

AFTER RECORDING RETURN TO:



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**SUBORDINATE DECLARATION OF  
CONDOMINIUM REGIME  
FOR LAS PALMAS  
PHASE A CONDOMINIUMS**  
(A Residential Condominium in El Paso County, Texas)

Declarant: AVENIDA DE PALMAS, LTD., a Texas limited partnership

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**SUBORDINATE DECLARATION OF CONDOMINIUM REGIME FOR  
LAS PALMAS PHASE A CONDOMINIUMS**

AVENIDA DE PALMAS, LTD., a Texas limited partnership ("Declarant"), previously executed that certain Declaration of Condominium Regime for Las Palmas Master Condominiums, recorded as Document No. \_\_\_\_\_ in the Official Public Records of El Paso County, Texas (the "Master Declaration"). The Master Declaration created "Master Units" within the condominium regime established pursuant to the terms and provisions of the Master Declaration, which Master Units were identified by number pursuant to the Plat and Plans attached to the Master Declaration as Attachment 3.

In accordance with *Section 3.2* of the Master Declaration, Declarant currently has the option and ability to submit one or more Master Unit(s) to the terms and provisions of a "Sub-Declaration" (as defined in the Master Declaration), provided that the Owner of such Master Unit(s) consents in writing to the submission of such Master Unit(s) to a Sub-Declaration. Upon submitting such Master Unit(s) to the terms and provisions of a Sub-Declaration, there shall be created within the Master Unit(s) a separate condominium regime – a "Sub-Condominium" (as defined in the Master Declaration); provided, however, that the creation of any Sub-Condominium shall not modify any obligations, limitations, rights, benefits or burdens established in the Master Declaration, except as set forth therein.

Pursuant to such authority, Declarant hereby submits Master Units 17-3/4, 17-5/6, 17-15/16, 17-45/46, 17-54/55, 19-9/10 and 19-28/29, as shown on the Plat and Plans attached as Attachment 3 to the Master Declaration, together with all Improvements thereon and all easements, rights, and appurtenances thereto (collectively, the "Submitted Master Units"), to the terms and provisions of the Texas Uniform Condominium Act, Chapter 82 of the Texas Property Code, for the purpose of creating Las Palmas Phase A Condominiums. In accordance with the terms and provisions of *Section 3.2* of the Master Declaration, all owners of the Submitted Master Units have executed this Declaration for the purpose of evidencing their consent to the terms and provisions hereof.

**NOW, THEREFORE**, it is hereby declared that the Submitted Master Units will be held sold, conveyed, leased, occupied, used, insured, and encumbered with this Declaration, which will run with the Submitted Master Units, together with all Improvements thereon and all easements, rights, and appurtenances thereto, and be binding upon all parties having right, title, or interest in or to such property, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE 1  
DEFINITIONS**

Unless otherwise defined in this Declaration, terms defined in *Section 82.003* of the Act and terms defined in the Master Declaration have the same meaning when used in this Declaration. The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

1.1. **"Act"** means Chapter 82 of the Texas Property Code, the Texas Uniform Condominium Act, as it may be amended from time to time.

1.2. **"Applicable Law"** means the statutes and public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes and ordinances specifically referenced in the Documents are **"Applicable Law"** on the date of the Document, and are not intended to apply to the Submitted Master Unit if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

1.3. **"Assessment"** means any charge levied against the Submitted Master Units or Owners by the Association pursuant to the Master Declaration, the Act, or other Applicable Law, as more particularly described in the Master Declaration.

1.4. **"Association"** means the Master Owners Association of Las Palmas, Inc., a Texas non-profit corporation, the Members of which shall be the Owners of the Master Units and any Sub-Units.

1.5. **"Board"** means the Board of Directors of the Association.

1.6. **"Building"** means any structure contained within the Submitted Master Units.

1.7. **"Bylaws"** means the Bylaws of the Association, as they may be amended from time to time. The initial Bylaws of the Association are attached to the Master Declaration as Attachment 2.

1.8. **"Certificate"** means the Certificate of Formation of the Association filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

1.9. **"Common Element"** means all portions of the Regime, **SAVE AND EXCEPT** the Units. Common Elements include General Common Elements and Limited Common Elements. The Common Elements expressly include any drainage flume, detention pond or other similar drainage feature shown on Plats and Plans.

1.10. **"Community Manual"** means a community manual adopted by the Board for the benefit of the Association as part of the initial project documentation for Las Palmas. The Community Manual may include the Rules and such other policies governing the Association as the Board determines to be in the best interests of the Association, in its sole and absolute discretion.

1.11. **"Declarant"** means **AVENIDA DE PALMAS, LTD.**, a Texas limited partnership. Notwithstanding any provision in this Declaration to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights and duties under this Declaration to any Person and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other Person in any

of its privileges, exemptions, rights and duties under this Declaration.

1.12. "Declaration" means this document, as it may be amended from time to time.

1.13. "Development Period" means the seven (7) year period beginning on the date the Master Declaration was Recorded, during which Declarant has certain rights as more particularly described in this Declaration, including rights related to development, construction, expansion, and marketing of the Regime or any Unit. The Development Period is for a term of years and does not require that Declarant own any portion of the Regime. Declarant may terminate the Development Period by executing and Recording a notice of termination. During the Development Period, Declarant hereby reserves the following rights with respect to the property subject to this Declaration: (i) to construct, or cause to be constructed, Improvements within the Regime; (ii) to complete all Improvements indicated on the Plat and Plans; (iii) to exercise any "development right" as defined in Section 82.003(12) of the Act; (iv) to make the condominium established hereby part of a larger condominium or planned community; (v) to maintain sales, management, and leasing offices, signs advertising the Regime, and models on within the Regime; and (vi) to use easements through the Common Elements for the purpose of making Improvements within the Regime or within real property that may be added to the Regime. In addition to the foregoing rights, Declarant has reserved other rights as set forth in this Declaration, some of which may be exercised during and after expiration or termination of the Development Period.

1.14. "Documents" mean, individually or collectively as the case may be, the Master Declaration, this Declaration, the Plat and Plans, attached hereto as Attachment 1, the Certificate, Bylaws, the Community Manual, if any, and the Rules of the Association, as each may be amended from time to time. An attachment, appendix, exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.15. "General Common Elements" mean Common Elements which are not Limited Common Elements.

1.16. "Homebuilder" means any Owner (other than the Declarant) who acquires a Unit for the purpose of constructing therein a single family residence for resale to a third party.

1.17. "Improvement" means every structure and all appurtenances of every type and kind, whether temporary or permanent in nature.

1.18. "Landscape Services" mean the following services: (a) mowing and edging all front yard areas at least once per week during the months of May through September of each year, and on an as-needed basis during the months of October through April; (b) applying fertilizer to the front yard areas twice a year; (c) manually and mechanically controlling weeds in the front yard areas as required to maintain a manicured appearance; (d) controlling fire ants in the front yard areas turf areas with applications of "Logic" or approved equal in the spring and fall. Notwithstanding the foregoing, the Board will have the right to modify the Landscape

Services provided hereunder from time to time. The Board, in its sole discretion, will determine the location of the "front yard area" for the purpose of the Landscape Services.

1.19. "Limited Common Elements" mean those portions of the Regime reserved for the exclusive use of one or more Owners to the exclusion of other Owners. Limited Common Elements are allocated pursuant to this Declaration or shown on the Plat and Plans.

1.20. "Majority" means more than half.

1.21. "Master Architectural Reviewer" means the "Declarant" under the Master Declaration during the Development Period. After the expiration or termination of the Development Period, the rights of the Master Architectural Reviewer will automatically be transferred to the Board.

1.22. "Master Common Elements" means the "Common Elements" as defined in the Master Declaration.

1.23. "Master Common Expenses" means the expenses incurred or anticipated to be incurred by the Association for preserving and enhancing Las Palmas as a whole, including but not limited to the operation, maintenance, repair and replacement of Master Common Elements, replacement reserves for Master Common Elements and property owned by the Association, reserves for the operation of the Association, the management, administration and operation of the Association, the administration and enforcement of the Documents (as defined in the Master Declaration), and for any expense reasonably related to the purposes for which the Association was formed.

1.24. "Master Declaration" means that certain Declaration of Condominium Regime for Las Palmas Master Condominiums, recorded in the Official Public Records of El Paso County, Texas.

1.25. "Master Plat and Plans" means the plat and plans attached as Attachment 3 to the Master Declaration, as changed, modified, or amended in accordance with the Master Declaration.

1.26. "Master Regime" means the condominium regime established pursuant to the terms and provisions of the Master Declaration.

1.27. "Member" means a member of the Association, unless the context indicates that member means a member of the Board or a member of a committee of the Association.

1.28. "Mortgagee" means a holder, insurer, or guarantor of a purchase money mortgage secured by a Recorded senior or first deed of trust lien against a Unit.

1.29. "Occupant" means any Person, including any Owner, having a right to occupy or use all or any portion of a Unit for any period of time.



1.30. "Owner" means a holder of Recorded fee simple title to a Unit. Mortgagees who acquire title to a Unit through a deed in lieu of foreclosure or through judicial or non-judicial foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

1.31. "Person" means any individual or entity having the legal right to hold title to real property.

1.32. "Plat and Plans" means the Plat and Plans, attached hereto as Attachment 1, as changed, modified, or amended in accordance with this Declaration or the Act.

1.33. "Recorded or Recordation" means recorded in the Official Public Records of El Paso County, Texas.

1.34. "Regime" means the Submitted Master Units, the Units, General Common Elements, and Limited Common Elements that comprise the condominium regime established under this Declaration.

1.35. "Rules" means rules and regulations of the Association adopted in accordance with the Documents or the Act. The Rules may be modified from time to time by the action of a Majority of the Board.

1.36. "Submitted Master Units" means Master Units 17-3/4, 17-5/6, 17-15/16, 17-45/46, 17-54/55, 19-9/10 and 19-28/29, as shown on the plat and plans attached as Attachment 3 to the Master Declaration, together with all Improvements therein and all easements, rights, and appurtenances thereto, and any additional Master Units within the Master Regime which are further submitted to the terms and provisions of this Declaration.

1.37. "Underwriting Lender" means a national institutional mortgage lender, insurer, underwriter, guarantor, or purchaser on the secondary market, such as Federal Home Loan Mortgage Corporation (Freddie Mac), Federal National Mortgage Association (Fannie Mae), or Government National Mortgage Association (Ginnie Mae), singularly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options or as a representation that a Submitted Master Units or any Unit is approved by any such institution.

1.38. "Unit" means each physical portion of the Regime subdivided out of the Submitted Master Units and designated by this Declaration for separate ownership as a "Sub-Unit" (as defined in the Master Declaration), the boundaries of which are shown on the Plat and Plans attached hereto as Attachment 1.

## ARTICLE 2

### SUBJECT TO DOCUMENTS; MAINTENANCE EASEMENT

#### 2.1. Subject to Documents.

2.1.1. This Declaration. The Submitted Master Units shall be held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including rights reserved by Declarant under this Declaration, which run with the Submitted Master Units and all parties having or acquiring any right, title, or interest in the Submitted Master Units, their heirs, successors, and assigns, and inure to the benefit of each Owner. The Regime is also subject to certain easements, rights and restrictions under the Master Declaration.

2.1.2. Master Declaration. Additionally, pursuant to *Section 3.3* of the Master Declaration, upon the Recording of this Declaration, all liabilities, costs, expenses (including Common Expenses), charges and Assessments under the Master Declaration attributable to ownership of the Submitted Master Units are hereby assigned and allocated to each Unit created hereby in accordance with the allocations and assignments set forth in this Declaration. The Owner of each Unit is obligated only for its proportionate share of such liabilities, costs, expenses (common or otherwise), charges and Assessment as set forth in this Declaration. EACH OWNER OF A UNIT AGREES TO INDEMNIFY AND HOLD HARMLESS THE DECLARANT AND THE OWNERS OF THE SUBMITTED MASTER UNITS FROM SUCH OWNER'S SHARE OF ANY AND ALL LIABILITIES, COSTS, EXPENSES (COMMON OR OTHERWISE), CHARGES AND ASSESSMENTS ALLOCATED TO SUCH OWNER'S UNIT UNDER THE TERMS AND PROVISIONS OF THIS DECLARATION.

2.1.3. No Assignment. This provision does not act to assign any rights retained by the Declarant under the Master Declaration or this Declaration. Any assignment of Declarant's rights under the Master Declaration or this Declaration must be by separate instrument, executed by the Declarant and Declarant's assignee, and Recorded.

2.2. Recorded Easements and Licenses. In addition to the terms, covenants, conditions, restrictions, liens and easements contained in this Declaration and the Master Declaration, the Regime is subject to all easements, licenses, leases, and encumbrances, including those described in the attached Attachment 1, and any easements, licenses, leases, and encumbrances shown or referenced on a Recorded plat, each of which is incorporated herein by reference. Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by such easements, licenses, leases, and encumbrances.

2.3. Additional Property. Additional real property may be annexed to the Regime and subjected to the Declaration and the jurisdiction of the Association on approval of Members representing at least sixty-seven percent (67%) of the voting interests in the Association, or, during the Development Period, by Declarant acting without the consent of any other Owners. Annexation of additional property is accomplished by the Recording of a declaration of annexation, which will include a description of the additional real property. The declaration of

annexation will also include a description of the additional property which complies with the Act.

### ARTICLE 3

#### DESCRIPTION OF UNITS, LIMITED COMMON ELEMENTS AND ALLOCATIONS

3.1. **Initial Submitted Units; Maximum Number of Units; and Additional Master Units.** The Regime initially consists of fourteen (14) Units. During the Development Period, Declarant hereby reserves the right to create a total of eighty-six (86) additional Units by either the re-subdivision of Units initially subjected to this Declaration or the annexation of additional Master Units into the Regime. The maximum number of Units which may be created by the Declarant is one-hundred (100). To subdivide or create a Unit, Declarant during the Development Period may, from time to time, execute and Record an amendment to this Declaration creating such additional Units. An amendment creating additional Units will: (i) assign an identifying number to each new Unit; (ii) reallocate the Common Interest Allocation to each new Unit using the formulas set forth in this Declaration for such allocations; (iii) describe any Limited Common Elements created or designated to each new Unit; and (iv) include the information required by Section 82.055 and Section 82.059(b) of the Act, as applicable.

3.2. **Unit Boundaries.** The boundaries and identifying number of each Unit are shown on the Plat and Plans attached hereto as Attachment 1. The boundaries of each Unit are further described as follows:

3.2.1. **Lower Boundary.** The horizontal plane corresponding to the finished grade of the land within the Unit.

3.2.2. **Upper Boundary.** The horizontal plane parallel to and forty feet (40') above the lower boundary of the Unit.

3.2.3. **Lateral Boundaries.** A plane located on each side of the Unit perpendicular to the lower and upper horizontal planes, from the lower boundary of the Master Unit to the upper boundary of the Unit.

3.2.4. **What the Unit Includes.** Each Unit includes the spaces and Improvements within its lower, upper, and lateral boundaries defined above, including without limitation any landscaping, driveways, parking areas, sidewalks, fences, yards, utility lines and meters and all other Improvements located within such Unit. In addition, each Unit also includes Improvements, fixtures, and equipment serving each Unit exclusively, whether located within, outside, or below the Unit.

3.3. **Additional Information to Interpret Unit Boundaries.** It is the express intent of the Declarant that the property described as being part of a Unit shall for all purposes herein be treated as and constitute a lawfully described "unit" as that term is defined in the Act. In the event that there is a final judicial determination by a court of competent jurisdiction that the

boundaries of a Unit or any portion thereof are so indefinite and vague so as to not create a legally constituted "unit" within the meaning of the Act, then that portion of the Unit that has not been adequately described shall be severed from the property deemed a part of the Unit (if the remainder of the Unit, excluding the severed portion thereof, constitutes a properly described "unit" under the Act) and shall thereafter be deemed to be Limited Common Elements reserved to the exclusive use of said Unit, subject to the rights and obligations of other Owners with respect to said property.

3.4. **Limited Common Elements.** Limited Common Elements allocated to a Unit include those portions of the Submitted Master Units designated as Limited Common Elements for the benefit of such Unit pursuant to the terms and provisions of this Declaration and/or shown on the Plat and Plans.

3.5. **Subsequent Allocation of Limited Common Elements.** A Common Element not allocated by this Declaration as a Limited Common Element may be so allocated only in accordance with the Act or the provisions of this Declaration. During the Development Period, Declarant hereby reserves the right to create and further assign Limited Common Elements within the Regime (provided that no reallocation of Limited Common Element may be made to a Unit not owned by the Declarant without consent of the Owner of such Unit). Unless prosecuted by Declarant pursuant to this Section, an amendment reallocating Limited Common Elements must be executed by the Owners between or among whose Units the reallocation is made and their Mortgagees. An amendment required to be executed by Owners will be delivered to the Association which shall Record the amendment at the expense of the reallocating Owners. The Owners executing the amendment will prepare the amendment at their sole cost and expense and will reimburse the Association for its reasonable attorneys' fees in connection with review and Recording of the amendment. No reallocation of Limited Common Elements between or among Owners may be made without the written consent of the Declarant until expiration or termination of the Development Period.

3.6. **Common Interest Allocation.** The percentage of interest in the Common Elements (the "Common Interest Allocation") allocated to each Master Unit is set forth on Attachment 2 to this Declaration. As set forth on Attachment 2, each Unit has been allocated an equal percentage of interest in the Common Elements. In the event the Common Interest Allocation is reallocated as a result of any increase or decrease in the number of Units subject to this Declaration, each Unit then existing after the increase or decrease in the Number of Units subject to this Declaration shall be allocated an equal percentage of interest in the Common Elements. In the event an amendment to this Declaration is Recorded which reallocates the Common Interest Allocation as a result of any increase or decrease in the number of Units, the reallocation will be effective on the date such amendment is Recorded.

3.7. **Common Expense Liabilities.** The percentage of liability for Common Expenses assigned to each Unit is equal to the Common Interest Allocation allocated to the Unit pursuant to *Section 3.6.*

3.8. **Votes.** In accordance with the terms and provisions of the Master Declaration, for all matters submitted to a vote of the Association, each Unit shall be allocated one (1) vote.

3.9. **Appointment and Election of Directors.** As provided in *Section 12.3* of the Master Declaration: (i) during the Declarant Control Period, the Declarant will have the exclusive authority to appoint and remove all members of the Board; (ii) within one hundred and twenty (120) days after fifty percent (50%) percent of the Master Units that may be created pursuant to the Master Declaration have been conveyed to owners other than Declarant, at least one-third (1/3) of the Board members must be elected by owners other than Declarant; and (iii) upon expiration or termination of the Declarant Control Period, the Board shall be elected by the Members in accordance with the requirements of Section 82.103(e) of the Act.

#### ARTICLE 4

##### **ASSESSMENTS; WORKING CAPITAL FUND; LIEN RIGHTS**

4.1. **Assessments.** As set forth more fully in the Master Declaration, the Association will use Assessments for the general purposes of for preserving and enhancing Las Palmas. Each Owner of a Unit is obligated to pay Assessments levied by the Board against the Owner or the Owner's Unit in accordance with the terms and provisions of the Master Declaration.

4.2. **Working Capital Fund.** In accordance with the terms and provisions of the Master Declaration, upon the transfer of a Unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital fee in an amount equal to two (2) months of Regular Assessments established pursuant to the Master Declaration will be paid to the Association for the Association's working capital fund. Upon expiration or termination of the Development Period (and only at such time), the Board will be permitted to modify any working capital fund contribution payable on the transfer of a Unit. Each working capital fund contribution will be collected from the transferee of the Unit upon the conveyance of the Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital fund contribution requirement: (i) the initial conveyance from Declarant to any Homebuilder; (ii) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (iii) transfer to, from, or by the Association; and (iv) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, or parent. Contributions to the working capital fund are not advance payments of Regular Assessments and are not refundable. Declarant may not use working capital fees to pay operational expenses of the Association until the Declarant Control Period established pursuant to the Master Declaration expires or terminates.

4.3. **Assessment Lien.** Each Owner, by accepting an interest in or title to a Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay Regular Assessments, Special Assessments, and Individual Assessments to the Association. Each Assessment is a charge on the Unit and is secured by a continuing lien on the Unit. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the

continuing lien for Assessments attributable to a period prior to the date he purchased his Unit. An express lien on each Unit is hereby granted and conveyed to the Association to secure the payment of Regular Assessments, Special Assessments, and Individual Assessments. In furtherance of, and not in limitation of, the provisions of Section 3.3 of the Master Declaration, the lien rights established pursuant to the Master Declaration and this Declaration and vested in the Association shall automatically, and without requiring further action, attach to each individual Unit created pursuant to this Declaration in lieu of the entirety of the Submitted Master Units.

4.4. **Superiority of Assessment Lien.** The Assessment lien is superior to all other liens and encumbrances on a Unit, except only for: (i) real property taxes and assessments levied by governmental and taxing authorities; (ii) a Recorded deed of trust lien securing a loan for construction of Improvements upon the original Unit; (iii) a deed of trust or vendor's lien Recorded before the Master Declaration; or (iv) a first or senior purchase money vendor's lien or deed of trust lien Recorded before the date on which the delinquent Assessment became due. The Assessment lien is superior to any Recorded assignment of the right to insurance proceeds on the Unit unless the assignment is part of a superior deed of trust lien.

4.5. **Effect of Mortgagee's Foreclosure.** Foreclosure of a superior lien extinguishes the claim by the Association against the Unit for unpaid Assessments that became due before the sale, but does not extinguish the claim by the Association against the former Owner. The purchaser at the foreclosure sale of a superior lien is liable for Assessments coming due from and after the date of the foreclosure sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as a Common Expense.

4.6. **Notice and Release of Notice.** The lien established by the Master Declaration and this Declaration for Assessments is created by Recordation of the Master Declaration and this Declaration, which constitutes Record notice and perfection of the lien. No other Recordation of a lien or notice of lien is required. However, in the exercise of its lien rights, the Association may, at its option, cause a notice of the lien to be Recorded. If the debt is cured after a notice has been Recorded, the Association will Record a release of the notice at the expense of the curing Owner. The Association may require reimbursement of its costs of preparing and Recording the notice before granting the release.

4.7. **Power of Sale.** By accepting an interest in or title to a Unit, each Owner grants to the Association a private power of non-judicial sale in connection with its Assessment lien. The Board may appoint, from time to time, any Person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. Any such appointment must be in writing and may be in the form of a resolution duly adopted by the Association.

4.8. **Foreclosure of Lien.** The Assessment lien may be enforced by judicial or non-judicial foreclosure. A non-judicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas

Property Code, or in any manner permitted by Applicable Law. In any foreclosure, the Owner will be required to pay all costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the Unit at a foreclosure sale initiated by it and to acquire, hold, lease, mortgage, and convey same.

4.9. **Effect of Non-Payment of Assessments.** Reference is herein made to *Article 8* of the Master Declaration, the provisions of which are incorporated herein by reference, regarding the effect of non-payment of Assessments. Each Owner is hereby advised to review *Article 8* of the Master Declaration to determine the remedies available to the Association in the event that the Owner fails to timely pay all Assessments attributable to the Owner's Unit and the manner in which Assessment payments will be applied by the Association.

## ARTICLE 5 MAINTENANCE AND REPAIR OBLIGATIONS

5.1. **Overview.** Generally, the Association maintains the Master Common Elements, and the Common Elements, and the Owner maintains his Unit and Building. If any Owner fails to maintain his Unit, the Association may perform the work at the Owner's expense.

5.2. **Association Maintains.** *Section 9.1* of the Master Declaration sets forth the maintenance obligations of the Association, the provisions of which are incorporated herein by reference. As set forth more fully therein, the Association maintains, repairs and replaces, as a Master Common Expense, the Master Common Elements, any Master Unit shown as a drainage flume, detention pond or other similar drainage feature on the Master Plats and Plans and those portions of the Property (as defined in the Master Declaration) specifically identified in the Master Declaration to be maintained by the Association. To the extent that any portion of the Common Elements includes a drainage flume, detention pond or other similar drainage feature, then, in accordance with the terms and provisions of the Master Declaration, the Association shall be obligated to maintain such drainage flume, detention pond or other similar drainage feature, the expense of which shall be a Master Common Expense.

### 5.3. **Landscape Services.**

5.3.1. **Generally.** The Association will cause the Landscape Services to be provided to each Unit, accordingly, the Association is hereby granted an easement over and across each Unit to the extent reasonably necessary or convenient for the Association or its designated landscaping contractor to perform the Landscape Services. Access hereunder to each Unit is limited to Monday through Friday, between the hours of 7 a.m. until 6 p.m., and then only in conjunction with actual performance of Landscape Services. If the Association damages any Improvements located within a Unit in exercising the easement granted hereunder, the Association will be required to restore such Improvements to the condition which existed prior to any such damage, at the Association's expense, within a reasonable period of time not to exceed thirty (30) days after the date the Association is notified in writing of the damage by the Owner of

the damaged Improvements.

5.3.2. Dates. The Association or its designated landscape company may, from time to time, provide each Owner with a schedule of dates on which the Landscape Services will be performed.

5.3.3. Irrigation. Each Owner will be required to water turf thoroughly after the application of fertilizer. Each Owner is also responsible for irrigation and all costs associated therewith (unless otherwise discharged by the Association) and must properly irrigate all yard areas within such Owner's Unit. Unless otherwise expressly approved by the Board, the Landscape Services will not include irrigation or the repair and maintenance of irrigation facilities. Each Owner will refrain from irrigating the front yard areas during the performance of Landscape Services.

5.3.4. Cost. The cost of all Landscape Services will be a Common Expense.

5.4. Owner Maintains. In accordance with the terms and provisions of the Master Declaration, except as otherwise expressly provided in the Master Declaration, each Owner shall operate and fully maintain, repair and, when necessary, replace, at its cost and expense, all portions of such Owner's Unit, all Limited Common Elements assigned thereto, and all areas that Owner has agreed to operate, maintain, repair and replace elsewhere in this Declaration, so that the same are at all times in good order, condition and repair. The foregoing obligation by each Owner to operate, maintain, repair and, when necessary, replace, shall include, without limitation, keeping all portions of the Unit and any Limited Common Element assigned thereto in a clean, uncluttered orderly and sanitary condition. An Owner shall perform his or her responsibility in such manner so as not to unreasonably disturb other Owners and Occupants.

5.5. Owner's Default In Maintenance. If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an Individual Assessment against the Owner and his Unit. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

5.6. Disputes. If a dispute arises regarding the allocation of maintenance responsibilities by this Declaration, the dispute will be resolved by the Declarant during the Development Period, and the Board thereafter, who will delegate such maintenance responsibility to either the Association or the individual Owner(s), as determined by the Declarant or the Board (as the case may be) in its sole and absolute discretion.



5.7. **Warranty Claims.** If the Owner is the beneficiary of a warranty against defects of the Common Elements, the Owner irrevocably appoints the Association, acting through the Board, as such Owner's attorney-in-fact to file, negotiate, receive, administer, and distribute the proceeds of any claim against the warranty that pertains to the Common Elements.

5.8. **Measures Related to Insurance Coverage.** The Board, upon resolution, will have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Regime which are the maintenance responsibility of the Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Regime, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage.

## ARTICLE 6 USE RESTRICTIONS

6.1. **Variance.** The use of the Regime is subject to the restrictions contained in this Article, and subject to Rules adopted pursuant to this Article. The Board, with the Declarant's written consent during the Development Period, may grant a variance or waiver of a restriction or Rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing and executed by a Majority of the Board. The grant of a variance shall not constitute a waiver or estoppel of the Association's right to deny a variance in other circumstances.

6.2. **Declarant Privileges.** In connection with the development and marketing of the Regime, Declarant has reserved a number of rights and privileges to use the Regime in ways that are not available to other Owners or Occupants. Declarant's exercise of a Development Period right that appears to violate this Declaration or any Rule does not constitute waiver or abandonment of applicable provision of this Declaration or the Rule.

6.3. **Association's Right to Promulgate Rules and Adopt Community Manual.** The Association, acting through the Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Units and Common Elements. The Association, acting through the Board, is further granted the right to adopt, amend, repeal, and enforce the Community Manual, setting forth therein such policies governing the Association as the Board determines.

6.4. **Rules and Regulations.** In addition to the restrictions contained in this Article, each Unit is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- (a) Use of Common Elements.
- (b) Hazardous, illegal, or annoying materials or activities within a Unit or the

Regime.

- (c) The use of services provided through the Association.
- (d) The consumption of utilities billed to the Association.
- (e) The use, maintenance, and appearance of anything visible from the street, Common Elements, or other Units.
- (f) The occupancy and leasing of Units.
- (g) Animals.
- (h) Vehicles.
- (i) Disposition of trash and control of vermin, termites, and pests.
- (j) Anything that interferes with maintenance of the Units and Common Elements, operation of the Association and the administration of the Documents.

6.5. **Use of Common Elements.** There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without the prior written consent of Declarant (during the Development Period) and the Board thereafter, except as specifically provided herein.

6.6. **Prohibition of Damage.** Without the prior written consent of Declarant (during the Development Period), and the Board thereafter, nothing shall be done or kept on the Regime, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body. No damage to or waste of the Common Elements or the Master Common Elements, or any part thereof, shall be permitted by any Owner or Occupant. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner or the Occupants of the Owner's Unit.

6.7. **Prohibition of Construction, Alteration and Improvement.** As set forth more fully in the Master Declaration, without the Master Architectural Reviewer's prior written approval, a Person may not commence or continue any construction, alteration, addition, Improvement, installation, modification, redecoration, or reconstruction of or to the Property (as defined in the Master Declaration), or do anything that affects the appearance, use, or structural integrity of Improvements within the Property (as defined in the Master Declaration).

6.8. **Firearms and Fireworks.** The display or discharge of firearms or fireworks on the Common Elements and the Master Common Elements is prohibited; provided, however,

that the display of lawful firearms on the Common Elements and the Master Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Elements and/or the Master Common Elements to or from a Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size, and shall also include, without limitation, sling shots, archery, and other projectile emitting devices.

6.9. **Abandoned Personal Property.** Personal property shall not be kept, or allowed to remain for more than twelve (12) hours upon any portion of the Common Elements or the Master Common Elements, without the prior written consent of Board. If the Board determines that a violation exists, then, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the disposition of the property within twenty-four (24) hours after the property is removed. Neither the Association nor any officer or agent thereof shall be liable to any Person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

6.10. **Animals – Household Pets.** Except for fish, there shall be allowed no more than two (2) household pets plus no more than two birds in any Unit; provided, however, that said pets may consist only of domesticated dogs, cats and/or fish and may not be kept, bred, or maintained for any commercial purpose and not become a nuisance or annoyance to neighbors. Additionally, American Pit Bull Terriers, Rottweilers, Doberman Pinschers, potbellied pigs and snakes of all types are specifically prohibited. The Board may require that all pets be registered. Owners must immediately pick up all solid waste of their pets and dispose of such waste appropriately. All individual pets, including cats, must be leashed at all times when outside a Unit. No reptiles or other forms of wildlife shall be kept within the Las Palmas community (including the Units). Without limiting the generality of this Section, violations of the provisions of this Section will entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Owners and/or to require, through order of the Board, any pet to be permanently removed from the Las Palmas community. No one other than an Owner or an Occupant is permitted to keep any pet.

6.11. **Fire Safety.** No Person may use, misuse, cover, disconnect, tamper with, or modify the fire and safety equipment within the Las Palmas community.

6.12. **Use Restriction.** The use of a Unit is limited exclusively to residential purposes or any other use permitted by the Documents. Other than the air conditioned part of a Building constructed within a Unit, no Improvement may be occupied as residence at any time by any Person.

6.13. **Business or Commercial Activity.** No Unit may be used for any business,

commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including, without limitation, any activity for which the provider is compensated in any way or receives any form of consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license; provided, however, that the Declarant and Homebuilders, and their respective agents, successors and assigns, may use any portion of the Regime for model home site(s), rental and sales offices and the display of signs associated with such sales and leasing activities. The provisions of this Section shall not preclude any of the above-described activities without external evidence thereof, provided that all of the following conditions are fulfilled: (i) such activities are conducted in conformance with Applicable Law and the Owner has obtained all required home business licenses from the appropriate governmental authorities; (ii) the patrons or clientele of such activities do not visit the Unit; (iii) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Unit; (iv) no such activity increases the liability or casualty insurance obligation or premium of the Association; and (v) such activities are consistent with the residential character of the Las Palmas community and conform with the provisions of the Documents. This provision will in no event be interpreted to prohibit or interfere with the leasing of Units.

6.14. Signs. No sign of any kind, including signs advertising Units for sale, for rent or for lease, may be erected, placed, or permitted to remain within or upon the Units unless approved in advance by the Master Architectural Reviewer in accordance with the terms and provisions of the Master Declaration.

6.15. Antennas and Satellite Dishes.

6.15.1. Generally. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any Unit or the Common Elements; provided, however, that the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Owners:

- (a) No transmission antenna, of any kind, may be erected anywhere within the Regime, without written approval of the Master Architectural Reviewer.
- (b) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter shall be placed, allowed or maintained within the Las Palmas community.
- (c) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission

(FCC) rules and Rules, and only if and to the extent such rules mandate that such dishes or antennas be allowed, both as may be amended from time to time. In such event, to the extent permissible under the FCC rules and regulations: (A) such satellite dishes and antennas shall be in a uniform color designated by the Master Architectural Reviewer; and (B) the Master Architectural Reviewer may designate and restrict the specific location and color of such satellite dishes and antennas. To the extent that any of the foregoing subsections (A) and (B) is not permitted under the FCC rules and regulations, the remaining portion of this subsection (C) shall survive independently to the extent permissible under the FCC rules and regulations.

6.15.2. Preferred Installation Locations. A dish or antenna may be installed in a location within Unit from which an acceptable quality signal can be obtained and where least visible from the street and the Regime, other than the Unit. In order of preference, the locations of a dish or antenna which will be considered least visible by the Master Architectural Reviewer are as follows:

- (a) attached to the back of the residence and contained completely within the Unit, with no part of the dish or antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street; then
- (b) attached to the side of the residence and contained completely within the Unit, with no part of the dish or antenna any higher than the lowest point of the roofline and screened from view of adjacent Units and the street.

6.15.3. Transfers. In the event of a transfer of the Unit which includes a satellite dish or antenna, the transferee shall assume all responsibility for the satellite dish or antenna and shall comply with all applicable provisions of the Documents regarding satellite dishes and antennas, including, but not limited to, any rules relating to maintenance and removal of any satellite dish or antenna.

6.16. Wireless Internet Systems. A wireless Internet communication network ("WiFi System") may be installed or otherwise used in a Unit provided precautions are taken to insure against interfering with, disturbing, or intercepting computer, communications, or other permitted electronic signals, networks, or systems installed in other portions of the Las Palmas community. The Association may establish reasonable requirements relating to the installation of WiFi Systems that must be complied with, including, without limitation, requiring assurance from the installation of the system that proper precautions are being taken. Notwithstanding the foregoing, compliance with requirements relating to the installation of WiFi Systems is not a guarantee that any WiFi System installed or otherwise used in a Unit will not interfere with,

disturb, or intercept other signals, networks, or systems within the Las Palmas community. The Association may require that any WiFi System found to cause such problems be terminated. The Association, Declarant, and their respective current and former partners, members, directors, officers agents employees, affiliates, and committee members, shall not in any way be considered insurers or guarantors of the proper operation or use of any WiFi Systems in the Las Palmas community, nor shall any of such Persons be held liable for any loss or damage relating to the use or operation of WiFi Systems in the Las Palmas community.

6.17. **Rubbish, Trash and Garbage.** All rubbish, trash and garbage shall be regularly removed from a Unit and shall not be allowed to accumulate therein. No rubbish, trash or garbage shall be placed on the Common Elements or the Master Common Elements. Trash receptacles shall be kept within the garage at all time, except on the day of collection, at which time such trash receptacles may be kept outside for collection for no more than twelve (12) hours.

6.18. **Drainage Flumes.** All Units shall require that the water drainage shall be from the rear of such Unit on to the street and into the drain flumes as provided. At all times the drain flumes shall be free and clear of any materials, trash and/or debris that would inhibit the free flow of the water drainage system. At all times the Association and its agents shall have access, ingress and egress upon the Units adjacent to the drainage flumes for their maintenance.

6.19. **Building Types; Garages.** No Building shall be erected, altered, placed or permitted to remain on any Unit other than one detached single-family dwelling, not to exceed thirty feet (30') in height, and a private garage for not more than three (3) cars. Covered and enclosed garage space shall be required on each nit to accommodate at least two (2) automobiles for each dwelling thereon. The garage area shall not be converted into a living area.

6.20. **Square Footage Requirements.** Subject to the granting of one or more variances as provided in *Section 6.1*, the floor area of the main residence constructed upon each Unit, exclusive of open porches, garages and basements, shall be not less than one-thousand four-hundred fifty (1,450) square feet.

6.21. **Setbacks; Protrusions.** The front elevation of each residence shall be set back from the street no less than fifteen feet (15') and the front elevation of the garage attached to the residence shall be set back a minimum of twenty-four feet (24') from the street. The rear elevation of each residence shall be located no less than twenty-five feet (25') from its rear boundary line of the Unit. Should any residence be located on a side street, then the elevation facing the side street shall be set back at least ten feet (10') from the side street. The distance between two adjacent residences shall be a minimum of ten feet (10'). For purposes of this *Section 6.21*, eaves, steps, fireplace and window protrusions shall not exceed eighteen (18') from the exterior elevation of a residence, provided that all protrusions shall be reflected in plans and specifications submitted to, and shall be subject to approval by, the Architectural Reviewer and be consistent with the building codes of the City of El Paso, Texas. In the event of any disagreement regarding the location of the front, rear, and side elevations of a residence, such

disagreement will be resolved by the Master Architectural Reviewer.

6.22. **Landscaping.** Each Owner will be required to install Xeriscape landscaping in the front yard areas of each Unit. The type and location of all landscaping must be approved in advance by the Master Architectural Reviewer.

6.23. **Exclusions as to Persons Convicted of Sex Crimes.** Each Owner and Occupant shall be required, prior to the purchase of a Unit, to provide the Association with an affidavit and an acknowledgement that states the following: "No person who has been convicted in a court of law of a sexual offense, sexual assault, indecency with a child or any other sexual act prohibited under applicable law or under applicable statutes of another state or the federal government, shall reside within the residential dwelling or any other property to be purchased by the undersigned buyer". Any Owner or Occupant who allows a Person who has been convicted of a sexual crime (as identified in the affidavit) shall be in violation of this Section 6.23. If the Association learns of a sexual offender's residency or visitation with the Las Palmas community, the Association shall have the right to request that such Person be removed from the Las Palmas community upon providing notice to the Owner or Occupant with whom the sexual offender is residing or whom the sexual offender is visiting. If the Owner or Occupant does not require the sexual offender to vacate the Las Palmas community, then the Association shall have the right to seek injunctive or other legal relief prohibiting the sexual offender from entering the Las Palmas community. Any and all costs incurred by the Association in seeking such injunctive or other relief shall be borne by the Owner or Occupant with whom the sexual offender is residing or whom the sexual offender is visiting as an Individual Assessment.

**ARTICLE 7**  
**UNIT LEASING**

7.1. **Leasing Provisions.** The leasing of Units shall be governed by the following provisions:

7.1.1. **Notice.** At least seven (7) days prior to entering into the lease of a Unit, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Documents. The Board may maintain and, upon request, provide a form that is deemed acceptable. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other Persons occupying the Unit.

7.1.2. **General.** Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. There shall be no subleasing of Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than six (6) months, except with prior written Board approval, which shall not be unreasonably withheld in cases of undue hardship. The Owner must provide the lessee copies of the Documents. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

7.1.3. **Liability for Assessments, Use of Common Elements and Compliance with Documents.** Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

- (a) **Compliance with Documents.** The lessee shall comply with all provisions of the Documents and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all Occupants of his or her Unit to comply with the Documents, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a Person living with the lessee, violates the Documents or a Rule for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with this Declaration or the Rules. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice



from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

- (b) Violations. Any violation of the Documents by the lessee, any Occupant, or any guest of lessee is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Applicable Law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Documents, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction, shall be an Assessment and lien against the Unit.
- (c) Use of Common Elements and Master Common Elements. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements and the Master Common Elements, including but not limited to, the use of any and all recreational facilities and other amenities.
- (d) Liability for Assessment. When an Owner who is leasing his or her Unit fails to pay any Assessment or any other charge against the Unit for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid Assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay Assessments or other charges, lessee shall pay to the Association all amounts authorized under the Master Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for Assessments, for which he or she would otherwise be responsible.

7.2. Eviction Of Tenants. Every lease agreement on a Unit, whether written or oral, express or implied, is subject to and is deemed to include the following provisions:

7.2.1. Violation Constitutes Default. Failure by the lessee or his invitees to comply with the Documents or Applicable Law is deemed to be a default under the

lease. When the Association notifies an Owner of his lessee's violation, the Owner will promptly obtain his lessee's compliance or exercise his rights as a landlord for lessee's breach of lease. If the lessee's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his lessee's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or State law for the default, including eviction of the lessee, subject to the terms of this Section.

7.2.2. Association as Attorney-in-Fact. Notwithstanding the absence of an express provision in the lease agreement for enforcement of the Documents by the Association, each Owner appoints the Association as his attorney-in-fact, with full authority to act in his place in all respects, solely for the purpose of enforcing the Documents against his tenants, including but not limited to the authority to institute forcible detainer proceedings against his lessee on his behalf.

7.2.3. Association Not Liable for Damages. The Owner of a leased Unit is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his lessee. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's lessee.

## ARTICLE 8 ENFORCING THE DOCUMENTS

8.1. Remedies. The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by Applicable Law, the Association has the following right to enforce the Documents:

8.1.1. Nuisance. The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by Applicable Law against a nuisance, either public or private, is applicable against the violation.

8.1.2. Fine. The Association, acting by and through the Board, may levy reasonable charges, as an Individual Assessment, against an Owner and the Owner's Unit if the Owner or Occupant, or their family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

8.1.3. Self-Help. The Association has the right to enter each Unit to abate or remove, using force as may reasonably be necessary, any construction, thing, animal, Person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Unit and its Owner as an Individual

Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association, acting by and through the Board, may not alter or demolish an item of construction on a Unit without judicial proceedings.

8.1.4. Suit. Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

8.2. Board Discretion. The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances: (i) the Association's position is not sufficiently strong to justify taking any or further action; (ii) the provision being enforced is or may be construed as inconsistent with Applicable Law; (iii) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable Person or to justify expending the Association's resources; or (iv) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

8.3. No Waiver. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter.

8.4. Recovery of Costs. The costs of curing or abating a violation are the expense of the Owner or other Person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

8.5. Notice and Hearing. Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an Individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard, to the extent required by Applicable Law. The Association's written notice must contain a description of the violation or property damage; the amount of the proposed fine or damage charge; a statement that not later than the thirtieth (30<sup>th</sup>) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and a stated date by which the Owner may cure the violation to avoid the fine, unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months. The Association may also give a copy of the notice to any Occupant. Pending the

hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another Person or written communication. The Board may adopt additional or alternative procedures and requirements for notices and hearing, provided they are consistent with the requirements of Applicable Law.

8.6. Security. THE ASSOCIATION MAY, BUT IS NOT OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE LAS PALMAS COMMUNITY DESIGNED, EITHER DIRECTLY OR INDIRECTLY, TO IMPROVE SAFETY WITHIN THE LAS PALMAS COMMUNITY. EACH OWNER ACKNOWLEDGES AND AGREES, FOR HIMSELF AND HIS PERMITTEES, THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES ARE NOT PROVIDERS, INSURERS, OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. EACH OWNER ACKNOWLEDGES AND ACCEPTS HIS SOLE RESPONSIBILITY TO PROVIDE SECURITY FOR HIS OWN PERSON AND PROPERTY, AND ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO SAME. EACH OWNER FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS THE OWNER RELIED ON ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE, BURGLARY, AND/OR INTRUSION SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY. EACH OWNER ACKNOWLEDGES AND AGREES THAT DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES MAY NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN.

8.7. Injury to Person or Property. NEITHER THE ASSOCIATION NOR DECLARANT, OR THEIR RESPECTIVE DIRECTORS, OFFICERS, COMMITTEES, AGENTS, AND EMPLOYEES HAVE A DUTY OR OBLIGATION TO ANY OWNER OR THEIR RESPECTIVE PERMITTEES: (A) TO SUPERVISE MINOR CHILDREN OR ANY OTHER PERSON; (B) TO FENCE OR OTHERWISE ENCLOSE ANY GENERAL COMMON ELEMENT, MASTER COMMON ELEMENT OR OTHER IMPROVEMENT; OR (C) TO PROVIDE SECURITY OR PROTECTION TO ANY OWNER OR THEIR RESPECTIVE PERMITTEES FROM HARM OR LOSS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER AGREES THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE REASONABLE AND CONSTITUTE THE EXERCISE OF ORDINARY CARE BY THE ASSOCIATION AND DECLARANT. EACH OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND DECLARANT, AND THEIR RESPECTIVE

AGENTS, FROM ANY CLAIM OF DAMAGES, TO PERSON OR PROPERTY ARISING OUT OF AN ACCIDENT OR INJURY IN OR ABOUT THE REGIME TO THE EXTENT AND ONLY TO THE EXTENT CAUSED BY THE ACTS OR OMISSIONS OF SUCH OWNER OR ITS PERMITTEES TO THE EXTENT SUCH CLAIM IS NOT COVERED BY INSURANCE OBTAINED BY THE ASSOCIATION AT THE TIME OF SUCH ACCIDENT OR INJURY.

**ARTICLE 9**  
**INSURANCE**

**9.1. Insurance Required to be Maintained by the Association Pursuant to the Master Declaration.**

9.1.1. Property Insurance. Policies of property insurance for the Master Regime are required to be obtained and maintained by the Association pursuant to *Article 14* of the Master Declaration. Among other things, *Section 14.3* of the Master Declaration provides that the Association will obtain blanket all-risk insurance if reasonably available, for all Master Common Elements insurable by the Association. If blanket all-risk insurance is not reasonably available, then at a minimum, the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover one-hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. As set forth in *Section 14.3* of the Master Declaration, such policies of insurance shall cover (i) the Master Common Elements; and (ii) property owned by the Association including, if any, records, furniture, fixtures, equipment, and supplies. The Association is also required to maintain property insurance covering any Master Unit shown as a drainage flume, detention pond or other similar drainage feature on the Master Plats and Plans.

9.1.2. Liability Insurance. Pursuant to *Section 14.7* of the Master Declaration, the Association is required to maintain a commercial general liability insurance policy over the Master Common Elements and any Master Unit shown as a drainage flume, detention pond or other similar drainage feature on the Master Plats and Plans. – expressly excluding the liability of each Owner and Occupant within the Owner’s Master Unit or Sub-Unit – for bodily injury and property damage resulting from the operation, maintenance, or use of the Master Common Elements and any Master Unit shown as a drainage flume, detention pond or other similar drainage feature on the Master Plats and Plans.

9.1.3. Other Policies: Generally. *Article 14* of the Master Declaration also permits, but does not require, the Association to maintain certain other policies of insurance, including, without limitation, policies of worker’s compensation, fidelity and directors’ and officers’ liability insurance. *Article 14* of the Master Declaration also includes additional information concerning the form and content of policies which may be maintained by the Association. Each Owner should review *Article 14* of the Master

Declaration in its entirety to determine the coverages which shall and may be provided by the Association.

9.2. **Insurance Required to be Maintained by the Owners Pursuant to the Master Declaration.** Except as provided in *Section 14.3.1* of the Master Declaration, in no event will the Association maintain property insurance on any of the Units. Accordingly, as required under *Section 14.3.2* of the Master Declaration, each Owner will be obligated to maintain property insurance on such Owner's Unit, including any Improvements constructed within or exclusively serving such Unit, in an amount sufficient to cover one-hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Each Owner is advised to consult *Article 14* of the Master Declaration to determine the full extent of insurance coverage required to be maintained by the Owners pursuant to the Master Declaration.

**ARTICLE 10**  
**RECONSTRUCTION OR REPAIR AFTER LOSS; TERMINATION AND**  
**CONDEMNATION**

10.1. **Reconstruction or Repair After Loss.** The Association's response to damage or destruction of the Property (as defined in the Master Declaration) will be governed by *Section 82.111(i)* of the Act. The provisions of *Article 15* of the Master Declaration, which are hereby incorporated into this Declaration by reference, will apply to the extent the Act is silent. Each Owner should review *Article 15* of the Master Declaration to determine the rights, obligations and duties of the Owners and the Association in the event of damage or destruction of the Property (as defined in the Master Declaration).

10.2. **Association as Trustee.** Each Owner hereby irrevocably appoints the Association, acting through the Board, as trustee to deal with the Submitted Master Units in the event of damage, destruction, obsolescence, condemnation, or termination of all or any part of the Submitted Master Units. As trustee, the Association will have full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration and the Act, including, without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; to effect the sale of the Property (as defined in the Master Declaration) as permitted by this Declaration or by the Act; and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

10.3. **Termination.** Termination of the terms of this Declaration and the condominium status of the Regime will be governed by *Section 82.068* of the Act and *Section 11.3* below.

10.4. **Condemnation.** The Association's response to condemnation of any part of the Regime will be governed by *Section 82.007* of the Act. On behalf of Owners, but without their consent, the Board may execute an amendment of this Declaration to reallocate allocated interests following condemnation and to describe the altered parameters of the Regime. If the Association replaces or restores Common Elements taken by condemnation by obtaining other

land or constructing additional Improvements, the Board may, to the extent permitted by Applicable Law, execute and Record an amendment without the prior consent of Owners to describe the altered parameters of the Regime and any corresponding change of facilities or Improvements.

## ARTICLE 11 MORTGAGEE PROTECTION

11.1. **Introduction.** This Article is supplemental to, not a substitution for, any other provision of the Documents, including, without limitation, the terms and provisions of *Article 17* of the Master Declaration. Some sections of this Article apply to "Mortgagees" as defined in *Article 1*. Other sections apply to "Eligible Mortgagees" as defined below.

11.1.1. **Known Mortgagees.** An Owner who mortgages his Unit will notify the Association, giving the complete name and address of his Mortgagee and the loan number. The Association's obligations to Mortgagees under the Documents extend only to those Mortgagees known to the Association. All actions and approvals required by Mortgagees will be conclusively satisfied by the Mortgagees known to the Association, without regard to other holders of mortgages on Units. The Association may rely on the information provided by Owners and Mortgagees.

11.1.2. **Eligible Mortgagees.** "Eligible Mortgagee" means the holder, insurer, or guarantor of a first purchase money mortgage secured by a Recorded deed of trust lien against a Unit who has submitted to the Association a written notice containing its name and address, the loan number, and the identifying number and street address of the mortgaged Unit. A single notice per Unit will be valid so long as the Eligible Mortgagee holds a mortgage on the Unit. The Board will maintain this information. The Association will treat the notice as the Eligible Mortgagee's request to be notified of any proposed action requiring the consent of Eligible Mortgagees. A provision of the Documents requiring the approval of a specified percentage of Eligible Mortgagees will be based on the number of Units subject to mortgages held by Eligible Mortgagees. For example, "51 percent of Eligible Mortgagees" means Eligible Mortgagees of fifty-one percent (51%) of the Units that are subject to mortgages held by Eligible Mortgagees.

11.2. **Amendment.** This Article establishes certain standards for the benefit of Underwriting Lenders, and is written to comply with their requirements and guidelines in effect at the time of drafting. If an Underwriting Lender subsequently changes its requirements, the Board, without approval of Owners or Mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender.

11.3. **Termination.** Termination of the terms of this Declaration and the condominium status of the Regime will be governed by Section 82.068 of the Act, subject to the following provisions. In the event of condemnation of the entire Regime, an amendment to terminate

may be executed by the Board without a vote of Owners or Mortgagees. Any election to terminate this Declaration and the condominium status of the Regime under circumstances other than condemnation of the entire Regime shall require the consent of: (i) Owners representing at least eighty percent (80%) of the Units; (ii) Declarant during the Development Period; and (iii) sixty-seven percent (67%) of Eligible Mortgagees.

11.4. **Implied Approval.** The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within sixty (60) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

11.5. **Other Mortgagee Rights.**

11.5.1. **Inspection of Books.** The Association will maintain current copies of the Documents and the Association's books, records, and financial statements. Mortgagees may inspect the Documents and records, by appointment, during normal business hours.

11.5.2. **Financial Statements.** If a Mortgagee submits a written request, the Association will give the Mortgagee an audited statement for the preceding fiscal year within one hundred and twenty (120) days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

11.5.3. **Attendance at Meetings.** A representative of an Eligible Mortgagee may attend and address any meeting which an Owner may attend.

11.5.4. **Right of First Refusal.** Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Unit does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien. This Declaration does not establish a right of first refusal in favor of any party.

11.5.5. **Management Contract.** If professional management of the Association is required by this Article, the contract for professional management may not require more than ninety (90) days' notice to terminate the contract, nor payment of a termination penalty.

11.6. **Insurance Policies.** If an Underwriting Lender that holds a mortgage on a Unit or desires to finance a Unit has requirements for insurance of condominiums, the Association must try to obtain and maintain the required coverages, to the extent they are reasonably available, and must try to comply with any notifications or processes required by the Underwriting Lender. Because underwriting requirements are subject to change, they are not recited here.



11.7. **Notice of Actions.** The Association will use its best efforts to send timely written notice to Eligible Mortgagees of the following actions:

- (a) Any condemnation or casualty loss that affects a material portion of the Regime or the mortgaged Unit.
- (b) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of the mortgaged Unit.
- (c) A lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- (d) Any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.
- (e) Any proposed amendment of a material nature, as provided in this Article.
- (f) Any proposed termination of the condominium status of the Regime.

11.8. **Amendments of a Material Nature.** A Document amendment of a material nature must be approved by Owners representing at least sixty-seven percent (67%) of the Units, and by at least fifty-one percent (51%) of Eligible Mortgagees. **THIS APPROVAL REQUIREMENT DOES NOT APPLY TO AMENDMENTS EFFECTED BY THE EXERCISE OF A DEVELOPMENT RIGHT RESERVED BY THE DECLARANT IN THIS DECLARATION.** A change to any of the provisions governing the following would be considered material:

- (a) Voting rights;
- (b) Assessment liens, or the priority of assessment liens;
- (c) Reductions in reserves for maintenance, repair, and replacement of Common Elements;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the General Common Elements or Limited Common Elements, or rights to their use; except that when Limited Common Elements are reallocated by Declarant pursuant to any rights reserved by Declarant pursuant to this Declaration by agreement between Owners (only those Owners and only the Eligible Mortgagees holding mortgages against those Units need approve the action);
- (f) Redefinitions of boundaries of Units, except that when boundaries of only

adjoining Units are involved, then only those owners and the Eligible Mortgagees holding mortgages against the Unit or Units need approve the action;

- (g) Convertibility of Units into Common Elements or Common Elements into Units;
- (h) Expansion or contraction of the Regime, or the addition, annexation, or withdrawal of property to or from the Regime;
- (i) Property or fidelity insurance requirements;
- (j) Imposition of any restrictions on the leasing of Units;
- (k) Imposition of any restrictions on Owners' right to sell or transfer their Units;
- (l) Restoration or repair of the Regime, in a manner other than that specified in the Documents, after hazard damage or partial condemnation; and
- (m) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

## ARTICLE 12 AMENDMENTS

12.1. Consents Required. As permitted by the Act or by this Declaration, certain amendments of this Declaration may be executed by Declarant acting alone, or by certain Owners acting alone, or by the Board acting alone. Otherwise, amendments to this Declaration must be approved by Owners representing at least sixty-seven percent (67%) of the votes in the Association.

12.2. Amendments Generally. For amendments requiring the consent of Eligible Mortgagees, the Association will send each Eligible Mortgagee a detailed description, if not the exact wording, of any proposed amendment. Notwithstanding any provisions in this Declaration to the contrary, no amendment to this Declaration shall modify, alter, abridge or delete any: (i) provision of this Declaration that benefits Declarant; (ii) rights, privileges, easements, protections, or defenses of Declarant; or (iii) rights of the Owners or the Association in relationship to Declarant, without the written consent of Declarant attached to and Recorded with such amendment. During the Development Period, this Article 12 may not be amended without Declarant's written and acknowledged consent.

12.3. Effective. To be effective, an amendment must be in the form of a written instrument: (i) referencing the name of the Regime, the name of the Association, and the Recording data of this Declaration and any amendments hereto; (ii) signed and acknowledged

by an officer of the Association, certifying the requisite approval of Owners and, if required, Eligible Mortgagees; provided, however, this subsection (ii) will not apply for amendments prosecuted by Declarant pursuant to any rights reserved by Declarant under this Declaration; and (iii) Recorded.

12.4. **Declarant Provisions.** Declarant hereby reserves the right to unilaterally amend this Declaration:

- (a) To meet the requirements, standards, or recommended guidelines of an Underwriting Lender to enable an institutional or governmental lender to make or purchase mortgage loans on the Units.
- (b) To correct any defects in the execution of this Declaration or the other Documents.
- (c) To add real property to the Regime.
- (d) To create Units, General Common Elements, and Limited Common Elements.
- (e) to subdivide, combine, or reconfigure Units or convert Units into additional Units and/or Common Elements.
- (f) to resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- (g) to exercise any development right, as defined in Section 82.003(12) of the Act, not otherwise described in this *Section 12.4*.
- (h) for any other purpose, provided the amendment has no material adverse effect on any rights of any Owner.

An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association.

### ARTICLE 13 **DISPUTE RESOLUTION**

13.1. **Subject to Master Declaration.** The Association, the Owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article, agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each of them hereby covenants and agrees that the terms and provisions of *Article 19* of the Master Declaration (expressly including *Section 19.10* of the Master Declaration) will apply to the resolution of all "Claims" (as defined in the Master

Declaration) as they may relate to the Documents or the Regime. Reference is herein made to *Article 19* of the Master Declaration, the terms of which are incorporated herein by reference. Each Owner is hereby advised to review the provisions of *Article 19* of the Master Declaration for a complete description of the process by which Claims may be resolved.

**ARTICLE 14**  
**GENERAL PROVISIONS**

14.1. **Supremacy of Master Declaration.** Every Owner, by acceptance of deed to a Unit, acknowledges that, in addition to being subject to and bound by this Declaration, he or she is subject to the Master Declaration. In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to this Declaration, the Bylaws, or the Certificate, the Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it pursuant to the Master Declaration. Each Owner and Occupant acknowledges and agrees that, until one-hundred twenty (120) days after Declarant has conveyed seventy-five percent (75%) of the Master Units which may be created under the Master Declaration, Declarant will have the authority to appoint and remove all directors and officers of the Association.

14.2. **Notices.** Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either by **electronic mail**, personally or by mail. Such notice shall be deemed delivered at the time of personal or **electronic delivery**, and if delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such Person to the Association of created.

14.3. **Compliance.** The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and Applicable Law, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

14.4. **Higher Authority.** The documents are subordinate to Applicable Law, and local ordinances. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with Applicable Law.

14.5. **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Regime and of promoting and effectuating the fundamental concepts of the Regime set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

14.6. **Duration.** Unless terminated or amended by Owners as permitted herein, the provisions of this Declaration run with and bind the Submitted Master Units, and will remain in effect perpetually to the extent permitted by Applicable Law.

14.7. **Captions.** In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

14.8. **Construction.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections, or articles hereof.

14.9. **Declarant as Attorney in Fact and Proxy.** To secure and facilitate Declarant's exercise of the rights reserved by Declarant under this Declaration, each Owner, by accepting a deed to a Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Unit, and any other Person, by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Unit, shall thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and Person's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to this Declaration. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee, and/or Person, shall be deemed, conclusively, to be coupled with an interest and shall survive the dissolution, termination, insolvency, bankruptcy, incompetency, and death of an Owner, Mortgagee, and/or Person and shall be binding upon the legal representatives, administrators, executors, successors, heirs, and assigns of each such party. In addition, each Owner, by accepting a deed to a Unit, and each Mortgagee, by accepting the benefits of a Mortgage, and any Person, by accepting the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien, and/or any other security interest against any Unit, shall thereby appoint Declarant the proxy of such Owner, Mortgagee, or Person, with full power of substitution in the premises, to do and perform each and every act permitted or required pursuant to this Declaration, and which may otherwise be reasonably necessary in connection therewith, including without limitation, to cast a vote for such Owner, Mortgagee, or Person at any meeting of the Members for the purpose of approving or consenting to any amendment to this Declaration in order to effect and perfect any such act permitted or required pursuant to this Declaration and to execute and Record amendments on their behalf to such effect; and the power hereby reposed in Declarant, as the attorney-in-fact for each such Owner, Mortgagee, or Person includes, without limitation, the authority to execute a proxy as the act and deed of any

Owner, Mortgagee, or Person and, upon termination or revocation of any Owner's proxy as permitted by the Texas Business Organizations Code the authority to execute successive proxies as the act and deed of any Owner, Mortgagee, or Person authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. Furthermore, each Owner, Mortgagee, and Person upon request by Declarant, will execute and deliver a written proxy pursuant to Section 82.110(b) of the Act, including a successive written proxy upon the termination or revocation as permitted by the Act of any earlier proxy, authorizing Declarant, or any substitute or successor Declarant appointed thereby, to cast a like vote for such Owner at any meeting of the Members of the Association. All such appointments and successive proxies shall expire as to power reserved by Declarant on the date Declarant no longer has the right to exercise such rights. All such proxies shall be non-revocable for the maximum lawful time and upon the expiration of non-revocable period, new proxies shall again be executed for the maximum non-revocable time until Declarant's right to require such successive proxies expires.

14.10. Attachments. The following attachments are attached to this Declaration and are incorporated herein by reference:

Attachment 1	Plat and Plans
Attachment 2	Schedule of Allocated Interests

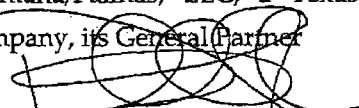
[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective on the date on which this Declaration has been recorded in the Official Public Records of El Paso County, Texas.

**DECLARANT:**

**AVENIDA DE PALMAS, LTD.,** a Texas limited partnership

By: ~~Montana/Palmas, LLC, a Texas limited liability company, its General Partner~~

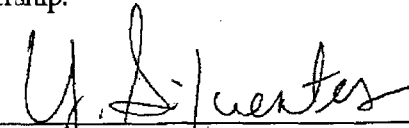
By:   
Printed Name: RICHARD AGUILAR  
Title: MANAGER

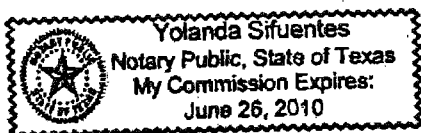
THE STATE OF TEXAS     §

COUNTY OF EL PASO     §

This instrument was acknowledged before me this 20 day of March, 2008 by Richard Aguilar, Manager of Montana/Palmas, LLC, a Texas limited liability company, General Partner of Avenida de Palmas, Ltd., a Texas limited partnership, on behalf of such limited liability company and limited partnership.

(SEAL)

  
\_\_\_\_\_  
Notary Public Signature



AGREED TO, ACKNOWLEDGED AND ACCEPTED  
BY THE UNDERSIGNED OWNER:

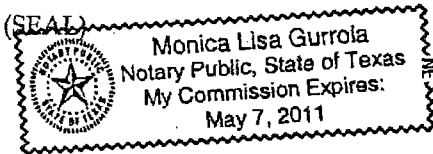
LA JOLLA HOMES, D/B/A AGUILAR  
CONSTRUCTION GROUP, LLC, a Texas limited  
liability company

By: Ruben Aguilar Jr.  
Printed Name: Ruben Aguilar Jr.  
Title: MANAGER

THE STATE OF TEXAS §

COUNTY OF EL PASO §

This instrument was acknowledged before me this 20th day of March 2008 by  
Ruben Aguilar Jr. of La Jolla Homes, d/b/a Aguilar Construction  
Group, LLC, a Texas limited liability company, on behalf of such limited liability company.



[Signature]  
Notary Public Signature



**AGREED TO, ACKNOWLEDGED AND ACCEPTED  
BY THE UNDERSIGNED OWNER:**

**BORDER INVESTORS CAPITAL, LLC**, a Texas limited liability company, d/b/a **BIC HOMES**

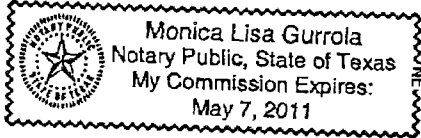
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: President

THE STATE OF TEXAS     §

COUNTY OF EL PASO     §

This instrument was acknowledged before me this 2th day of March 2008 by Sergio L. Cuates President of Border Investors Capital, LLC, a Texas limited liability company, d/b/a Bic Homes, on behalf of such limited liability company.

(SEAL)



\_\_\_\_\_  
Notary Public Signature

**AGREED TO, ACKNOWLEDGED AND ACCEPTED  
BY THE UNDERSIGNED OWNER:**

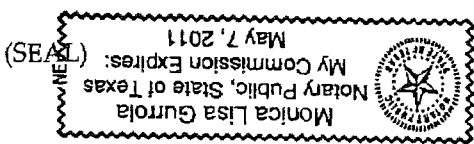
FRANCISCO J. NAVARRETE, d/b/a CUSTOM  
DREAM HOMES, a sole proprietorship

By: [Signature]  
Printed Name: JAVIER NAVARRETE  
Title: OWNER

THE STATE OF TEXAS §

COUNTY OF EL PASO §

This instrument was acknowledged before me this 20th day of March 2008 by  
Javier Navarrete of Francisco J. Navarrete, d/b/a Custom Dream  
Homes, a sole proprietorship, on behalf of such sole proprietorship.



[Signature]  
Notary Public Signature

**AGREED TO, ACKNOWLEDGED AND ACCEPTED**  
**BY THE UNDERSIGNED OWNER:**

EPT BELLA HOMES, LP, a Texas limited partnership

By: EPT Bella Management, LLC, a Texas limited liability company, its General Partner

By: 

Printed Name: RICHARD AGUILAR

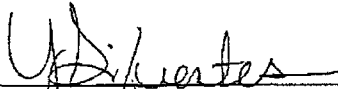
Title: MANAGER

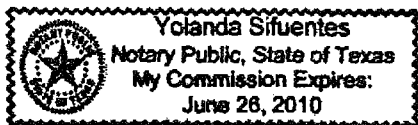
THE STATE OF TEXAS §

COUNTY OF EL PASO §

This instrument was acknowledged before me this 20 day of March, 2008 by Richard Aguilar, Manager of EPT Bella Management, LLC, a Texas limited liability company, General Partner of EPT Bella Homes, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

(SEAL)

  
\_\_\_\_\_  
Notary Public Signature



AGREED TO, ACKNOWLEDGED AND ACCEPTED  
BY THE ASSOCIATION:

RESIDENTIAL OWNERS ASSOCIATION OF LAS  
PALMAS, INC., a Texas non-profit corporation

By: [Signature]  
Printed Name: RICHARD AGUILAR  
Title: BOARD Member

THE STATE OF TEXAS     §

COUNTY OF EL PASO     §

This instrument was acknowledged before me this 20 day of March, 2008 by \_\_\_\_\_ of the Residential Owners Association of Las Palmas, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

(SEAL)

[Signature]  
Notary Public Signature

