with the Association and who has complied with all directives and requirements of the Association. Each and every Owner shall and must take such affirmative steps as are necessary to become and remain a Member of, and in good standing in, the Association. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a Member of the Association.

"Owner" shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot.

"Payment and Performance Lien" shall mean and refer to the lien described within Sections 8 and 9 of Article V hereinbelow.

"Properties" shall mean and refer to: (i) the Lots described in the Preamble hereinabove; and (ii) the other land within the Subdivision, including but not limited to the Common Properties.

"Resident" shall mean and refer to:

- (a) each owner of the fee simple title to any Lot within the Properties;
- (b) each person residing on any part of the Assessable Property who is a bona-fide lessee pursuant to a legally cognizable lease agreement with an Owner; and
- (c) each individual lawfully domiciled in a Dwelling Unit other than an Owner or bona-fide lessee.

"Structure" shall mean and refer to: (i) any thing or device, other than trees, shrubbery (less than two feet high if in the form of a hedge) and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot) including but not limited to any building, garage, porch, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall or hedge more than two feet in height, signboard or other temporary or permanent living quarters or any temporary or permanent Improvement to any Lot; (ii) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; and (iii) any enclosure or receptacle for the concealment, collection and/or disposition of refuse; (iv) any change in the grade of any Lot of more than three (3) inches from that existing at the time of initial approval by the Architectural Review Committee.

"Subdivision" shall mean and refer to Emerald Springs Retreat, a subdivision of certain land in El Paso County, Texas, according to the plat or map thereof filed on the _____ day of _____, 2005, recorded in Plat Book _____, Page _____, Real Property Records, El Paso County, Texas, as well as any and all amendments, revisions, modifications, corrections or clarifications thereto.

"Taxing Authorities" shall mean and refer to El Paso County, the Socorro Independent School District, the City of El Paso and the State of Texas and any and all other governmental

entities or agencies which have, or may in the future have, the power and authority to impose and collect ad valorem taxes on real property estates, in accordance with the Texas Constitution and applicable statutes and codes.

"Trustee" shall mean and refer to that certain individual(s) or entity(ies) designated or appointed from time to time and at any time by the Association to perform the duties and responsibilities described within Section 9 of Article V below, and its successors and assigns.

"Zoning Ordinance" shall mean and refer any and all applicable County of El Paso and/or other applicable municipal zoning ordinance, governmental regulations, and all amendments thereto.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The Properties, including the Residential Lots, which are, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration within the Emerald Springs Retreat Subdivision are more particularly described in the Preamble hereinabove.

Section 2. Additions to Existing Property. Additional land(s) may become subject to this Declaration, or the general scheme envisioned by this Declaration, as follows:

(a) The Declarant may (without the joinder and consent of any person or entity) add or annex additions of real property to the scheme of this Declaration within the next ten (10) years by filing of record an appropriate enabling declaration, generally similar to this Declaration, which may extend the scheme of the Covenants to such property. Provided further however, such other declaration(s) may contain such complementary additions and modifications of these Covenants as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept and purpose of this Declaration.

(b) In the event any person or entity other than the Declarant desires to add or annex additional Assessable Property and/or Common Property to the scheme of this Declaration, such annexation proposal must have the express approval of the Board.

Any additions made pursuant to this Section 2, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added and correspondingly subject the properties added to the covenants of the enabling declaration. Upon any merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law or by lawful articles or agreement of merger, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and

obligations of another association may, by operation of law or by lawful articles or agreement of merger, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Covenants established by this Declaration, together with the covenants and restrictions established upon any other properties, as one scheme.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Each and every Owner of each and every Lot which is subjected to these, or substantially similar, Covenants shall automatically be, and must at all times remain, a Member of the Association in good standing. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a non-voting Member of the Association. During the Development Period, the Association shall have two (2) classes of Members: Class A and Class B. The Class A Members shall include: (a) all Owners (other than the Declarant during the Development Period); and (b) all Residents (not otherwise Owners) who have properly and timely fulfilled all registration and related requirements prescribed by the Association. The Class B Member shall be the Declarant. Upon conclusion of the Development Period, the Class B membership shall terminate and the Declarant shall become a Class A Member.

Section 2. Voting Rights. There shall be two (2) classes of voting Members during the Development Period:

Class A: The Owner(s) of each Lot shall be entitled to one (1) vote per Lot. Where more than one (1) Owner owns and holds a record fee interest in a Lot such Owner(s) may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Lot yield more than one (1) vote.

Class B: The Class B Member shall have one (1) vote for each Lot it owns.

Any Owner, Resident or Member shall not be in "good standing" if such person or entity is: (a) in violation of any portion of these Covenants, the Design Guidelines, or any rule or regulation promulgated by the Board; (b) delinquent in the full, complete and timely payment of any Annual Assessment, special assessment, or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any rule or regulation promulgated by the Board.

The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, as it deems advisable, for: any meeting of Members; proof of membership in the Association; the status of good standing; evidence of right to vote; the

appointment and duties of examiners and inspectors of votes; the procedures for actual voting in person or by proxy; registration of Members for voting purposes; and such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

Section 3. Board of Directors. The affairs of the Association shall be managed initially by a board of two (2) individuals elected by the Class B Member. However, beginning no later than the fifth annual meeting of the Members of the Association and continuing thereafter, the Board shall be expanded to consist of five (5) individual Directors, three of whom shall be elected by the Class B Member and two of whom shall be elected by the Class A Members. Beginning with the seventh annual meeting and continuing thereafter, the Board shall still consist of five (5) individual Directors, all of whom shall be elected by the Class A Members.

The Directors need not be Members of the Association. Directors shall be elected for two year terms of office and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the Board, by reason of death, resignation, removal, or otherwise, may be filled at any meeting of the Board by the affirmative vote of a majority of the remaining Directors representing the same class of Members who elected the Director whose position has become vacant. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he or she was elected to fill.

Unless otherwise prohibited by the Bylaws, the Board shall be entitled to have one or more private workshop meetings and to have one or more public meetings per Fiscal Year. The Board, no later than 10 days prior to the annual meeting of the Members, shall file with the Declarant and distribute to the Members (by whatever means the Board may deem reasonable and economical) a certification of the Directors to be elected by Class A Members, and the Directors to be elected by the Class B Member. The actual election of the directors shall take place in accordance with the Bylaws or, to the extent not inconsistent with the Bylaws, the directives of the then-existing Board.

Section 4. Notice and Voting Procedures. Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Texas law.

ARTICLE IV

RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES

Section 1. Easement. Subject to the provisions of Sections 2 through 7 of this Article, each and every Owner in good standing with the Association shall have a non-exclusive right and easement of enjoyment in and to all Common Properties, and such easement shall be appurtenant to and shall pass with every Lot. All Residents in good standing with the

Association shall have a non-transferable, non-exclusive privilege to use and enjoy all Common Properties for so long as they are Members in good standing with the Association.

Section 2. Extent of Members' Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant or Association to prescribe reasonable regulations (e.g. speed limits on the streets and limitations on parking on or in the streets) and policies governing, and to charge reasonable expense reimbursements and/or deposits (e.g., key, access card and/or radio transmitter device deposits) related to, the use, operation and maintenance of the Common Properties;

(b) Liens or mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Declarant to develop and improve the Properties or Common Properties or by the Association to improve or maintain the Common Properties;

(c) The right of the Association to enter into and execute contracts with any party (including, without limitation, the Declarant or its corporate affiliates) for the purpose of providing management, maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

(d) The right of the Declarant or the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(e) The right of the Declarant or the Association to enter into and execute contracts with the owner-operators of any community antenna television system ("CATV") or other similar operations for the purpose of extending cable or utility or security service on, over or under the Common Properties to ultimately provide service to one or more of the Lots;

(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 Properties for any period during which any assessment (including without limitation "fines") against a Lot resided upon by such Member remains unpaid, or during which non-compliance with this Declaration or the Design Guidelines exists, and otherwise for any period deemed reasonable by the Association for an infraction of the then-existing rules and regulations and/or architectural guidelines;

(g) The right of the Declarant and/or the Association to hold and sponsor, whether alone or in conjunction with municipal departments or other non-profit groups and entities, events and activities within the Common Properties which are not necessarily limited only to Owners, Residents and Members, but which may also include selected invitees and/or the general public (for which the Board may, in its discretion, charge a user fee equal to or greater

than any fee charged to Owners, Residents and Members), such as (but not necessarily limited to) children's summer recreational events, sports festivals and tournaments, summer camps, day care centers, concerts-in-the-park, wedding receptions, reunions, conferences, picnics, national and/or state holiday commemorations, educational and cultural presentations and other similar events which the Board reasonably believes will be of direct or indirect benefit to the Association and/or an appreciable number of its Members;

(h) The right of the Declarant and/or the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the Declarant and the Board; and

(i) The right of the Declarant and/or the Association to grant permits, licenses and easements over the Common Properties for utilities, roads and other purposes necessary for the proper operation of Emerald Springs Retreat subdivision.

Section 3. Restricted Actions by Members. No Member shall permit anything to be done on or in the Common Properties which would violate any applicable public law or Zoning Ordinance or which would result in the cancellation of or the increase of premiums for any insurance carried by the Association, or which would be in violation of any law or any rule or regulation promulgated by the Board.

Section 4. Damage to the Common Properties. Each Member shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Member or his family and guests.

Section 5. Rules of the Board. All Members shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and a Member determined to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees.

Section 6. Use of Common Properties. The Board shall have the power and authority to prescribe rules and regulations which extend to and cover matters such as (but not limited to) smoking, the possession and consumption of alcoholic beverages, loud and obnoxious noises and behavior, dress and attire and the supervision by attending adults of children. No person or entity (excluding the Declarant) shall use any portion of the Common Properties to:

- (a) solicit, promote or conduct business, religious, political or propaganda matters;
- (b) distribute handbills, newsletters, flyers, circulars or other printed materials,

without the prior written consent of the Association (which consent may be withheld in its sole and absolute discretion). The Association may, on its own motion, permit and allow town hall meetings, voting precincts, community garage sales and bazaars and other reasonable activities to occur on the Common Properties in accordance with rules and regulations deemed reasonable and appropriate by the Association.

Section 7. User Fees and Charges. The Board may levy and collect special charges and fees for any and all extraordinary operation and maintenance of the Common Properties and services which the Board determines to be necessary for the advancement, benefit and welfare of the Owners or Residents. Examples (by way of illustration, and not limitation) of these special charges and fees would include: extraordinary utility consumption; additional gate and/or security personnel for parties or special events; management overtime services; and additional insurance conditions or requirements. In establishing special user fees, the Board may formulate reasonable classifications of users. Such fees should be uniform within each class but need not be uniform from class to class. If an Owner shall fail to pay a charge or fee when due and payable, said unpaid charge or fee shall be delinquent and upon written notice to said Owner shall become a personal debt of said Owner. Failure of any Owner to pay said fee and charge when due and payable, in addition, shall be a breach of these Covenants.

Section 8. Encroachments. If: (a) construction, reconstruction or repair activities which have been approved by the ARC; or (b) shifting, settlement or other movements of any portion of ARC approved improvements, results either in the Common Properties encroaching on a Lot or Dwelling Unit or in a Lot or Dwelling Unit encroaching on the Common Properties or on another Lot or Dwelling Unit, and unless otherwise directed by the ARC, a valid easement shall then and there exist to permit the encroachment and reasonable and necessary maintenance activities related thereto.

Section 9. Private Streets. The entry gatehouse, streets, sidewalks and alley network within Emerald Springs Retreat residential community are "private" and constitute a portion of the Common Properties which are subject to the jurisdiction and administration by the Association. In addition to the other provisions appearing within this Article, 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 entry gatehouse, sidewalks, streets and alleys covering items such as (but not necessarily limited to):

- (a) identification and entry programs for Owners, Residents 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" system 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 Properties.

ARTICLE V

COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Subdivision, hereby covenants and agrees, and each subsequent Owner of any Lot, by acceptance of a Deed therefor, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot so as to have affected the purchase price) to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

(1) regular Annual Assessments;

(2) special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided;

(3) special individual assessments levied against individual Owners to reimburse the Association for extra or unusual costs incurred for items such as (but not limited to): maintenance and repairs to portions of the Properties caused by the willful or negligent acts of the individual Owner, Member or Resident; the remedy, cure or minimizing of problems caused by, or as a result of, violations of these Covenants by an Owner, Member or Resident;

(4) individual assessments and fines levied against an individual Owner, Member or Resident for violations of rules and regulations pertaining to the Association and/or the Common Properties; and

(5) special transfer assessment, discussed in Article XI below.

The regular, special group, special individual and individual assessments, together with such late charges, interest and costs of collection thereof as are hereinafter provided, shall be a charge on
{00024885.DOC.3}

the land and shall be a continuing lien upon each Lot against which each such assessment is made and shall also be the continuing personal obligation of the then-existing Owner, Member and Resident of such Lot at the time when the assessment fell due. Each Owner of each Lot shall be directly liable and responsible to the Association for the acts, conduct and omission of each and every Member and Resident associated with the Dwelling Unit(s) on such Owner's Lot.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used for the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Residents of the Properties and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the improvement and maintenance of private streets, gatehouse, greenbelt easements, floodway easement areas, walkways, common green, hike and bike trails, ponds, lakes, recreational areas and other properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association, including, but not limited to or for: the payment of taxes on the Common Properties and insurance in connection with the Common Properties; the payment for utilities and the repair, replacement and additions of various items within the Common Properties; paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; carrying out the duties of the Board of Directors of the Association as set forth in Articles IV and VI herein; carrying out the other various matters set forth or envisioned herein or in any Amended Declaration related hereto; and for any matter or thing designated by the County of El Paso in connection with any zoning, subdivision, platting, building, development or occupancy requirements. The items and areas described above are not intended to be exhaustive but merely illustrative.

Section 3. Basis and Amount of Annual Assessments. Until and unless otherwise determined by the Board of Directors of the Association, the maximum initial regular base assessment shall be Six Hundred Dollars (\$600.00) per Lot per year. The Association's Board of Directors may fix the actual regular base assessment at an amount equal to or less than the maximum regular base assessment. The Association's Board of Directors may establish a time-price differential schedule for the payment of the regular assessment in which the lowest amount is the actual regular base assessment.

The Board of Directors may be permitted to increase the maximum Annual Assessment without a vote of the Members, but such an adjustment should not exceed five percent (5%) of the previous year's maximum Annual Assessment, or the change in the Consumer Price Index, whichever is greater. The annual maximum assessment may not be otherwise increased without the assent of at least two-thirds of each class of Members at a meeting called for that purpose with at least 60 percent of the Lot Owners (or their proxies) present after adequate notice. If 60 percent do not attend, a second meeting may be called with the same notice and the quorum may be reduced to 30 percent.

The Board shall not increase the Annual Assessment except pursuant to this Section and shall not take formal action on or impose a cost of living increase in the Annual Assessment more than once in any Fiscal Year. Any such cost of living increase in the Annual Assessment shall thereafter remain in effect indefinitely; and any increase shall not be deemed to limit the Board's authority to increase the annual assessment in succeeding Fiscal Years provided, however, that any further increases are made in accordance with this Section. Each and every meeting of the Board in which final action on an Annual Assessment or special group assessment is taken shall be open to the Owners.

Notwithstanding any provision herein to the contrary, any and all lots owned by the Declarant during the Development Period shall be exempt from the payment of any and all assessments of any kind or character.

Section 4. Special Group Assessments. In addition to the regular Annual Assessment authorized by Section 3 hereof, the Association may levy in any Fiscal Year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement upon the Common Properties, including any necessary fixtures and personal property related thereto or for any unusual or emergency purpose(s) (including without limitation those matters arising out of litigation and/or judgments); provided that any such assessment shall have the affirmative approval of at least three-fourths of the individuals comprising the Board.

Section 5. Rate of Assessments. Both regular and special group assessments must be fixed at a uniform rate for all residential Lots owned by Class A Members who are not Homebuilders, unless otherwise approved by at least three-fourths of the individuals comprising the Board. The Declarant shall have the right to collect \$150.00 per Lot from each Homebuilder to cover the first six months (one-half the normal rate) from and after the closing of each particular Lot, and thereafter the Homebuilder shall pay the standard regular assessment for such Lot.

Section 6. Date of Commencement of Assessments; Due Dates. The Annual Assessment shall be due and payable in full in advance on the first day of each Fiscal Year and shall, if not automatically paid within thirty (30) consecutive calendar days thereafter, automatically become delinquent. The Board shall use reasonable efforts to provide each Owner with an invoice statement of the appropriate amount due, but any failure to provide such a notice shall not relieve any Owner of the obligation established by the preceding sentence. The Board may (but is not required to), however, prescribe time-price differential payment schedules which would permit the collection of an amount greater than the Annual Assessment on a semi-annual, quarterly or monthly basis provided that the creditworthiness of the Owner was acceptable to the Board and the inconvenience to the staff of the Association for additional invoicing and collection efforts was minimized or eliminated. The Board may further prescribe: (a) procedures for collecting advance regular Annual Assessments from new Owners, Members or Residents out of "closing

transactions"; and (b) different procedures for collecting assessments from Owners who have had a recent history of being untimely in the payment(s) of assessments.

Section 7. Duties of the Board of Directors with Respect to Assessments.

(a) In the event of a revision to the amount or rate of the Annual Assessment, or establishment of a special group assessment, the Board shall fix the amount of the assessment against each Lot, and the applicable due date(s) for each assessment, at least sixty (60) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association;

(b) Written notice of the applicable assessment shall be actually or constructively furnished to every Owner subject thereto in accordance with the procedures then determined by the Board as being reasonable and economical; and

(c) The Board shall, upon reasonable demand, furnish to any Owner originally liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.

Section 8. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; and Remedies of Association.

(a) Effective as of, and from and after the filing and recordation of this Declaration, there shall exist a self-executing and continuing contract Payment and Performance Lien and equitable charge on each Lot to secure the full and timely payment of each and all assessments and all other charges and monetary amounts and performance obligations due hereunder. Such lien shall be at all times superior to any claim of homestead by or in any Owner. If any assessment, charge or fine or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment, charge or fine shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the highest lawful rate of interest per annum and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Lot of the non-paying Owner/Member/Resident which shall bind such Lot in the hands of the Owner and Owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The personal obligation of the then-existing Owner to pay such assessment, however, shall remain the Owner's personal obligation and shall not pass to Owner's successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any

assessment provided herein by non-use of the Common Properties or abandonment of the Lot. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner;

(b) The Association may also give written notification to the holder(s) of any mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment, charge or fine, particularly where the Association has theretofore been furnished in writing with the correct name and address of the holder(s) of such mortgage, a reasonable supply of self-addressed postage prepaid envelopes, and a written request to receive such notification;

(c) If any assessment, charge or fine or part thereof is not paid when due, the Association shall have the right and option to impose a late charge (but only to the extent permitted by applicable law) to cover the additional administrative costs involved in handling the account and/or to reflect any time-price differential assessment schedule adopted by the Association. The unpaid amount of any such delinquent assessment, charge or fine shall bear interest from and after the date when due at the highest lawful rate of interest per annum until fully paid. If applicable state law provides or requires an alternate ceiling under Vernon's Annotated Texas Civil Statutes Article 5069-1.04, then that ceiling shall be the indicated rate ceiling. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid assessments, charges, fines and delinquent accounts, and there shall also be added to the amount of any unpaid assessment, charge, fine or any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association;

(d) The Association may, at its discretion but subject to all applicable debt collection statutes: (i) prepare and file a lien affidavit in the public records of El Paso County, Texas which specifically identifies the unpaid assessments, charges or fines; and (ii) publish and post, within one or more locations within the Properties, a list of those individuals or entities who are delinquent and, if applicable, their suspended use and enjoyment of the Common Properties until and unless the delinquency has been cured to the reasonable satisfaction of the Association. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association;

(e) All agreements between any Owner and the Association and/or Declarant, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Declarant or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the

maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance the Association and/or Declarant should ever receive an amount deemed interest by applicable law which shall exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the actual base assessment amount or principal amount owing hereunder and other indebtedness of the Owner to the Association and/or Declarant and not to the payment of interest of if such excessive interest exceeds the unpaid balance of the actual Annual Assessment hereof and such other indebtedness, the excess shall be refunded to Owner. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between any Owner and the Association and/or Declarant.

Section 9. Power of Sale. The lien described within the preceding Section is and shall be a contract Payment and Performance Lien. Each Owner, for the purpose of better securing each and all monetary obligations described within these Covenants, and in consideration of the benefits received and to be received by virtue of the ownership of real estate within Emerald Springs Retreat subdivision, has granted, sold and conveyed and by these covenants does grant, sell and convey unto the Trustee, such Owner's Lot. To have and to hold such Lot, together with the rights, privileges and appurtenances thereto belonging unto the said Trustee, and to its substitutes or successors, forever. And each Owner does hereby bind himself and/or herself, their heirs, executors, administrators and assigns to warrant and forever defend the Lot unto the said Trustee, its substitutes or successors and assigns, forever, against the claim, or claims of all persons claiming or to claim the same or any part thereof.

This conveyance is made in trust to secure payment of each and all assessments and other obligations prescribed by these Covenants to and for the benefit of the Association as the Beneficiary. In the event of default in the payment of any obligation hereby secured, in accordance with the terms thereof, then and in such event, Beneficiary may elect to declare the entire indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured due and payable (subject, however, to the notice and cure provisions set forth in Section 51.002 of the Texas Property Code), and in the event of default in the payment of said indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or its successor or substitute as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the Lot then subject to the lien hereof, and mailing and filing notices as required by Section 51.002, Texas Property Code, as then amended (successor to {00024885.DOC.3}

article 3810, Texas Revised Civil Statutes), and otherwise complying with that statute, the Trustee shall sell the Lot, then subject to the lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the Lot as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the Purchaser or Purchasers, with general warranty binding upon the Owner, his heirs and assigns; and out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorney's fees provided for, and then to Beneficiary the full amount of principal, interest, attorney's fees and other charges due and unpaid on said indebtedness secured hereby, rendering the balance of the sales price, if any, to the Owner, his heirs or assigns and/or to any other lienholders (if so required by applicable law); and the recitals in the conveyance to the Purchaser or Purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner, his heirs and assigns.

It is agreed that in the event a foreclosure hereunder should be commenced by the Trustee, or its substitute or successor, Beneficiary may at any time before the sale of said property direct the said Trustee to abandon the sale, and may then institute suit for the collection of said indebtedness, and for the foreclosure of this contract Payment and Performance Lien; it is further agreed that if Beneficiary should institute a suit for the collection thereof, and for a foreclosure of this contract lien, that it may at any time before the entry of a final judgment in said suit dismiss the same, and require the Trustee, its substitute or successor to sell the Lot in accordance with the provisions of this section. Beneficiary, if it is the highest bidder, shall have the right to purchase at any sale of the Lot, and to have the amount for which such Lot is sold credited on the debt then owing. Beneficiary in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness hereby secured has been paid in full, or until said Lot is sold hereunder, and each substitute and successor trustee shall succeed to all of the rights and powers of the original trustee named herein. In the event any sale is made of the Lot, or any portion thereof, under the terms of this section, the Owner, his heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the Purchaser at such sale, and in the event of his failure to do so he shall thereupon from and after the making of such sale be and continue as tenants at will of such Purchaser, and in the event of his failure to surrender possession of said property upon demand, the Purchaser, his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof, is situated. The foreclosure of the continuing contract lien on any one or more occasions shall not remove,

replace, impair or extinguish the same continuing lien from securing all obligations arising from and after the date of foreclosure.

Section 10. Subordination of the Lien to Mortgages. The lien securing the payment of the assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

- (a) bona-fide first mortgage or deed of trust liens for purchase money and/or home improvement purposes placed upon a Lot, including without limitation Institutional Mortgages and Eligible Mortgages, in which event the Association's lien shall automatically become subordinate and inferior to such first lien;
- (b) liens for taxes or other public charges as are by applicable law made superior to the Association's lien; and
- (c) such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien;

provided however, such subordination shall apply only to: (i) the assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien; (ii) the permitted lien on the Lot alone and not on or to any easement appurtenant for use and enjoyment of the Common Properties. Such sale shall not relieve such Lot from liability for the amount of any assessment thereafter becoming due nor from the lien of any such subsequent assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay assessments and/or to hinder the Association in performing its functions hereunder.

Section 11. Exempt Property. The following property otherwise subject to this Declaration shall be exempted from any assessments, charge and lien created herein:

- (a) All properties dedicated to and accepted by a local public or governmental authority;
- (b) Common Properties; and
- (c) Exempt Property.

ARTICLE VI

GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 1. Powers and Duties. The affairs of the Association shall be conducted by its Board. The Board, for the benefit of the Association, the Properties and the Owners and the Members and Residents, may provide and may pay for, out of the assessment fund(s) provided for in Article V above, one or more of the following:

(a) Care, preservation and maintenance of the Common Properties (including without limitation the proper maintenance of the private streets) and the furnishing and upkeep of any desired personal property for use in or on the Common Properties;

(b) Recreational and social programs and activities for the general benefit of the Residents and programs which are designed only for separately identifiable sub-groups of Residents, such as (but not limited to) infants, adolescents, teenagers, students, mothers and senior citizens;

(c) Supplementing (to the extent, if any, deemed necessary, appropriate and affordable by the Board) the police, fire, ambulance, garbage and trash collection and similar services within the Properties traditionally provided by local governmental agencies;

(d) Taxes, insurance and utilities (including, without limitation, electricity, gas, water, sewer and telephone charges) which pertain to the Common Properties;

(e) The services of any person or firm (including the Declarant and any affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association. The Board is specifically authorized to hire and employ one or more managers, secretarial, clerical, staff and support employees. The Board is specifically authorized to engage personnel (such as ad valorem tax consultants and computer operators) and equipment (such as computers, software and electronic communication and transmission devices), and to purchase and/or rent magnetic tapes and the like for the administration of the collection of assessments described within the preceding Article V;

(f) Legal and accounting services and all costs and expenses reasonably incurred by the Architectural Review Committee; and

(g) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following additional rights, powers and duties:

(h) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

(i) To enter into agreements or contracts with insurance companies, Taxing Authorities, the holders of first mortgage liens on the individual Lots and utility companies with respect to: (i) any taxes on the Common Properties; (ii) monthly escrow and impound payments by a mortgagee regarding the assessment, collection and disbursement process envisioned by Article V hereinabove; (iii) utility installation, consumption and service matters; and (iv) the escrow or impounding of monies sufficient to timely pay the Annual Assessment applicable to any Lot;

(j) To borrow funds (including, without limitation, the borrowing of funds from the Declarant and/or its affiliates) to pay costs of operation, secured by such assets of the Association as deemed appropriate by the lender and the Association;

(k) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(l) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;

(m) To make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time and to enter into concession agreements regarding food, beverage, vending and other products and services within the Common Properties;

(n) To prepare an annual operating budget and to make available for review by each Owner at the Association offices within ninety (90) days after the end of each Fiscal Year an annual report;

(o) Pursuant to Article VII herein, to adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency; and

(p) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner, Resident or Member for violation of such provisions or rules. The Board is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary "fines" system 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 individual Lot Owner assessment secured by the continuing Payment and Performance Lien herein established.

The Association may: (i) borrow monies from the Declarant; (ii) lease equipment from the Declarant; (iii) contract with the Declarant concerning the provision of any personnel, labor, supplies, materials and services, provided such contract terms and conditions are: generally comparable (in terms of price, quality and timeliness) with those that might be otherwise obtained from unrelated third parties; and, as to professional management contracts, terminable by the Association at any time for any reason whatsoever and without penalty upon furnishing at least ninety (90) days advance notice thereof to Declarant. The Board shall not be required to solicit bids from unrelated third parties before entering into any contract with the Declarant and the reasonable judgment and resolution of the Board to enter into any such contract with the Declarant (absent fraud, gross negligence or willful misconduct) shall be final and conclusive and binding upon the Association and all of its Members.

Section 2. Board Powers. The Board shall have the right and obligation to perform the functions of the Board on behalf of the Association. In the event or if for any reason the Board is not deemed authorized to act for and on behalf of the Association and the Members, then the Declarant may exercise its power and authority under Article XIII, Section 1, to act for and on behalf of the Association and the Members, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting.

Section 3. Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner, Member or Resident (including, without limitation, the Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

Section 4. Liability Limitations. Neither any Resident nor the directors and officers and managers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or for a tort of another Resident, whether such other Resident was acting on behalf of the Association or otherwise. Neither the Declarant, the Association, its directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to

inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. The Declarant, the Association or any other person, firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other actual, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof.

Section 5. Reserve Funds. The Board may establish reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net or taxable income to the Association.

ARTICLE VII

INSURANCE; REPAIR; RESTORATION; COMMUNITY SERVICES ARRANGEMENTS

Section 1. Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenant thereto, for the interest of the Association, its Board of Directors, officers, managers, agents and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be deemed appropriate by the Board and/or as specifically required by the Eligible Mortgagees or Eligible Insurers. Such insurance may include, but need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs;

(b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Board, Owners, Residents and Members with respect to the Common Properties;

(c) Fidelity bonds for all officers and employees of the Association having control over the receipt or disbursement of funds; and

(d) Liability insurance regarding the errors and omissions of directors, officers, managers, employees and representatives of the Association.

Section 2. Insurance and Condemnation Proceeds. The Association shall be the exclusive representative of the Members in any proceedings, negotiations, settlements or agreements concerning insurance or condemnation. The Association and the Members may use the net

insurance or condemnation proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance or condemnation. Any balance from the proceeds of insurance or condemnation paid to the Association, remaining after satisfactory completion of repair and replacement or after the Board has elected to waive the repair, restoration or replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

Section 3. Insufficient Proceeds. If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special group assessment as provided for in Article V of this Declaration to cover the deficiency.

Section 4. Community Services Arrangements. Declarant and the Association have arranged for the employment and utilization of a mechanical crossing gate at the gatehouse entry point to the Properties (with no guard service planned). The Declarant and the Association hope that the gatehouse and private streets concept will discourage undesired and unauthorized vehicular traffic within the Properties and foster a higher degree of peace and tranquility. However, the Properties are not entirely encompassed by a fence nor are there any plans for such an enclosure. Also, the gatehouse program is not designed to restrict or impede pedestrian traffic into, within or out of the Properties.

Although the Declarant and the Association reasonably believe that the existence of controlled access points may discourage the commission of criminal acts (e.g., burglary, theft, etc.) within the Properties, nevertheless neither the Declarant nor the Association warrant or guarantee that: (a) the 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 Properties. These controlled access points are not designed or intended to replace the conventional police and fire protection and paramedical services available from the County 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, Residents and Members (and their respective family members and guests).

Each Owner, Resident 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, Resident and Member;

(b) Each Owner, Resident and Member shall, from time to time and at various times, consult with reputable insurance industry representatives of each Owner's, Resident'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, Resident and Member covering his or her real and personal property;

(c) Each Owner, Resident and Member releases and holds Declarant and the Association 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 Properties, 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, Resident and Member will cooperate with Declarant, the Association and the ARC in connection with the establishment, evolution and maintenance of reasonable controls on the pedestrian and vehicular traffic into and within the Properties 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 Properties.

ARTICLE VIII

ARCHITECTURAL REVIEW

Section 1. Architectural Review Committee. The Architectural Review Committee ("ARC") shall be composed of at least two (2) individuals selected and appointed by the Declarant, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a consistent approach to and construction of improvements within Emerald Springs Retreat Subdivision. The original members of the ARC shall be Andy J. Winton and Herschel Stringfield. In the event of the death, incapacity or resignation of any member of the ARC, the Declarant (during the Development Period) shall

have full authority to designate and appoint a successor. From and after conclusion of the Development Period, the ARC members shall be appointed, and replaced in the event of death, incapacity or resignation, by the Board.

Section 2. ARC Jurisdiction. No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications have been submitted to and approved in writing by the ARC, or a majority of its members, as to:

- (i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, proper facing of main elevation with respect to nearby streets, and zero lot-line considerations, in accordance with this Declaration and/or the Design Guidelines and/or bulletins;
- (ii) minimum finished floor elevation and proposed footprint of the dwelling;
- (iii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (iv) drainage solutions;
- (v) the observance of and compliance with applicable setback lines and easement areas and the enhancement of aesthetic views and visual corridors to and from the Common Properties; and
- (vi) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within the Design Guidelines, bulletins promulgated by the ARC, or matters in which the ARC has been vested with the authority to render a final interpretation and decision.

The ARC is authorized and empowered to consider and review any and all aspects of construction, location and landscaping, which may, in the reasonable opinion of the ARC, adversely affect the living enjoyment of one or more Owner(s) or Residents or the general value of the Properties. Also, the ARC is permitted to consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the ARC.

The following is a general outline of the steps likely to be involved in the review of plans and specifications:

- (1) Submit preliminary plans and specifications to the ARC;
- (2) Submit final plans and specifications to the ARC.

The ARC may require as a condition precedent to any approval of the final plans and specifications, that the applicant obtain and produce an appropriate building permit from the any governmental authority requiring such a permit, if any. The ARC is also authorized to coordinate with the County of El Paso and any applicable municipality in connection with the applicant's observance and compliance of the construction standards set forth in this Declaration, the Design Guidelines, and any bulletins or lot information sheets promulgated thereunder. However, the mere fact that a building permit is issued with respect to a proposed structure does not automatically mean that the ARC is obliged to unconditionally approve the plans and specifications. Similarly, the ARC's approval of any plans and specifications does not mean that all applicable building requirements of the County of El Paso or any applicable municipality have been satisfied.

Each and every owner and applicant shall use their respective best efforts to commence construction of all improvements approved by the ARC and the County of El Paso, Texas (and any and all other applicable municipalities and governmental agencies) within sixty (60) days after obtaining all necessary governmental approvals therefor and thereafter diligently pursue the project through to completion.

Section 3. Design Guidelines. The initial Design Guidelines are attached hereto as Exhibit "A". The ARC may, from time to time, publish and promulgate additional or revised Design Guidelines, and such design guidelines shall be explanatory and illustrative of the general intent of the proposed development of the Properties and are intended as a guide to assist the ARC in reviewing plans and specifications. The Architectural Review Committee shall have the right, power and authority to establish and prescribe architectural restrictions and guidelines pertaining to items and topics such as (but not necessarily limited to):

- a. A site plan showing the "footprint" of the building, location of all existing and proposed improvements, including but not limited to, structures, patios, driveways, parking areas and structures, fences and walls.
- b. Exterior elevations of all proposed buildings and structures.
- c. A description and samples of exterior materials, colors, textures and shapes of all buildings and structures.
- d. Landscape plans, which shall include walkways, fences, walls, details, elevation changes, irrigation and watering systems, vegetation and ground cover (indicating size, spacing and quantity), and the protection and preservation of trees and other existing and introduced vegetation.
- e. Utility connections, including routing of electrical, gas, water, sanitary sewer, telephone cables and prewired CATV facilities.

- f. Exterior illumination and location.
- g. Dimensional floor plan of all enclosed spaces and any garages or parking facilities (particularly where the garages face the street).
- h. Smoke detector locations.
- i. Mailbox location and design.
- j. Drainage solutions.
- k. Such other matters as may be required by the then applicable zoning and building codes of the County of El Paso and any applicable municipality.
- l. The items described within Section 2 above and any other data or information requested or deemed reasonably necessary by the Architectural Review Committee.

 * PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH *
 * PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND *
 * OWNER OF ANY LOT IN THE SUBDIVISION IS STRONGLY *
 * ENCOURAGED TO CONTACT THE DECLARANT OR ASSOCIATION *
 * OR THE ARC TO OBTAIN AND REVIEW THE MOST RECENT *
 * DESIGN GUIDELINES WHICH WILL CONTROL THE *
 * DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT. *

Section 4. Preliminary and Final Plan Submissions. The Architectural Review Committee is authorized and empowered to and shall consider, review and comment on preliminary plans submitted in duplicate on an informal basis to assist Owners, developers, homebuilders and prospective purchasers of the Lots in complying with these Covenants and to assist in the completion of any feasibility studies undertaken by such persons or entities. [The ARC shall have the right, however, to prescribe reasonable limitations concerning the time, effort and expense likely to be involved in handling such matters on an informal basis]. If the preliminary plans and specifications are approved by the ARC, the Owner or the Owner's designated representative will be so advised by letter. If found not to be in compliance with these Covenants, the Owner or the Owner's designated representative will be so advised by letter containing a reasonable statement and explanation of items found not to comply with these Covenants. If the ARC fails to approve or disapprove such plans and specifications within thirty (30) days after the actual date on which the submission is received, approval of the matters submitted shall be presumed. Comments on and approvals of preliminary plans and

specifications shall be binding upon the Architectural Review Committee provided that conforming final plans and specifications are submitted within ninety (90) days of such preliminary comments or approvals.

Final plans, specifications and surveys shall be submitted in duplicate to the Committee for approval or disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans, specifications and surveys meet the approval of the ARC, one complete set of plans, specifications and surveys will be retained by the ARC and the other complete set will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these Covenants, one set of such plans, specifications and surveys shall be returned marked "Disapproved," accompanied by a reasonable statement and explanation of items found not to comply with these Covenants. Any modification or change to the approved set of plans, specifications and surveys must again be submitted to the ARC for its inspection and approval. The ARC's approval or disapproval, as required herein, shall be in writing. If the ARC fails to approve or disapprove such plans, specifications and surveys within thirty (30) days after the actual date on which the submission is received, then the ARC approval shall be presumed.

The ARC may from time to time publish and promulgate architectural standards bulletins and/or lot information sheets which shall be fair and reasonable and shall carry forward the spirit and intention of these Covenants. Such bulletins and lot information sheets shall supplement these Covenants and are incorporated herein by reference. EACH OWNER SHALL SEEK AND OBTAIN AND BECOME THOROUGHLY FAMILIAR WITH ANY AND ALL ARCHITECTURAL STANDARDS BULLETINS AND LOT INFORMATION SHEETS PRIOR TO ACQUISITION OF, AND CONSTRUCTION ON, ANY LOT WITHIN THE SUBDIVISION.

Section 5. General. The following declarations within this Section apply to the ARC. The ARC shall be entitled, at any time and from time to time, to associate or employ a staff and to seek and obtain professional advice and counsel (including but not limited to architects, attorneys, designers, engineers and landscape technicians) in connection with the performance of its duties with all reasonable costs and expenses related thereto paid for or reimbursed by the Association. The Association may, in turn, reasonably recoup some or all of these expenses from the applicants seeking review and approval of plans and specifications.

The Declarant and/or the Association and/or the ARC may require any Owner to restore such Owner's improvements or alteration to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvement) if such improvements or alterations were commenced or constructed in violation of this Article. In addition, the Declarant and/or the Association and/or the ARC may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the

cost thereof as a special individual assessment against the Lot upon which such improvements or alterations were commenced or constructed.

Neither Declarant, nor the Association, nor the ARC, nor the Board nor the officers, directors, managers, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. No approval of plans and specifications and no publication of any Design Guidelines, architectural bulletins or lot information sheets shall be construed as representing or implying that such plans, specifications, guidelines, bulletins or sheets will, if followed, result in properly designed improvements and/or improvements built in a good and workmanlike manner. Every person or entity who submits plans or specifications, and every Owner of each and every Lot, agrees that he will not bring any action or suit against Declarant, the Association, the ARC, the Board, or the officers, directors, managers, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

After reasonable notice to the Owner (and any applicable Resident), any member or agent of the Committee may from time to time at any reasonable hour or hours enter and inspect any property subject to the jurisdiction of the ARC to confirm improvement or maintenance or alteration in compliance with the provisions hereof. No improvements or addition or change or alteration thereof shall be constructed, erected, placed, altered or maintained on any Lot which is in violation of any of the laws or ordinances of El Paso County, Texas or any other applicable municipal or governmental laws, rules or regulations. However, Declarant, the Association, the ARC and their respective officers, directors, managers, agents and employees shall have no obligation to enforce or to report the violation of any such law, ordinance, rule or regulation.

The ARC shall have the power to grant variances, waivers, tolerances or modifications of the standards set forth within the Covenants under circumstances and conditions deemed reasonable, appropriate and prudent by the ARC. Matters of "quality", "adequacy" and "propriety" are to be considered by the ARC generally from an aesthetic standpoint, rather than from an engineering standpoint. Plans and specifications are not reviewed or approved for engineering or structural design or technical quality of materials, and by approving such plans and specifications neither the ARC, nor the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications.

ARTICLE IX

USE OF LOTS IN THE SUBDIVISION; PROTECTIVE COVENANTS

The Subdivision (and each Lot situated therein) shall be constructed, developed, occupied and used as follows:

Section 1. Residential Lots. All Lots within the Subdivision shall be used, known and described as residential Lots, unless otherwise indicated on the Subdivision plat. Lots shall not be further subdivided and, except for the powers and privileges herein reserved by the Declarant, the boundaries between lots shall not be relocated without the prior express written consent of the ARC. No building or structure shall be erected, altered, placed or permitted to remain on any residential Lot other than one (1) single-family dwelling and, if any, its customary and usual accessory structures (unless otherwise prohibited herein). No building or structure intended for or adapted to business or commercial purposes shall be erected, placed, permitted or maintained on such premises, or any part hereof, save and except those related to development, construction and sales purposes of a bona-fide homebuilder, the Declarant or the Association. No Owner, Resident or Member shall conduct, transmit, permit or allow any type or kind of home business or home profession or hobby on any Lot or within any Dwelling Unit which would: (i) attract automobile, vehicular or pedestrian traffic to the Lot; (ii) involve lights, sounds, smells, visual effects, pollution and the like which would adversely affect the peace and tranquility of any one or more of the Residents within the Subdivision. The restrictions on use herein contained shall be cumulative of, and in addition to, such restrictions on usage as may from time to time be applicable under and pursuant to the statutes, rules, regulations and ordinances of El Paso County, Texas or any other governmental authority having jurisdiction over the Subdivision.

Section 2. Minimum Floor Space; Alarms. Each one (1) story dwelling and each one-and-one half (1.5) and two (2) story dwelling constructed on any Lot shall contain such minimum square feet of air-conditioned floor area (exclusive of all porches, garages or breezeways attached to the main dwelling) as may be specified by the Design Guidelines and/or the ARC for the first and/or second stories and/or the total. The Design Guidelines and/or the ARC may require that the construction plans and specifications for each residential dwelling include provisions for the installation and equipment of fire and burglar alarms, smoke detectors and such other safety and security devices which, from time to time, become technologically feasible for residential use as may be further described and defined by the Architectural Review Committee.

Section 3. Garages; Parking. Each single-family residential dwelling erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles, unless otherwise specifically approved by the ARC. Carports are not encouraged but may be permitted under limited rigid circumstances if, as and when, in the absolute opinion of the Architectural Review Committee, the exterior surface and appearance will substantially compare with a garage and if

absolutely no storage of items, which would otherwise be visible, will occur thereunder. Any and all proposed garage or carport plans and specifications must be submitted to the Architectural Review Committee for review and approval. Each Owner, Resident and Member shall use their respective best efforts to refrain from:

(a) habitually parking any automobile or vehicle on any Lot outside of an approved garage area between any Dwelling Unit and the abutting front street or between any Dwelling Unit and an abutting side street; and

(b) performing, permitting or allowing repair or maintenance work to any automobile or other vehicle outside the garage and visible to the abutting street(s).

Under no circumstances or conditions shall any automobile or other vehicle be parked on a non-paved portion of any Lot.

Section 4. Setback Requirements. Setback requirements are described within the Design Guidelines. The Architectural Review Committee may establish additional setback lines (for fences, walls and for buildings) from the front property line of each Lot at varying distances; the mixture of various front setbacks may satisfy requirements of El Paso County and reflect architectural style and design. In order to allow flexibility for: (i) implementation of state-of-the-art construction designs, and (ii) any consolidation of two (2) or more Lots to accommodate the construction of a lesser number of dwellings thereon, the Architectural Review Committee shall also have the authority to develop and refine rear and side yard setback requirements. Within the setback areas for each Lot and subject to the construction or installation of any other items otherwise permitted, a non-exclusive surface easement and right-of-way is reserved for the Association in order to properly facilitate and carry out its duties and responsibilities under this Declaration.

Section 5. Height Limitations; Elevations. No building or structure on any Lot shall exceed the height limit specified by the Design Guidelines or the ARC. In order to create a desired architectural appearance and mix of one (1) and two (2) story structure heights the Architectural Review Committee may prescribe inter-related height and setback requirements. The Architectural Review Committee shall have the power and authority to further develop and refine guidelines and interpretations concerning the height concepts and limitations envisioned herein.

Section 6. Fences; Signs. No fence, wall or hedge (which serves as a barrier) shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line as established by the Design Guidelines or the Architectural Review Committee. All exterior mechanical or service equipment must be enclosed within fences, walls or landscaping so as not to be visible from the immediate residential street. No fence, wall or hedge shall be erected,

placed or altered on any residential Lot without the approval of the Architectural Review Committee. No sign or signs shall be displayed to the public view on any residential Lot, except:

(a) any builder, during the applicable initial construction and sales period, may utilize one (1) professional sign [of not more than sixteen (16) square feet in size] per Lot for advertising and sales purposes;

(b) thereafter, a dignified "For Sale" or "For Lease" sign [of not more than six (6) square feet in size] may be utilized by the Owner of the respective residential Lot for the applicable sale or lease situation; and

(c) development-related signs owned or erected by the Declarant shall be permitted.

The Declarant and/or the ARC shall have the right and privilege to develop and implement uniform signage specifications and requirements applicable throughout the Subdivision.

Section 7. Easements; Utilities. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded subdivision plat. Utility service may be installed along or near the front and/or side and/or rear Lot lines and each Lot Owner shall have the task and responsibility of determining the specific location of all such utilities. Except as may be otherwise permitted by the ARC (e.g. fencing, flatwork, landscaping, etc.), no Owner shall erect, construct or permit any obstructions or permanent improvements of any type or kind to exist within any easement area, nor shall anything be done or permitted within an easement area which would restrict or adversely affect drainage. Electrical (and possibly other utility) easements are likely to be located at or near or along the rear lot line(s), and each Lot Owner assumes full, complete and exclusive liability and responsibility for all cost and expense related to damage, repair, relocation and restoration of such improvements or fence. Except as to special street lighting or other aerial facilities which may be required by El Paso County, Texas or which may be required by the franchise of any utility company or which may be installed by the Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the Subdivision whether upon individual Lots, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Subdivision, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility. All utility meters, equipment, air conditioning compressors and similar items must be visually screened and located in areas designated by the Architectural Review Committee (unless on the roof). The Association or the Architectural Review Committee shall have the right and privilege to designate the underground location of any CATV-related cable. Pursuant to requirements by utility company(ies) providing service to the

{00024885.DOC.3}

Properties, the following provisions and covenants are to run with the land within the Subdivision with the same force and effect as all other Covenants herein and as if such provisions and covenants had originally been recited within each deed to each Lot executed and delivered by Declarant:

"(a) Electric service of the type known as 120/240 volt, single phase, 3 wire, 60 cycle, alternating current has been made available to the Lot hereby conveyed by means of underground facilities, at a cost in excess of the cost of service provided by the usual and standard overhead facilities, and each Owner acknowledges for himself, his heirs, executors, administrators, successors and assigns, that electric service of any character other than that hereinabove described will not be available except at added cost to such Owner and in accordance with the rules and regulations for electric service of the subject electric utility company; and

(b) Since electric service is to be furnished to each of the Lots solely by underground facilities, each Owner agrees for himself, his heirs, executors, administrators, successors and assigns, that he will, at his own expense, install and maintain the necessary underground facilities to connect the Owner's installation with the service wires of the subject electric utility company and security system at the point of delivery of electric energy."

Each Owner shall assume full and complete responsibility for all costs and expenses arising out of or related to the repair, replacement or restoration of any utility equipment damaged or destroyed as a result of the negligence or mischief of any Resident of the Owner. Each Owner agrees to provide, at the sole cost and expense of each Owner, such land and equipment and apparatus as are necessary and appropriate to install and maintain additional lighting and security-related measures which becomes technologically provident in the future.

Section 8. Temporary Structures and Vehicles. No temporary structure of any kind shall be erected or placed upon any Lot. Temporary structures shall include, but not be limited to, any garage, servant's house or other improvement erected more than one hundred twenty (120) days prior to the completion of the main portion of the single-family dwelling. However, upon receiving the prior, express written approval of the Architectural Review Committee, Declarant or any bona-fide homebuilder may maintain temporary sales or construction offices provided such sales or construction offices are removed within sixty (60) days after completion of sales or construction, as the case may be.

Any truck (over 3/4 ton and excluding conventional pickups), bus, boat, boat trailer, trailer, mobile home, golf cart, motorcycle, recreational vehicle, campmobile, camper and any vehicle other than a conventional automobile shall, if brought within the Subdivision by or on behalf of any Owner, Member or Resident, be stored, placed or parked within the enclosed garage on the appropriate Lot unless otherwise directed by the Architectural Review Committee. The

Declarant and/or the Association may, at its option, provide and designate (and charge for and collect a reasonable user fee as approved by the Board), at one or more locations within the Properties, a surface facility for the storage of any vehicle mentioned above which cannot be stored properly within a garage; if, as and when such facility is designated, then each Owner, Member and Resident agrees to cooperate in appropriately using such facility; HOWEVER, Declarant has no plans to provide such surface storage facility, now or in the future.

Section 9. Site Maintenance, Garbage and Trash Collection. Lot Owners are responsible to keep construction sites free of rubbish on a daily basis and streets (to the crown) scraped clear of any mud accumulation. Lot Owners will not be allowed to store any excavation of soil on streets or adjacent sites. Soil runoff due to rain or irrigation will be removed promptly from streets and sidewalks by the Lot Owner.

All garbage shall be kept in plastic bags or other containers required by and meeting the specifications of El Paso County and/or any private garbage collection service. Each Owner, Member and Resident shall observe and comply with any and all regulations or requirements promulgated by the Association, El Paso County, or any private garbage collection service in connection with the storage and removal of trash and garbage, particularly where the collection point is in front of the residential Dwelling Units.

No residential Lot, or any portion of the Common Properties or any public right-of-way area, shall be used or maintained as a dumping ground for rubbish, trash or garbage. No Owner, Member or Resident shall dump grass clippings, landscape debris, garbage or trash of any kind on another Lot. Each Owner is responsible for the appearance and condition of such Owner's Lot. If more than five (5) days after prior written notice an Owner shall fail to: (i) control weeds, grass and/or other unsightly growth; (ii) remove trash, rubble, building and construction debris; or (iii) exercise reasonable care or conduct to prevent or remedy an unclean, untidy or unsightly condition, then Declarant or the Association shall have the authority and right to go onto said Lot for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner of said Lot a reasonable charge for mowing or cleaning said Lot on each respective occasion of such mowing or cleaning. The assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing Payment and Performance Lien upon each Lot against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the assessment occurred.

Section 10. Offensive Activities; Pets. No noxious or offensive activity or pollution emitting sight/sound/smell, as determined by the ARC, shall be conducted or permitted on any portion of the Properties. No direct sales activities (excluding, however, activities of the Declarant and bona-fide homebuilders and community activities specifically approved by the

Board), garage sales, yard sales, patio sales, flea markets, bazaars, sample sales, promotional dinner parties or similar activities shall be conducted on any portion of the Subdivision.

Any noise or odor emitted by, and any discharge or waste from, any animal (including without limitation dogs and cats) which can be seen, heard or smelled outside the perimeter of the subject Owner's (or Member's or Resident's) Lot shall be deemed noxious and offensive and is therefore prohibited. No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential Lot, except that not more than two (2) dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes and they are not noxious, offensive, vicious (e.g. pit bull terriers shall not be permitted within the Properties) or dangerous. Any outside pen, cage, kennel, shelter, concrete pet pad, run, track or other building, structure or device directly or indirectly related to animals which can be seen, heard or smelled by anyone other than the subject Lot Owner must be approved by the Architectural Review Committee in its sole and absolute discretion. Each and every dog, cat or other household pet, if not kept and confined within an enclosed non-visible portion of the Owner's/Resident's/Member's Lot, must be leashed and accompanied by its corresponding Owner/Resident/Member, particularly when traveling beyond the perimeter of the Owner's/Resident's/Member's Lot, and such Owner/Resident/Member shall promptly clean and remove the discharge and waste of any pet.

Section 11. Landscaping; Maintenance. Construction of each and every residential dwelling within the Properties shall include the installation and placement of appropriate landscaping. Each Owner, Member and Resident of any Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep and maintain the Lot, and all improvements therein and thereon, in a well maintained, safe, clean and attractive condition at all times. Such maintenance shall include (without limitation):

- the-proper seeding, consistent watering and mowing of all lawns;
- the pruning and cutting of all trees and shrubbery;
- prompt removal of all litter, trash, refuse and waste; watering of all landscape;
- keeping exterior lighting and mechanical facilities in working order;
- keeping lawn and garden areas alive, free of weeds and attractive;
- keeping driveways in good repair and condition; promptly
- repairing any exterior damage; complying with all governmental health and police requirements,

all in a manner and with such frequency as is consistent with aesthetics, safety and good property management. The Association, and its agents, during normal business hours, shall have the right (after 5 days written notice to the Owner of any Lot involved, setting forth the specific violation or breach of this covenant and the action required to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner), to enter on the

subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any person or entity) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es). The cost of such remedy or abatement will be paid to the Association upon demand and if not paid within thirty (30) days thereof, shall become a lien upon the Lot affected. The Association, or its agent, shall further have the right (upon like notice and conditions), to trim or prune, at the expense of the Owner, any hedge, tree or any other planting that, in the written opinion of the Association, by reason of its location on the Lot, or the height, or the manner in which it is permitted to grow, is detrimental to the adjoining Lots, is dangerous or is unattractive in appearance. The lien provided under this section will constitute a lien retained against such property with the same force and effect as the Payment and Performance Lien for assessment set forth in these Covenants.

Section 12. Exterior Surfaces. All roofs shall be constructed of slate, tile, metal, composition, built-up roof or other materials approved by the Architectural Review Committee taking into account harmony, conformity, color, appearance, quality and similar considerations. The exterior surface of all residential dwellings shall be constructed of stucco, brick, stone, glass or other materials approved by the Architectural Review Committee. The Architectural Review Committee is specifically authorized to require a continuous, uniform surface with respect to all improvements which directly face perimeter common green area or adjoin any Greenway Frontage. Installation of all types of exterior items and surfaces such as address numbers or external ornamentation, outdoor illumination, lights, mail chutes, exterior paint or stain and the like shall be subject to the prior approval of the Architectural Review Committee. All antennae (including, without limitation, radio or television transmitting or receiving antennae and satellite dishes) should be installed within the residential dwelling so that no exterior antennas or satellite dishes are visible. Each Owner shall keep and maintain the quality and appearance of all exterior surfaces, particularly those areas covered by an approved paint or stain, in good repair, condition and appearance.

Section 13. Yard Maintenance; Sprinkler System. The Association will have primary responsibility for maintenance (generally limited to mowing, trimming and edging only) of Common Areas only. The Association is not responsible for yard maintenance of Owner's Lots.

Construction of each and every residential dwelling within the Properties shall include the installation and placement of appropriate landscaping. Each Lot on which a residential dwelling is constructed shall have and contain an underground water sprinkler system for the purpose of providing sufficient water (to preserve and maintain the landscaping in a healthy and attractive condition) to the front and side yard areas situated outside of fences, walls or hedges. Each Lot Owner shall use reasonable efforts to keep, preserve and maintain the landscaping in a healthy and attractive condition.

ARTICLE X

EASEMENTS

Section 1. Utility Easements. Non-exclusive easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across an area not less than two feet (2') nor more than five foot (5') wide perimeter of each Lot are reserved by Declarant for itself, the Association, and all utility and CATV companies and their respective successors and assigns, serving the Subdivision and no Improvement or Structure shall be constructed or placed thereon without the express prior written consent of the ARC. Full rights of ingress and egress shall be had by Declarant, the Association, and all utility and CATV companies serving the Subdivision, and their respective successors and assigns, at all times over the Subdivision for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction (excluding, however, any driveway, fence or other Improvement or Structure which has been theretofore specifically approved by the ARC) that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility.

Section 2. Sign Easements. The Association shall have the right, privilege, duty and responsibility to reasonably maintain and care for any and all signs, monuments, landscaping and the like installed or placed on any Common Properties.

Section 3. Ingress, Egress and Maintenance by the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon the setback and sign easement areas applicable for each Lot for the carrying out by the Association of its functions, duties and obligations hereunder; provided, however, that any such entry by the Association upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association at the expense of the Association's maintenance fund.

ARTICLE XI

REGISTRATION

Section 1. Registration with the Association. In order that the Declarant and the Association can properly acquaint every Lot purchaser and every Owner, Resident and Member with these Covenants and the day-to-day matters within the Association's jurisdiction, each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, various items of information to the Association such as: (a) the full name and address of each Owner, Member and Resident; (b) the full name of each individual family member who resides within the residential dwelling of the Lot Owner; (c) the business address, occupation and

telephone numbers of each Resident; (d) the description and license plate number of each automobile owned or used by a Resident and brought within the Properties; (e) the name, address and telephone numbers of other local individuals who can be contacted (in the event the Resident cannot be located) in case of an emergency; and (f) such other information as may be reasonably requested from time to time by the Association. In the event any Owner, Member or Resident fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner, Member and Resident shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

Section 2. Special Assessment on Transfer. In connection with each and every transfer(s) [including, without limitation, voluntary and involuntary transfers, assignments, deeds, leases for more than five (5) years, gifts, testamentary bequests, intestate transfers, muniment of title, or other instrument or by operation of law which causes or effects a transfer of a significant estate or fee simple title, but excluding the exceptions discussed below] of record ownership title to any Lot, the Board shall have the right to collect a special transfer assessment in an amount equal to one (1) month of the then-existing regular assessment applicable to such Lot, which sum shall be earmarked by the Board for deposit(s) to one or more of the then-existing Association reserve funds. Such sum shall be non-refundable and shall not be regarded as a prepayment of or credit against any portion of the regular Annual Assessment.

Notwithstanding the foregoing, the following transfers are excepted and excluded from applicability and coverage of the special transfer assessment:

- (a) transfer from the Declarant to any Homebuilder;
- (b) foreclosure by any Eligible Mortgagee and/or Eligible Insurer;
- (c) transfer to, from or by the Association;
- (d) transfers by any Owner to his/her spouse or any other member of such Owner's immediate family;
- (e) transfers between or among existing Owners (regardless whether such Owners are spousal, family or otherwise) of the same Lot;
- (f) any transfer in which the assessment envisioned by Section 10 of Article XII is being collected;
- (g) transfer by Declarant of all Lots remaining in the Subdivision to a single purchaser in a single transaction.

The Board of Directors is authorized from time to time and at any time to develop and implement such procedures, forms and collection mechanisms as it deems reasonable and appropriate to administer and collect this transfer assessment.

ARTICLE XII

RIGHTS OF CERTAIN MORTGAGEES AND MORTGAGE INSURERS

The provisions within this Article are for the primary benefit of:

(a) the owners and holders of Institutional Mortgages which are required to satisfy the applicable requirements of FHA, VA, FNMA, FLMC and other similar governmental, quasi-governmental and nationally recognized public and/or private sources of end financing (such mortgagees sometimes collectively referred to herein as "Eligible Mortgagees" and their mortgages referred to as "Eligible Mortgages"); and

(b) the insurers, guarantors, participants and subsidizers of the Eligible Mortgages, sometimes collectively referred to herein as the "Eligible Insurers."

To the extent applicable, necessary or proper, the provisions of this Article XII apply not only to this Declaration but also to the Articles of Incorporation and By-Laws of the Association. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, the Articles of Incorporation and By-Laws, but in the event of ambiguity or conflict, this Article shall control.

Section 1. Notices of Action. An Eligible Mortgagee or Eligible Insurer who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and a reasonable description of the Dwelling Unit covered by the Eligible Mortgage) will be entitled to receive timely written notice of:

(a) any proposed termination of the Association;

(b) any condemnation loss or any casualty loss which affects a material portion of the Subdivision or which materially affects any Dwelling Unit on which there is an Eligible Mortgage held, insured or guaranteed by such Eligible Mortgagee or Eligible Insurer, as applicable;

(c) any delinquency in the payment of assessments or charges owed by an Owner of a Dwelling Unit subject to the Eligible Mortgage of such Eligible Mortgagee or Eligible Insurer, where such delinquency has continued for a period of sixty (60) days;

(d) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

(e) any proposed action which would require the consent of the Eligible Mortgagees as required hereinbelow.

Section 2. Joinder to Documents. In addition to the provisions set forth within Article XIII, Eligible Mortgagees who have requested the Association to notify them concerning any proposed action that requires the consent of a specified percentage of Eligible Mortgagees also have the right to join in the decision making about certain amendments to this Declaration. Amendments of a material nature (as defined below) must be agreed to by: (i) at least sixty-seven percent (67%) of the Dwelling Unit Owners; and (ii) the Declarant (during the Development Period) or the Board of Directors of the Association (after conclusion of the Development Period); and (iii) Eligible Mortgagees representing at least fifty-one percent (51%) of the Dwelling Units that are subject to Eligible Mortgages. A substantive change to any of the following are defined as material for purposes of this provision:

- voting rights;
- assessments, assessment liens, or subordination of assessment liens;
- reserves for maintenance, repair, and replacement of Common Properties;
- responsibility for maintenance and repairs;
- boundaries of any Lot covered by an Eligible Mortgage;
- convertibility of Dwelling Units into Common Properties or vice versa;
- imposition of any restrictions on a Dwelling Unit Owner's right to sell or transfer his or her Dwelling Unit;
- restoration or repair (after a hazard damage or partial condemnation) in a manner other than that specified herein;
- any action to terminate the legal status of the Subdivision after substantial destruction or condemnation occurs; or
- any provisions that expressly benefit Eligible Mortgagees or Eligible Insurers.

Additions or amendments such as the correction of a technical error or the clarification of a statement shall not be considered or construed as being "material."

If and when the Dwelling Unit Owners are considering termination of the coverage of this Declaration over the Subdivision for reasons other than substantial destruction or condemnation, the Eligible Mortgagees representing at least sixty-seven percent (67%) of the mortgaged Dwelling Units in the Subdivision must agree.

Section 3. Special FHLMC Provision. So long as required by The Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the other Sections of this Article. Unless two-thirds (2/3) of the Eligible Mortgagees or Owners give their consent, and subject to the condition that any proposed action of the Association purportedly covered by the following requirements must be material and adverse, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Properties which the Association owns, directly or indirectly (but the granting of easements for public utilities or for other public purposes consistent with the intended use of the Development shall not be deemed a transfer);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

(c) by act or omission charge, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Dwelling Units and of the Common Properties;

(d) assign any future income of the Association, including its right to receive assessments;

(e) fail to maintain fire and extended coverage insurance on assets owned by the Association, as required by this Declaration; or

(f) use hazard insurance proceeds for any Common Properties losses for other than the repair, replacement or reconstruction of such properties.

The provisions of this Section 3 shall not be construed to reduce the percentage vote that must be obtained from Eligible Mortgagees or Owners when a larger percentage vote is otherwise required for any of the actions described in this Section.

Eligible Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Properties and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage

upon the lapse of a policy, for the Common Properties, and Eligible Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 4. Approval of Amendments. The failure of an Eligible Mortgagee or Eligible insurer to respond within thirty (30) days to any written request of the Association for approval of an addition or amendment shall constitute an implied written approval of the addition or amendment.

Section 5. Inspection of Books. The Association shall have current copies of the Declaration, Articles of Incorporation, Bylaws, rules and regulations, books, records and financial statements available for inspection by Dwelling Unit Owners and by Eligible Mortgagees and Eligible Insurers during normal business hours or under other reasonable circumstances.

Section 6. Financial Statements. The Association shall provide any Eligible Mortgagee or Eligible Insurer which submits a written request with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association.

Section 7. Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors and may be enforced by any of them by any available means, at law, or in equity.

Section 8. Attendance at Meetings. Any authorized representative(s) of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting of the Association which an Owner may attend.

Section 9. Annexation. With respect to any annexation of additional lands to the scheme of this Declaration, the following additional provisions shall apply:

- the legal method of expansion shall be generally in accordance with Article II hereinabove;
- the potential annexable property is legally within a one-quarter mile radius of the Subdivision;
- the time limit within which any expansion will take place is the Development Period;
- prescribing assessments and/or granting voting rights to the annexed properties shall be generally in accordance with Articles III and V herein;

- all improvements intended for future phases will be consistent with the initial improvements in terms of quality of construction; and
- the annexation document(s) that will be recorded will likely be a Declaration similar to this document.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Power of Attorney. Each and every Owner, Member and Resident 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 any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Properties;

(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 clause(s), recital(s), covenant(s), agreement(s) and restriction(s) 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(s) of the Properties, 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 to 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 El Paso County Clerk's Office and shall remain in full force and effect thereafter until conclusion of the Development Period.

Section 2. Duration. The Covenants of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner and Resident of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for an original fifty (50) year term expiring on the fiftieth (50th) anniversary of the date of recordation of this Declaration, after which time these Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Owners of at least fifty-one percent (51%) of all Lots within this

Subdivision and all the Subdivisions and recorded in the Deed Records of El Paso County, Texas, which contains and sets forth an agreement to abolish these Covenants; provided, however, no such agreement [where approved by less than seventy-five percent (75%) of the Owners of all Lots within this Subdivision and all of the Subdivisions] to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

Section 3. Amendments. The Covenants set forth herein are expressly subject to change, modification and/or deletion by means of amendment at any time and from time to time as provided herein. Notwithstanding Section 3 of this Article, these Covenants may be amended and/or changed in part as follows:

(a) During the Development Period, and in response to any governmental or quasi-governmental suggestion, guideline, checklist, requisite or requirement, particularly with respect to those entities or agencies directly or indirectly involved in, or having an impact on, mortgage financing, mortgage insurance and/or reinsurance, the Declarant shall have the complete and unfettered right and privilege to amend, change, revise, modify or delete portions of these Covenants, and each and every Owner, Member and Resident specifically and affirmatively authorizes and empowers the Declarant, utilizing the attorney-in-fact status set forth in Section 1 above, to undertake, complete and consummate any and all such amendments, changes, revisions, modifications or deletions as Declarant (in its sole and absolute discretion) shall deem reasonable and appropriate;

(b) During the Development Period the Declarant may otherwise amend or change these Covenants by exercising its powers under Article XIII, Section 1 hereinabove or with the direct consent of at least fifty-one percent (51%) of the Owners of Lots within the Subdivision; and

(c) From and after conclusion of the Development Period these Covenants may be amended or changed upon the express written consent of the Board and at least fifty-one percent (51%) of the Owners of Lots within the Subdivision.

Any and all amendments shall be recorded in the Office of the County Clerk of El Paso County, Texas.

Section 4. Enforcement. Each Owner of each Lot shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every Resident, Member, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), Member(s), guests and invitees. The Payment and Performance Lien shall extend to, cover and secure the proper payment and performance by each and every Resident, Member, guest and invitee affiliated with each Owner. Each Owner may, upon appropriate application to and approval by the Association, impose greater or additional

restraints and restrictions on the "good standing" qualifications of the Residents and Members of such Owner's Lot. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Properties. Enforcement of these Covenants may be initiated by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants; but failure by the Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. El Paso County, Texas is specifically authorized (but not obligated) to enforce these Covenants. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, from the non-prevailing party.

Section 5. Validity. Violation of or failure to comply with these Covenants shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of these Covenants, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants conflicts with mandatory provisions of any ordinance or regulation promulgated by the El Paso County, Texas or any applicable municipality (including, without limitation, the Zoning Ordinance), then such municipal requirement shall control.

Section 6. Proposals of Declarant. The proposals of the Declarant, as set forth in various provisions hereinabove, are mere proposals and expressions of the existing good faith intentions and plans of the Declarant and shall not be deemed or construed as promises, solicitations, inducements, contractual commitments or material representations by the Declarant upon which any person or entity can or should rely. Nothing contained in or inferable from this Declaration shall ever be deemed to impose upon any other land owned or to be owned by the Declarant, or any related entity, any covenants, restrictions, easements or liens or to create any servitudes, negative reciprocal easements or other interests in any such land in favor of any person or entity other than the Declarant. Declarant has no control over the development of land parcels adjoining the Properties and Declarant makes no representations of any kind or character concerning those parcels. Each prospective Owner should make his/her own investigation concerning those parcels, and what impact, if any, same may have on the ownership, use and enjoyment of the Properties.

Section 7. Service Mark. Declarant is the exclusive owner, proprietor and/or claimant of a service mark for Emerald Springs Retreat subdivision (referred to as the "Service Mark"). Unless and until a written license agreement has been sought and obtained from Declarant (and in this connection Declarant may withhold consent in its sole and absolute discretion), no person or entity may at any time and/or for any reason whatsoever use, depict, draw, demonstrate, reproduce, infringe, copy or resemble, directly or indirectly, the Service Mark.

Section 8. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

Section 9. Notices to Resident/Member/Owner. Any notice required to be given to any Resident, Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when: (i) deposited in the United States Mail, postage prepaid, addressed to the last known address of the person who appears as the Resident, Member or Owner on the records of the Association at the time of such mailing; or when (ii) delivered by hand or by messenger to the last known address of such person within the Properties; or when (iii) posted on the Association's bulletin board for at least thirty (30) consecutive calendar days.

Section 10. Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

Section 11. Disputes. Matters of dispute or disagreement between Owners, Residents or Members with respect to interpretation or application of the provisions (excluding Article VIII architectural matters and issues concerning "substantial completion") of this Declaration or the Association Bylaws, shall be determined by the Board of Directors. Matters pertaining to Article VIII architectural matters and issues concerning "substantial completion" shall be determined by the Architectural Review Committee. These respective determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners, Residents and Members.

* * * * *

Witness the hand of an authorized representative of Declarant on the acknowledgment date noted below.

DECLARANT:

VIEW POINT ACREAGE, L.L.C.

Address:
6300 Escondido
El Paso, Texas 79912

By: *Andy J. Winton*
Andy J. Winton, Member & Manager

SUNNY VIEW, L.L.C.

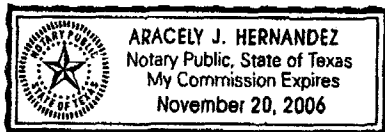
Address:
6300 Escondido
El Paso, Texas 79912

By: *Andy J. Winton*
Andy J. Winton, Member & Manager

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 18th day of July, 2005, by Andy J. Winton, Member and Manager of VIEW POINT ACREAGE, LLC, a Texas limited liability company, on behalf of said company.

Notary's Official Seal:

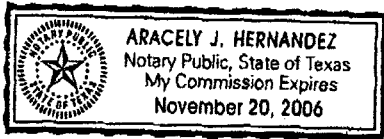


Aracely J. Hernandez
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 18th day of July, 2005,
by Andy J. Winton, Member and Manager of SUNNY VIEW, LLC, a New Mexico limited
liability company, on behalf of said company.

Notary's Official Seal:



Aracely J. Hernandez
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

After Recording Return to:
View Point Acreage, L.L.C.
Sunny View, L.L.C.
Attn: Andy J. Winton
6300 Escondido
El Paso, Texas 79912

Exhibit "A"
Design Guidelines

1. Dwelling Quality and Size.

- (a) All dwellings must be of a permanent nature constructed on site affixed to a permanent foundation, and no modular home, trailer house or mobile home shall be set upon any Lot within said Subdivision.
- (b) All dwellings must be of workmanlike quality using new materials of the same or better quality than those which can be produced on the date these Covenants are recorded and shall be completely finished before occupancy.
- (c) Completion must occur within nine (9) months of issuance of a building permit.
- (d) Once the dwelling is completed, the landscaping shall be completed in ninety (90) days or less. The quantity of grass shall be in compliance with the then current water conserving requirements of the City of El Paso, Public Service Board.
- (e) Each residence structure shall contain not less than two thousand five hundred (2,500) square feet of livable space, excluding garages, basements, storage areas and covered porches.
- (f) No house shall contain more than two (2) stories above ground.
- (g) The roof height shall not exceed thirty-four (34) feet from the finish grade plat elevation as shown on the approved grading plan, to the top of the highest ridgeline of the roof.
- (h) Exterior materials of any dwelling shall be brick, stucco, rock, stone or glass; no exterior wood siding shall be permitted.
- (i) Exterior color shall be approved by the ARC; in general, southwestern and subdued earth tone colors shall be used.
- (j) The dwelling shall in general be in a Southwestern style, which includes what is generally described as Southwestern, and would also include what is generally described as Mediterranean, California, Territorial, Spanish Mission, Pueblo, and Contemporary Southwestern.

2. Setback Requirements. In addition to setback requirements of ordinances of El Paso County, Texas, it is required that all structures on each Lot shall be set back at least twenty (20) feet in the front (between the Lot and the front street to which the front of the building is deemed primarily to face); twenty (20) feet in the back (opposite the front street to which the building faces); twelve (12) feet on any side street (if the building is on a corner); and six (6) feet on the side (next to an adjacent lot).

Doc# 20050074280
#Pages 55 #ofPages 1
9/17/2005 3:32:37 PM
Filed & Recorded in
Official Records of
EL PASO COUNTY
WALDO ALARCON
COUNTY CLERK
Fees \$122.00

56

I hereby certify that this instrument was filed on the date and time stamped
hereon by me and was duly recorded by document number in the Official
Public Records of Real Property in El Paso County.



Waldo Alarcon

EL PASO COUNTY, TEXAS