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SECOND CORRECTION  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
DIAMOND POINTE PATIO HOMES  
SUBDIVISION

(A Residential Subdivision, El Paso, El Paso County, Texas)

**This Second Correction Declaration of Covenants, Conditions and Restrictions for Diamond Pointe Patio Homes Subdivision is made in place of and to correct that certain Declaration of Covenants, Conditions and Restrictions for Diamond Pointe Patio Homes Subdivision filed under Clerk's File. No. \_\_\_\_\_, Real Property Records of El Paso County, Texas and that certain Correction Declaration of Covenants, Conditions and Restrictions for Diamond Pointe Patio Homes Subdivision filed under Clerk's File. No. \_\_\_\_\_, Real Property Records of El Paso County, Texas.**

DIAMOND POINTE PATIO HOMES SUBDIVISION

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EXHIBITS

- 1.1. Legal description of Common Areas and Private Drives

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE**  
**“DIAMOND POINTE PATIO HOMES SUBDIVISION”**  
**(A RESIDENTIAL SUBDIVISION IN EL PASO COUNTY, TEXAS)**

This Declaration of Covenants, Conditions, and Restrictions (“Declaration”) is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by A.R. CONSTRUCTION, INC. (hereinafter referred to as “Declarant”), the present Owner of the Property which it desires also to make subject to this Declaration.

**W I T N E S S E T H:**

1. **RECITALS AND DECLARATION.**

1.1. **The Property.** Declarant is the Owner of certain property, herein referred to as the “Property” located in El Paso County, Texas, which is more particularly described as:

Lots 1 through 16, 21 and 22, Block 1, Diamond Pointe Patio Homes Subdivision Amending Plat, an addition to the City of El Paso, El Paso County, Texas, as reflected in that certain subdivision amending plat filed in Book 80, Page 38, of the Real Property Records of El Paso County, Texas (“Subdivision Plat”); and which includes a private drive named “Indian Bluff Drive” and private streets named “Teresa Del Mar Street” and “Tierra Del Mar Street” all as reflected on the Subdivision Plat.

The Property shall also include any other property subsequently made subject to the Declaration.

A legal description of the Common Areas and Private Drives as those terms are defined in Section 2 hereof, is attached hereto at Exhibit 1.1.

1.2. **General Plan and Declaration.** WHEREAS, Declarant desires to impose a general plan for the benefit of all future Owners (as defined hereinafter) of Lots (as defined hereinafter) for the development of the Property, together with such other additions of property as may hereafter be made thereto, all for the purpose of enhancing and protecting the value, desirability, and attractiveness thereof.

NOW THEREFORE, Declarant does hereby COVENANT, AGREE and DECLARE that the Property, shall hereafter be subject to the covenants, conditions, restrictions, easements, charges and liens of this Declaration upon the use, occupancy, and enjoyment thereof.

1.3. The Association. For the efficient preservation of the value and amenities in the Property, Declarant deems it desirable to provide for an agency to which will be delegated and assigned the powers of maintaining and administrating all common properties and amenities, and enforcing and administrating the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created, and therefore Declarant shall cause a nonprofit corporation to be incorporated under the laws of the State of Texas to which such powers may be delegated in the future, hereafter referred to as the "Association". The duties and powers of the Association are those set forth in this Declaration, together with general and implied powers of a property Owners association and a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its members, subject only to the limitations on the exercise of such powers as stated in the Declaration. The Association comes into existence on the earlier of (1) issuance of its corporate charter or (2) the initial levy of assessments against the Lots and Owners. The Association will continue to exist at least as long as the Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.

1.4. Mergers. Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions applicable to the

properties of the other association as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration or any Supplemental Declaration.

1.5. Change in Property Configuration. Subject to the rights of eligible mortgage holders as defined in subsection 12.2. Declarant reserves the right to make such changes in the boundaries and designations of Lots not sold to others and in the Common Areas, as Declarant deems advisable, provided that any such changes shall not have a materially adverse effect upon the boundaries or the beneficial use and enjoyment of any Lot then owned by Owners other than Declarant.

2. DEFINITIONS.

The following terms hereinafter used in the Declaration, unless otherwise provided or unless the context requires otherwise, are defined as follows:

2.1. The Association. “The Association” shall mean and refer to the nonprofit corporation which Declarant shall cause to be incorporated as herein provided, its successors and assigns, and shall serve as the “property owners association” as defined in Section 202.001, of the Texas Property Code.

2.2. Common Areas. “Common Areas” shall mean and refer to all real property owned by the Association for the common and/or restricted use and enjoyment of the Owners, which includes Lot 14 on the Subdivision Plat and which shall be subsequently conveyed to the Association for use as a Common Areas, and shall also refer to any facilities located thereon including but not limited to signage, landscaping, planter boxes, gates, fencing, walls, gate lighting, pools, ponds, walking trails, and a pool club house, if any. “Common Area” shall mean and refer to the singular of “Common Areas”.

2.3. Declaration. “Declaration” shall mean and refer to this Declaration.

2.4. Lot. “Lot” shall mean and refer the lots described in section 1.1. above with the exception of the Common Area and the Private Drives; and shall mean the fee owned by a Member or shall mean any Lot as shown or redesignated on the Subdivision Plat and any replat.

2.5. Member. “Member” shall mean and refer to every person or entity who holds membership in the Association as provided in Section 5.3 hereof.

2.6. Owner. “Owner” shall mean and refer to the record Owner, whether one or more persons or, entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Owner shall also include the personal representative of a person who holds record title to a Lot. “Owners” shall mean and refer to the plural of the term “Owner”.

2.7. Private Drives. “Private Drives” shall refer to Indian Bluff Drive, Teresa Del Mar Street, and Tierra Del Mar Street which are private streets known as Lots 21 and 22 of the Subdivision Plat and which shall be subsequently conveyed to the Association, and shall also refer to all fixtures and improvements thereon, including but not limited to: all curbs, parking areas, drainage facilities, storm sewer lines, sanitary sewer lines, water lines, electrical cable, telephone, security, gas, or other utility facilities, gates, lighting, street lamps, street name, signs, traffic signs, or any other street facility situated thereon. “Private Drive” shall mean and refer to the singular of “Private Drives”.

2.8. The Subdivision. “The Subdivision” shall mean and refer to Lots 1 through 16, 21 and 22, Block 1, of Diamond Pointe Patio Homes Subdivision Amending Plat filed in Volume 80, Page 38, of the Real Property Records of El Paso County, Texas and any other real property brought within the scheme of this Declaration.



2.9. Subdivision Plat. “Subdivision Plat” shall mean and refer to the Diamond Pointe Patio Homes Subdivision Amending Plat, recorded in Volume 80, Page 38, in the Real Property Records of El Paso County, Texas, or any replat(s) thereof.

2.10. Supplemental Declaration. “Supplemental Declaration” shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions supplementing this Declaration under the authority provided herein.

### 3. PROPERTY RIGHTS IN COMMON AREAS AND PRIVATE DRIVES

Every Member is hereby granted a nonexclusive common right and easement of enjoyment in and to Common Areas, and the Private Drives with such right and easement to be appurtenant to and pass with title to each Lot in the Subdivision, subject, however, to the following reservations, restrictions, and limitations:

3.1. Fees and Rules. The right of the Association to make, publish, and enforce reasonable rules and regulations governing the use, enjoyment, preservation, repair and replacement of the Common Areas and Private Drives or any part thereof, all of which rules and regulations shall be binding upon, complied with, and observed by each Member. These rules and regulations may include but not limited to provisions to govern and control the use of such Common Areas and Private Drives by guests or invitees of the Members, including, without limitation, the number of guests or invitees who may use such Common Areas and Private Drives or any part thereof at the same time and provisions to create fines for the violation thereof by Members and any other person governed by said rules and regulations, provisions to designate the appropriate or inappropriate use of the Common Areas and/or Private Drives to include but not be limited to the hours of use of the Common Areas, the designation of speed limit on the Private Drives, the designation of parking and parking areas in the Common Areas and/or Private Drives, the removal or prohibition of vehicles that violate these rules and

regulations and/or rules and regulations created for controlling access through the entrance gates(s), if any. Additionally, the Association shall have the right, in its discretion, to charge reasonable admission and other fees for the use of recreational facilities including but not limited to a pool and pool club house, if any, located in the Common Areas; and

3.2. Easements. The right of the Association to grant or dedicate easements in, on, under or above such Common Areas and Private Drives or any part thereof to any public or governmental agency or authority or to any utility company for any service to the Subdivision or any part thereof and rights, easements and restrictions on use now existing and as provided for in the Declaration; and

3.3. Title to Utilities and Streets. The right of the Association to transfer title to any street, curbs, parking areas, drainage facilities, storm sewer line, sanitary sewer line, water line, or any other street facility, electrical cable, telephone, security, gas or other utility facility or equipment situated in any part of such Common Areas and Private Drives and owned by the Association to any public or political authority or agency or to any utility company rendering or to render service to the Subdivision or any part thereof; and

3.4. Health, Safety, and Welfare. The right of the Association to convey or dedicate such portions of such Common Areas and Private Drives as its Board of Trustees may deem appropriate to governmental authorities, political subdivisions or other persons or entities for use as locations for schools, churches, and hospitals, or for other similar purposes related to the health, safety, and welfare of the Members; and

3.5. Maintenance and Operation. The right of the Association to enter into management and/or operating contracts or lease or concession agreements relative to the maintenance and operation of such Common Areas and Private Drives in such instances and on such terms as its Board of Trustees may deem appropriate subject to any law regulating same.

Notwithstanding any provision in this Declaration to the contrary, any said management and/or operating contract entered into prior to the Conversion Date as that term is defined in subsection 5.4.2, shall expressly provide that at any time after the Conversion Date, the Association may terminate said management and/or operating contract without cause, without penalty and without more than ninety (90) days notice to the party with whom said contract is entered into. The Association shall have the exclusive right to operate recreational facilities and related concessions located on such Common Areas; and

3.6. Suspension of Rights. Subject to the Texas Residential Property Owners Protection Act, Section 209.001, et. seq. of the Property Code: (1) the right of the Association to suspend the voting rights of a Member or his right to use any recreational facility located in the Common Areas, or use the Common Areas, during the period he is in default in excess of thirty (30) days in the payment of any assessment for which he or she is liable under this Declaration; and (2) the right of the Association to suspend the rights described above for a period not to exceed sixty (60) days for any infractions of its published rules and regulations; and the aforesaid rights of the Association shall not be exclusive but shall be cumulative of and in addition to any other rights and remedies which the Association may have in this Declaration and any Supplemental Declaration or in its Bylaws or at law or in equity on account of any such default or infraction; and

3.7. Borrowings. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and Private Drives, and in aid thereof to mortgage said properties. The rights of any mortgage holder in such properties shall be subject to the rights of the Owners to the easements of enjoyment in the Common Areas and Private Drives as set out herein. Notwithstanding any other provision in this Declaration to the contrary, no action under this subsection 3.7 may be had without the assent of at least sixty

percent of each class of the Members: and

3.8. Assignment of Use. Any Member may assign his right of use and enjoyment of the Common Areas and Private Areas, together with all easement rights granted to Members in this Declaration, to the member of his family, his tenants, or contract purchasers who reside on his Lot. Said Common Areas and Private Drives are not dedicated in any manner for use by the general public, but are limited and specifically restricted to the sole use and enjoyment of said Members and those to whom the use is properly assigned as herein provided.

4. GENERAL EASEMENTS.

Existing easements as shown on the Subdivision Plat or otherwise of record are hereby incorporated herein by reference and made a part of this Declaration for all purposes. The following additional easements are hereby granted, and each Owner takes his Lot and his right to enjoy and use the Common Areas and the Private Drives subject thereto:

4.1. Utility Easements Nonexclusive. Easements for underground services may be crossed by driveways, walkways, carports, walls and other facilities or improvements provided the Declarant or builder makes prior arrangements with the utility company whose easement is thus traversed. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area; and

4.2. Encroachment Easement. If, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, any portion of the Common

Areas encroaches upon a Lot or any portion of a Lot encroaches upon the Common Areas or upon an adjoining Lot, a valid easement for the encroachment and for the maintenance of same so long as it stands, is hereby created. Such encroachments and easements shall not be considered or determined to be encumbrances either upon the Common Areas or on the Lots, or the purpose of marketability of title or any other purpose; and

4.3. Drainage Easements. Each Owner covenants to provide such easements for drainage and water flow as the contour of the property and the arrangement of the structures by Declarant thereon requires; and

4.4. Easements for Police Etc. An easement is further granted to all police and police equipment, firemen and fire fighting equipment, utility service personnel and equipment, ambulance, garbage collection and all similar emergency or service persons so as to permit them to enter upon the Common Areas and the Private Drives in the performance of their required duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and to any management company elected by the Association to enter in or to cross over the Common Areas and the Private Drives provided for herein.

4.5. Monument Easement. The Association is granted a perpetual easement (the "Monument Easement") over each Lot that contains a standard street name monument ("Monument Lot") for the purpose of repairing, removing, and replacing the monument, as deemed necessary by the Association. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of the Monument Lot as may be reasonably necessary for the Association to perform its contemplated work on the Monument Easement. The Owner of a Monument Lot may not remove, deface, cover, or screen the monument, or otherwise interfere with the intended use and purpose of the monument.

4.6. Association's Access Easement. The Association is granted an easement of access and entry to every Lot to perform maintenance, to enforce architectural and use restrictions, to respond to emergencies, and to perform any other duties requires by this Declaration, it Articles of Incorporation, Bylaws, rules or regulations.

4.7. Right of Ingress and Egress. Each Owner shall have the right of ingress and egress to his Lot via the Private Drives and such right is perpetual and shall run with each respective Lot.

## 5. THE ASSOCIATION.

The Declarant shall cause the Association to be organized and formed as a nonprofit corporation under the laws of the State of Texas.

5.1. Purpose. The purpose of the Association in general shall be to provide for and promote the health, safety, and welfare of the Members, to collect the regular, restricted, and special assessments, and to administer the funds so collected, to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Areas, and the Private Drives in the Subdivision and such other purposes as are stated in the Articles of Incorporation consistent with the provisions of this Declaration and any Supplemental Declaration.

5.2. Trustees. The Association shall initially act through a three member Board of Trustees (or "Board" or "Board of Trustees" collectively, or "Trustee" individually), which shall manage the affairs of the Association. The initial Trustees of the Association shall be selected by Declarant. Each initial Trustee shall serve until the Conversion Date (defined in Section 5.4) unless replaced by the Declarant. The Declarant may replace a Trustee until the Conversion Date. After the Conversion Date, the Members shall elect a three member Board of Trustees as provided for in the Bylaws. Any vacancy, from whatever cause other than removal, occurring in the Board of Trustees shall be filled by appointment made by the remaining Trustee or Trustees.

The person appointed by the remaining Trustee or Trustees to fill such vacancy shall serve for the remainder of the initial term and until his successor is duly elected and qualified. All actions taken by the Board shall be by majority vote.

5.3. Members. Each Owner, whether one or more persons or entities, of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until his Ownership ceases for any reason, at which time his membership in the Association shall automatically cease, except that such termination shall not release or relieve any such person or entity from any liability or obligation incurred under this Declaration during the period of such person's or entity's Ownership, nor impair any rights or remedies which the Association or any other Owner may have with regard to such former Owner. Membership in the Association shall be appurtenant to and shall automatically follow the legal Ownership of each Lot and may not be separated from such Ownership. Whenever the legal Ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued. Notwithstanding anything contained herein to the contrary, a reference to Owner shall be deemed a reference to Member and a reference to Member shall be deemed to be a reference to Owner.

5.4. Voting Rights. The Association shall have two classes of voting membership:

5.4.1. Class A. The Class A Members shall be all Owners with the exception of the Declarant. After the Conversion Date, as defined below in subsection 5.4.2, Declarant shall also become a Class A Member to the extent Declarant is an Owner of a Lot or Lots.

5.4.2. Class B. The Class B Member shall be the Declarant. The Class B membership of Declarant shall cease and become converted to Class A membership upon occurrence of the earlier of the following (the "Conversion Date"):

- a) When Declarant has sold or leased for a term in excess of forty (40) years its interest in of all the Lots to unrelated third parties. A sale or a lease for such term to an unrelated third party shall include a sale or lease to joint ventures or partnerships that include Declarant as a co-venturer or partner;
- (b) Three (3) years after the first Lot in the Subdivision is conveyed to an unrelated third party; or
- (c) Such earlier date as may be established by Declarant in a Supplemental Declaration to be recorded by Declarant.

5.5. Restricted Voting Rights Prior to Conversion. Until the Conversion Date, the Class A Members shall not be entitled to vote (except as to amendments of this Declaration under Section 14.2. hereunder). The Class B Member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership.

5.6. Voting Rights After Conversion. From and after the Conversion Date each Class A Member shall be entitled to one (1) vote for each Lot in which he holds the interest required for membership. Where more than one person(s) or entity holds such interest in any Lot or subdivided portion thereof, all such person collectively shall be a single Member, and the vote for such Member shall be exercised as the several parties shall determine among themselves. The Association shall not be a voting member of the Association by virtue of its Ownership of any Lot, or subdivided portion thereof.

5.7. Title to Common Areas, Private Drives and Limited Assessment Rights. The Declarant may retain the legal title to the Common Areas and the Private Drives in the Subdivision until such time as it has completed improvements thereon and until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Until



title to such Common Areas and the Private Drives has been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all rights and privileges relating to such Common Areas and Private Drives granted to the Association in this Declaration and any Supplemental Declaration. Subject to Section 6, during such time, the Declarant (or the Board, at Declarant's request) may levy assessments including a lien to secure the payment of the assessments for the purpose and as provided in section 6. herein and otherwise exercise all rights of the Association in connection therewith, so long as such assessments do not exceed \$1,200.00 per year per Lot, and are levied against all Lots including those owned by Declarant (subject to the provisions of Section 6. herein) and any such assessments levied and collected and not used shall be turned over to the Association when title to the Common Areas and Private Drives are transferred to it. The \$1,200.00 limitation described in the immediately preceding sentence shall not apply to assessments imposed by the Association.

6. ASSESSMENTS AND LIENS.

There is hereby granted to the Board of Trustees of the Association (and to Declarant, prior to conveying the Common Areas and Private Drives to the Association, limited as described in subsection 5.7 herein) the right to levy assessments, and a lien to secure the payment thereof, as herein provided. The Association's lien for assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the county's real property records. 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. By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of non-judicial sale in connection with the Association's 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. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a board meeting. The assessment lien may be enforced by judicial or nonjudicial foreclosure. A nonjudicial 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 law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, and reasonable costs, subject to the requirements and limitations described in subsections 6.5 and 6.15 below. The Association shall have the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The Association, and its officers, trustees, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in this Declaration or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the Owner if those assessments are paid in full. Notwithstanding anything to the contrary in this Declaration, the Association may not foreclose on its assessment lien if the debt securing the assessment lien consists solely of:

- (1) fines assessed by the Association under Section 6.5 below or pursuant to the Association rules, regulations or resolutions; or
- (2) attorneys fees incurred by the Association solely associated with fines assessed by the Association.

6.1. Purpose of Assessments. The assessments levied hereunder by the Association shall be used exclusively for the purpose of protecting and promoting the comfort, collective mutual enjoyment, health, safety and welfare of the Owners of the Property, including, but not limited to, the following:

6.1.1. Maintenance. The maintenance, repair or replacement of any and all of the Common Areas, the Private Drives and any improvements thereon, along with the cost of any associated management or supervisory services, fees, labor, equipment, and materials. Assessments may also be levied with respect to installation and maintenance of gates to the Subdivision and guard devices related thereto, if any.

6.1.2. Improvements. The design, purchase and installation of the Common Areas, Private Drives and improvements.

6.1.3. Insurance. The purchase of insurance coverage relating to the Common Areas, Private Drives and any improvements thereon, and other property of the Association.

6.1.4. Administration. The carrying out of duties of the Board of Trustees as provided herein and in the Articles of Incorporation of the Association.

6.1.5. Purposes. The carrying out of purposes of the Association as stated herein and in the Articles of Incorporation.

6.1.6. Others. The carrying out of all other matters set forth or contemplated in this Declaration.

6.2. Annual Budget. Each fiscal year while this Declaration is in force, the Board shall adopt an annual budget and set the amount of a regular annual assessment to be levied for the next year, taking into consideration Association operating costs for the then current year, expected normal increases in such costs over the next year, and additional future needs of the Association, including the establishment and maintenance of an Association reserve fund to

maintain operations reserves for the Association at a level sufficient to cover the cost of operational or maintenance emergencies or contingencies, including the full amount of deductibles on insurance policies maintained by the Association and for the periodic maintenance, repair and replacement of improvements to the Common Areas and Private Drives, including but not limited to gates and security devices related thereto, if any (the "Regular Annual Assessment"). The annual budget shall be adopted by the Board not later than thirty (30) days prior to the commencement of each fiscal year. Notwithstanding the above, in the event the Board fails for any reason to adopt an annual budget covering the succeeding fiscal year, then and until such time as an annual budget shall have been adopted for such succeeding fiscal year, the annual budget in effect for the then current year shall continue and the Regular Annual Assessment shall be deemed the same as for the current year. The Association is granted the right to borrow money, subject to subsection 3.7 and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

6.2.1 Initial Budget. Within thirty (30) days after the filing of the Articles of Incorporation of the Association, the Board of Trustees shall adopt a budget for that portion of the fiscal year of the Association commencing on the date the Articles of Incorporation were filed and terminating on the last day of the then current fiscal year. The manner of determining the assessment for the initial budget shall be the same manner used in determining the Regular Annual Assessments described in subsection 6.3 below except that a working capital fund equal to at least a two (2) months' Common Areas charge for each Lot shall also be planned for

inclusion into the initial budget. Each Lot's share of the working capital fund shall be collected at the time the sale of said Lot is closed from the Owner of the Lot. The share of the working capital fund collected from the first Lot sold in the Subdivision, together with the shares of the working capital fund collected from all Lots sold in the Subdivision during the period of time expiring sixty (60) days after the closing of the first Lot in the Subdivision, shall be deposited in a segregated fund by the Declarant on behalf of the Association. Upon the expiration of said sixty (60) day period, the Declarant shall transfer and pay over to said segregated account all the shares of the working capital fund for all Lots remaining unsold at that time. For each Lot sold by the Declarant after the expiration of said sixty (60) day period, the Declarant shall be entitled to directly receive at closing as reimbursement each such Lot's share of the working capital fund theretofore paid by the Declarant for such Lot. The Board of Trustees shall determine in the reasonable exercise of its judgment whether and to what extent such a working capital fund shall be incorporated into the Regular Annual Assessments. Payment of initial assessments based upon the initial budget shall be as determined by the Board of Trustees.

6.3. Manner of Determining Regular Annual Assessment. The Regular Annual Assessment for each fiscal year shall be determined by the Board upon its adoption of the annual budget for such fiscal year in the following manner:

6.3.1. Total Regular. The Regular Annual Assessment with respect to any fiscal year shall equal the total amount of the annual budget approved by the Board with respect to such fiscal year.

6.3.2. Unimproved. Each unimproved Lot shall be assigned a weighted factor of 1.

6.3.3. Declarant or Builder Owned, Improved, Unoccupied. Each Lot owned by Declarant or any Builder (who holds for resale), improved and with an issued Certificate of

Occupancy, but unoccupied, shall be assigned a weighted factor of 2.

6.3.4. Improved. Each Lot owned by any Owner other than Declarant, improved and available for occupancy (whether occupied or not), shall be assigned a weighted factor of 3.

6.3.5. Allocation. Each Lot's pro rata share of the Regular Annual Assessment shall be determined by multiplying the Regular Annual Assessment by a fraction, the numeration of which is the assigned weighted factor for such Lot, and the denominator of which is the total of all weighted factors of all Lots. The Board, in its discretion, may adjust the weighted factor assigned based upon reasonable determination of proper allocations based on actual experience of costs related to Lots in the above three categories.

6.3.6. Surplus. Should any surplus exist at the end of any year, the Board of Trustees may, at its own discretion, reduce the amount required for the next Regular Annual Assessment by an amount not more than said surplus, provided, however, that reserve fund requirements are first met.

6.4. Special Group Assessments. In addition to the Regular Annual Assessment provided for herein, the Association by resolution of its Board of Trustees as provided for in the Bylaws may levy in and for any year, applicable to that year only, a special group assessment for the purpose of (the "Special Group Assessment"):

- (a) Defraying the cost of any new construction or reconstruction, unexpected repair or replacement of capital improvements for and within Common Areas and Private Drives, including but not limited to the necessary fixtures and personal property related thereto;
- (b) Defraying the cost of repairs or replacements resulting from an uninsured loss or damage or insured loss or damage when there are insufficient

insurance proceeds as provided for in the Declaration; and

- (c) Responding to unusual or emergency needs of the Association.

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

6.5. Special Member Assessments. In addition to other assessments provided for herein, the Association, by resolution of its Board of Trustees, may levy a special assessment ("Special Member Assessment") on any Member for the purpose of:

- (a) Defraying the cost of any unexpected damage or loss requiring maintenance, repairs, or replacement of improvements associated either with a Common Areas, Private Drives or with a Lot not owned by that Member and any personal property or fixture related to any of the above (including but not limited to security gates and lighting) caused by such Member when damage or loss has been determined by the Board to have been caused, either directly or indirectly, by the willful or negligent acts of such Member or its agent, occupant or visitor.
- (b) Reimbursing the Association for any and all direct or indirect costs incurred by the Association with regard to the maintenance, repair or replacement of any improvements on any particular Lot owned by such Member when:
  - (i) It has been determined by the Board of Trustees that the maintenance, repair or replacement of improvements associated with such Member's Lot has been neglected to the point where conditions existing on such Lot are not in conformance with the

maintenance obligations set forth in this Declaration;

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

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

(iv) Due to the failure of the Member owning such Lot to take corrective action within the period of time established by the Board, it has been necessary or appropriate for the Association to contract for, initiate or complete such corrective action to meet the maintenance requirements of this Declaration. In the event such Member shall start corrective action on a Lot after the Association has either contracted for such work to be done or actually accomplished such work in whole or in part, such Member shall be obligated to the Association for the reimbursement of any costs actually incurred by the Association, including without limitation: release from contract settlements; design, legal or other professional fees, labor, equipment, materials or guarantees



required to accomplish corrective work; management or supervisory services; collection costs; and any other costs directly or indirectly attributable to the work; and

- (c) Levying a fine for the violation of this Declaration, the Association's Bylaws, rules or regulations.

6.6. Payment of Regular Annual Assessment. The Regular Annual Assessment provided for herein shall commence on a date fixed by the Board of Trustees. The Board of Trustees shall notify, in writing, each Owner at the Lot address of the Owner of the Regular Annual Assessment each year. Said written notice shall be sent by certified mail return receipt requested and by regular mail at least fifteen (15) days prior to the first monthly due date of the Regular Annual Assessment. The Regular Annual Assessment shall be due and payable in monthly installments, in advance, on the first day of the each month.

6.7. Payment of Special Group Assessments and Special Member Assessments.

6.7.1 Special Group Assessments. Special Group Assessments shall be due and payable in full (or in installments as determined by the Board of Trustees) thirty (30) days following the date the written notice described below is sent to each Member as described below. The Board of Trustees shall notify, in writing, each Owner of the Special Group Assessments each time a Special Group Assessment is assessed. Each written notice shall be sent by certified mail, return receipt requested and by regular mail to the Lot address of the Owner within fifteen (15) days after each Special Group Assessment is set by the Board of Trustees in a resolution adopting the respective Special Group Assessment. The Board of Trustees may determine that the Special Group Assessment (1) must be paid in full immediately or within a time set by the Board of Trustees at its sole discretion or (2) may be paid in installments at the Board of Trustees' sole discretion.

6.7.2 Special Member Assessments. Notwithstanding anything contained in this Declaration to the contrary, before a Special Member Assessment can be charged or levied, the Association or its agent must give written notice to the Owner by certified mail, return receipt requested of the Association's intention of charging or levying the Special Member Assessment against the Owner (the "Notice"). The Notice must: (1) describe the violation or property damage that is the basis for the charge, or fine and state any amount due the Association from the Owner; and (2) inform the Owner that the Owner; (a) is entitled to a reasonable period to cure the violation and avoid the fine or charge unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months; and (b) may request a hearing before the Board of Trustees on or before the 30<sup>th</sup> day after the date the Owner receives the Notice. If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before the Board of Trustees. The Board of Trustees shall hold a hearing not later than the 30<sup>th</sup> day after the date the Board of Trustees receives the Owner's request for a hearing and shall notify the Owner of the date, time and place of the hearing not later than the 10<sup>th</sup> day before the date of the hearing. The Board of Trustees or the Owner may request a postponement, and if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Board of Trustees may make an audio recording of the meeting. The Notice and hearing provisions of this subsection do not apply if the Association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. If a suit is filed relating to a matter to which this subsection applies a party to the suit may file a motion to compel mediation. The notice and hearing provisions of this subsection do not apply to a temporary suspension of a person's or Owner's right to use Common Areas if the temporary

suspension is the result of a violation that occurred in the Common Areas and involved a significant and immediate risk of harm to others in the Subdivision. The temporary suspension is effective until the Board of Trustees makes a final determination on the suspension action after following the procedures prescribed by this subsection. An Owner or the Association may use alternative dispute resolution services. Thereafter, the Association may charge or levy its Special Member Assessment. The Association shall thereafter notify, in writing, the Owner of the Special Member Assessment. The written notice shall be sent certified mail, return receipt requested and by regular mail to the Lot address of the Owner within fifteen (15) days after the Special Member Assessment has been charged or levied in a resolution by the Board of Trustees. The Board of Trustees may determine that the Special Member Assessment (1) shall be paid in full immediately or within a time set by the Board of Trustees at its sole discretion or (2) may be paid in installment at the Board of Trustees' sole discretion.

6. 8. Collection of Enforcement. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. Each assessment is a charge on the Lot and is secured by a continuing lien on the Lot. 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 Lot. A new Owner shall take his title to a Lot subject to this continuing lien for assessments and for assessments past due at the time of purchase. Each Member, by his assertion of title or claim of Ownership or by his acceptance of a deed to a Lot, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and specifically the Board of Trustees, the right, power and authority to take all action which the Association and/or the Board of Trustees shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the liens securing the same.

6.9. Enforcement and Personal Obligation of Owners for Payment of Assessments.

The Regular Annual Assessments, Special Group Assessments and Special Member Assessments provided for herein shall be the personal and individual debt of the Owner of a Lot covered by such assessments. No Owner may, for any reason, exempt itself from liability for such assessments levied in accordance with the provisions of this Declaration or the Associations rules, regulations or resolutions or the Bylaws. In the event that any Regular Annual Assessment, Special Group Assessment or Special Member Assessment (subject to Subsections 6.7.2 and 6.15) or installment thereof of any of them is not paid when due, and remains unpaid for a period of thirty (30) days thereafter, then the unpaid amount of any such assessment or installment thereof shall become delinquent and shall, together with interest thereon as herein provided and costs of collection thereof, become a continuing personal obligation and debt of the nonpaying Owner secured by a self-executing lien (and may include a vendor's lien retained by Declarant) on the Lot or subdivided portion thereof, including all improvements thereon, to which such assessment or installment thereof pertains. The homestead rights of any Owner claimed in his or her Lot are, by reason of the assessment liens created hereunder prior to establishment of any homestead, subject to the obligations to pay assessments, such preexisting assessment liabilities being an inherent characteristic of the property interest obtained by such homestead claimant to which such rights of homestead are subordinate and deemed waived by acceptance of a deed to any Lot. The Association shall have the right to reject any partial payment of any assessment or installment thereof. The Association's acceptance of any partial payment tendered by an Owner shall neither relieve an Owner from his continued liability for the balance owed nor obligate the Association to accept any other partial payments. The unpaid amount of any assessment shall bear interest from its due date until paid at eighteen percent (18%) per annum or the maximum legal rate of interest then prevailing, whichever is less. In addition, the Board may retain the

services of an attorney of its choice for the purposes of collecting any unpaid assessment and interest charges thereon, and/or to foreclose the lien against the property subject thereto and/or to pursue any other legal or equitable remedy which the Association may have and there shall be added to the amount of unpaid assessment and interest charges thereon, any and all collection costs incurred by the Association, whether judicial or nonjudicial, and including, but not limited to, reasonable attorney's fees, costs of legal suit and collection costs, unless limited and subject to Subsections 6.5 and 6.15.

6.10. Effect of Transfer on Unpaid Assessments. Except as provided in subsection 6.12 of this Declaration, the lien for any unpaid assessments shall be unaffected by any sale or transfer of the full or of a partial Ownership interest in a Lot. In the event of full or partial sale or transfer of an Ownership interest in a Lot, it shall be the sole obligation of the Owner selling or transferring such interest (and not the Association) to disclose to any buyer or transferee by written notice that an unpaid assessment and associated lien against the Ownership interest exists prior to that date at which such sale or transfer is to be consummated. A copy of such notice shall be sent to the Association at the same time. Upon written request, the Association shall provide an Owner with a statement reflecting the amount of any unpaid or delinquent assessments with respect to a Lot owned by said Owner. A sale or other transfer of title to such Lot shall not release such former Owner from personal liability notwithstanding an assumption of liability by the purchaser or transferee.

6.11. Lien and Foreclosure. Upon delinquency, all sums assessed in the manner provided in this Declaration or Bylaws, together with all interest and costs as herein provided shall be secured by the lien provided for under this Section 6. As further evidence and notice of such assessment lien, the Association may prepare a written notice of such lien setting forth the amount of delinquent indebtedness, the name of the Owner of property covered by such lien, and

a description of the property. Such notice shall be signed by a duly authorized Officer of the Association and shall be recorded in the Real Property Records of the County Clerk of El Paso County, Texas, or such other place as may be required by law for the recording of liens affecting real property at such time as such notice is recorded. Such lien for payment of assessments shall attach from the date such payment becomes delinquent and may be enforced after recording said notice by any one or more of the following methods: (i) foreclosure of such lien on the Lot, or subdivided portion thereof and any improvements thereon in a manner similar to a foreclosure of a Deed of Trust with Power of sale on real property; (ii) suit against the Owner personally obligated to pay the assessment; and/or (iii) foreclosure of the aforesaid lien judicially as earlier described in this Section 6. In any foreclosure proceeding whether judicial or nonjudicial, the Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred by the Association. The Association shall have the power to bid on the property being foreclosed. Notwithstanding anything contained herein to the contrary, the Association's right to foreclose is subject to the terms and conditions of the Texas Residential Property Owners Protection Act, 209.001 et. seq. of the Property Code, which contains among other provisions, (1) a requirement for notice prior to foreclosure; (2) a requirement for notice after foreclosure; and (3) a provision that the Owner has a right to redemption.

6.12. Lien Subordination. Any lien established as provided for in this Declaration or the Bylaws, shall be subordinate and inferior to any first lien mortgage or deed of trust, in favor of any bank, savings and loan association, insurance company, pension fund, or other similar financial institution or other lender approved by the Board; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a foreclosure sale (whether public or private) of any such Lot pursuant to the terms and conditions of any such mortgage or deed of trust. No such foreclosure sale shall relieve a new Owner taking

title at such sale from liability for the amount of any assessments thereafter becoming due or from a lien arising from any such subsequent assessment. Notwithstanding anything contained herein to the contrary, a lien for assessments shall be unaffected by a foreclosure of other than a lien created by a mortgage or deed of trust superior to the lien for assessments. The assessment lien is superior to all other liens and encumbrances on a Lot, except only for:

- (1) real property taxes and assessments levied by governmental and taxing authorities,
- (2) a deed of trust or vendor's lien recorded before this Declaration,
- (3) a recorded deed of trust lien securing a loan for construction of the original dwelling, and
- (4) 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.

Foreclosure of a superior lien extinguishes the Association's claim against the Lot for unpaid assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the foreclosure sale is liable for assessments coming due from and after the date of the sale.

6.13. Common Areas and Private Drives Exempt. All the Common Areas and Private Drives shall be exempted from any assessments and any lien created herein.

6.14. Notice of Lien or Suit. Any Owner shall at the request of the Association give notice to the Association of every lien or encumbrance upon his Lot or subdivided portion thereon, other than for taxes and Assessments, and notice of every suit or other proceeding which may affect the title to his Lot or subdivided portion thereon, and such notice shall be given within five (5) days after the Owner has knowledge thereof.

6.15 Attorneys fees. The Association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the Association relating to collecting amounts, including damages, due the Association for enforcing this Declaration, its restrictions and covenants or the bylaws or rules, regulations or resolutions of the Association only if the Owner is provided a written notice that attorney's fees and costs will be charged to the Owner if the delinquency or violation continues after a date certain ("Attorneys Fees Notice"). An Owner is not liable for attorney's fees incurred by the Association relating to a matter described by the Notice under subsection 6.7.2 if the attorney's fees are incurred before the conclusion of the hearing described in subsection 6.7.2, or if the Owner does not request a hearing under that subsection, before the date by which the Owner must request a hearing. The Owner's presence is not required to hold a hearing under subsection 6.7.2. All attorney's fees, costs, and other amounts collected from an Owner shall be deposited into an account maintained at a financial institution in the name of the Association or its managing agent. Only Trustees of the Board of Trustees or its managing agent or employees of its managing agent may be signatories on the account. On written request from the Owner, the Association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the Association seeks reimbursement of fees and costs. The provisions described above do not apply to a counterclaim of the Association in a lawsuit brought against the Association by an Owner. This Declaration allows for nonjudicial foreclosure. Unless other means are provided by law, the amount of attorney's fees that the Association may include in a nonjudicial foreclosure sale for an indebtedness covered by the Association's Regular Annual Assessment Lien, Special Group Assessment Lien, and Special Member Assessment Lien is limited to the greater of: (1) one-third of the amount of all actual costs and assessments, excluding attorney's fees, plus interest and court costs, if those amounts are permitted to be included by law or by this Declaration or (2)



\$2,500.00.

7. MAINTENANCE OF THE PROPERTY.

Each party owning any property within the Property shall, unless otherwise herein indicated, be responsible for maintaining its own property.

7.1. Duties of the Association. The Association shall have the responsibility of maintaining the Common Areas and the Private Drives, (as designated from time to time and limited as hereinafter provided), to include but not limited to improvements and landscaping.

7.2. Duties of Owners. Each Owner shall be responsible for the upkeep and maintenance of all portions of all improvements and landscaping upon his Lot:

7.2 (a) House Maintenance. Each Owner, at the Owner's expense, must maintain all improvements on the Lot, including but not limited to the dwelling, fences, sidewalks, and driveways. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each Owner is expected to maintain his Lot's improvements at a level, to a standard, and with an appearance that is commensurate with the neighborhood and in accordance with his Lot's original building plan, if any. Specifically, each Owner must repair and replace worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces.

7.2 (b) Yard Maintenance. Each Owner, at the Owner's expense, must maintain the yards on his Lot at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each Owner must:

- a. Maintain an attractive ground cover or lawn on all yards visible from a street.
- b. Edge the street curbs at regular intervals.
- c. Mow the lawns and grounds at regular intervals.
- d. Prevent lawn weeds or grass from exceeding 6 inches in height.
- e. Not plant vegetable gardens that are visible from a street.
- f. Prevent plant material in front of windows from growing taller than the window bottom.

7.3. Default of Owner in Maintenance. In the event of default on the part of the Owner or occupant of any Lot in observing its maintenance requirements, or any of them, such default continuing after the Notice thereof has been given to the Owner of said Lot under subsection 6.7.2 and after the provisions of 6.7.2 have been satisfied, the Association (or Declarant, if prior to conveyance of the Common Areas and Private Drives to the Association) may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause such maintenance to be done and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of such Lot to pay such all such charges incurred by the Association or Declarant under the preceding sentence immediately upon receipt thereof. The failure to timely pay such charges shall entitle the Association to levy a Special Member Assessment on the Owner of said Lot for said amount. Notwithstanding any provision herein to the contrary, no improvement on any Lot may be altered or demolished by either the Association or the Declarant until after the institution of judicial proceedings to remedy said Owner default.

8. INSURANCE.

8.1. Association Insurance. The Association shall obtain and pay the premiums upon, as a common expense, policies of insurance providing the coverage hereinafter specified. All insurers and reinsurers, if applicable, must be licensed, or otherwise authorized by law, to conduct business in the jurisdiction where the property insured is located. All insurers and reinsurers must be rated B/III or better in Best's Insurance Reports or must satisfy any one of the following three criteria: (a) the insurer has a rating of A/II or better; (b) the insurer is reinsured by a company rated B/III or better in which case both the insurer and reinsurer must execute an Assumption of Liability Agreement or a similar endorsement providing for 100% reinsurance of

the insurer's policy and requiring the reinsurer to give the insurer, any mortgage holder and its borrower ninety (90) days written notice before cancellation or termination of the reinsurance; or (c) the insurance is underwritten by Lloyd's of London.

8.1.1. Fire and Extended Coverage. All improvements upon the Common Areas and all personal property owned by the Association, and at the Association's discretion the Private Drives, shall be insured in an amount sufficient to cover 100% of the current insurable replacement cost thereof, affording protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as may from time to time be customarily insured against with respect to improvements similar in construction, location and use, including those perils covered by the standard "all risks" endorsement, such as vandalism and malicious mischief. Said insurance shall provide for loss or damage settlement on a replacement cost basis. Such coverage shall be issued in the name of the Association as insured with loss payable in favor of the Association. The proceeds of such coverage shall be received by the Association and held in a separate account. Should the Board of Trustees decide in its discretion to purchase fire and extended coverage with deductible amounts to be paid by the Association, the maximum deductible amount which the Association may obtain shall be the lesser of \$10,000.00 or 1% of the policy face amount. All funds to cover deductible amounts shall be included in the Association's reserve fund as described in subsection 6.2 of this Declaration.

8.1.2. Liability. Broad form comprehensive liability coverage in an amount not less than \$1,000,000.00 shall be purchased by the Association. The Owners shall be named as additional insureds. Such coverage shall include, but shall not be limited to, the legal liability of the Association for bodily and personal injuries, property damage, operation of automobiles on behalf of the Association and activities of the Association in connection with the operation or

use of the Common Areas (Private Drives if possible), the maintenance required to be performed by the Association, and the performance by the Association of its duties and obligations under this Declaration and the Bylaws. If the policy does not include “severability of interests” in its terms, it shall have a specific endorsement to preclude the insurer’s denial of an Owner’s claim caused by negligent acts of the Association or of other Owners.

8.1.3. Worker’s Compensation. If required by law, the Association shall purchase worker’s compensation insurance in such form as to meet the requirements of law for injures to Association employees.

8.1.4. Fidelity Insurance/Bond. The Association shall purchase fidelity insurance or bond covering losses resulting from dishonest or fraudulent acts committed by the Association’s employees, Trustees, or volunteers who manage funds collected and held for the benefit of the Owners. The coverage provided by such fidelity insurance shall equal the maximum amount of funds in the Association’s custody at any one time and must be at least equal to the sum of three (3) months of assessments of all of the Subdivision plus any reserve funds. The fidelity insurance or bond shall designate the Association as a named insured and shall provide that said insurance cannot be cancelled or substantially modified for any reason without giving the Association ten (10) days prior written notice thereof. Should a professional management firm be employed, said firm must be insured to the same extent that the Association would be required to be insured under this subsection 8.1.4. in managing its own operations. Any professional management firm so employed must submit satisfactory proof of possession of the insurance required by this subsection.

8.1.5. Flood Insurance. If the Property is determined to be in a special flood hazard area, the Association shall maintain a “master” or “blanket” policy of flood insurance covering the Common Areas. The amount of insurance shall be at least equal to the lesser of

100% of the insurable value of the improvements on the Common Areas or the maximum coverage available under the appropriate National Flood Insurance Program. Unless a higher maximum amount is required by state law, the maximum deductible amount for the insurance provided under this subsection 8.1.5 is the lesser of \$5,000.00 or 1% of the policy face amount. Funds to cover this deductible amount are to be included in the Association's reserve account described in subsection 6.2 of this Declaration.

8.1.6. Other Coverage. The Association shall also purchase such other insurance coverage as shall hereafter be required by law or determined by the Board of Trustees to be necessary for the protection of the Owners and the mortgage holders, or to ensure approval of the Subdivision for participation in the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association programs, including without limitation, Agreed Amount and Inflation Guard endorsements, Construction Code endorsements, demolition cost and steam boiler and machinery endorsements. All insurance policies required by this Section 8 shall provide for at least ten (10) days written notice to the Association and to any mortgage holder before the insurer can cancel or substantially modify any policy. All such insurance policies shall also contain, when applicable, a standard mortgage clause and must name as mortgagee the lender and "its successors, assigns or beneficiary". When a mortgage clause is not applicable, a certificate of insurance must be provided to every mortgage holder of the insured property.

8.2. Owner's Insurance. Each Owner, and not the Association, shall have the responsibility of obtaining and keeping in full force and effect, at his sole expense the following insurance coverage.

8.2.1. Fire and Extended Coverage. Standard fire and extended risk insurance on all improvements on his Lot and the personal property and furnishings contained in his residential unit or located on the Common Areas. Said fire and extended risk insurance must at

least equal the lesser of 100% of the insurable value of all improvements on the Owner's Lot and his personal property located on Common Areas, or the unpaid balance of any mortgage to which the insured property is subject. The insurance, however, must not be less than the minimum amount required under the terms of coverage to fully compensate for any damage or loss on a replacement cost basis. All dwellings exist be fully insured even when vacant. The deductible may not exceed the lower of \$1,000.00.or 1% of the applicable amount of coverage.

8.2.2. Liability. Broad form comprehensive liability coverage for his Lot (which shall be in addition to and not in lieu of the comprehensive liability coverage required to be purchased by the Association).

8.2.3. Flood Insurance. If the Property is determined to be in a special flood hazard area, each Owner shall obtain flood insurance providing coverage in an amount at least equal to the least of the following: (a) the maximum available under the National Flood Insurance Program; (b) the maximum available under the National Flood Insurance Program's Emergency Program if the regular program is not yet in effect in the area where the mortgaged premises are located; or (c) the minimum amount required under the terms of coverage to compensate for any damage or loss on a replacement cost basis, or the unpaid balance of the mortgage if replacement cost compensation is not available for the type of building insured. Deductibles may not exceed the lower of \$1,000.00 or 1% of the amount of coverage.

8.2.4 Other Coverage. Such other insurance coverage as the Owner may elect to purchase in addition to the insurance coverage purchased by the Association; provided, however, that in no event is the insurance coverage purchased by the Association to be brought into contribution with insurance purchased by any Owner.

8.3. Waiver of Subrogation. In the event of loss or damage to the Common Areas or the property of an Owner which shall be covered by insurance, the insurance company paying

such claim shall have no right of subrogation against the Association, its agents and employees, nor against the Owners, their tenants, or members of their respective households.

9. RESTORATION OF IMPROVEMENTS.

9.1. Restoration by Association. When a casualty damage shall occur to any portion of the Common Areas and/or Private Drives, it shall be the responsibility of the Association to restore such damaged portion to its same or similar condition existing just prior to the casualty. Such restoration shall be commenced and completed within a reasonable time in a good and workmanlike manner, using the same or similar materials as were originally used in the structures damaged or destroyed. The Association shall not, be liable to any Owner for any delay in the completion of any repair, restoration or replacement due to causes beyond the reasonable control of the Association, its contractors or subcontractors. Specifically, the Association shall not be liable for delay occasioned by weather, shortage or unavailability of materials and strikes or work stoppages.

9.1.1. Cost of Repairs. As soon as possible after the occurrence of damage to the Common Areas and/or the Private Drives the Association shall obtain reliable and detailed cost estimates to accomplish the restoration thereof, applying all insurance proceeds available to time Association in payment therefore. Any surplus in insurance proceeds shall be applied in payment of common expenses otherwise assessable upon the Lots. However, if there is no insurance upon the casualty or if insurance proceeds are not sufficient to pay the cost of restoring the damage to the Common Areas and/or the Private Drives, then the Association shall levy a Special Group Assessment pursuant to subsection 6.4. Provided, however, each Owner shall be responsible for the cost, not otherwise covered by insurance carried by the Association, of any reconstruction, repair or replacement of any portion of the Common Areas and/or Private Drives as the result of a casualty caused by the negligent or tortious acts or neglect of such Owner, a

member of his family, his agents, tenants, invitees, employees or contractors, which expense shall be considered a special expense subject to Special Member Assessment.

9.2. Restoration by Owners. When a casualty damage shall occur to a residential unit, including, without limitation, a party wall, the Owner thereof shall within thirty (30) days thereafter commence and diligently pursue to completion the restoration thereof.

9.3. Eminent Domain. In the event of a taking by eminent domain of part or all of the Common Areas and/or Private Drives, the award for such taking shall be payable to the Association. The Association shall represent the Owners named in the condemnation proceedings and the Owners appoint the Association as their attorney-in-fact for this purpose. Said award shall be utilized to the extent possible for the repair, restoration, replacement and/or improvement of the remaining the Common Areas and/or Private Drives. Any funds not so utilized shall be applied in payment of common expenses other wise assessable upon the Lots. In the event of a taking by eminent domain of all or a part of a Lot or Lots, the award made for such taking shall be payable to the Association for distribution to the Owners and the mortgage holders, as their interests may appear.

#### 10. BUILDING AND USE RESTRICTIONS.

10.1. Single Family Residential Use. Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. No Lot shall be used or occupied for any business, commercial, trade, or professional purpose either apart from or in connection with the use thereof as a private residence, whether for profit or not. Each single family residence situated on a Lot shall have an enclosed, attached garage for not less than two (2) nor more than three (3) automobiles. No carport shall be built on any Lot. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles. All Owners, their families, tenants and contract purchasers shall, to



the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

10.2. Resubdivision. No Lot or Lots may be resubdivided into a greater number of Lots. Any number of Lots may, however, be resubdivided into a lesser number of Lots so long as none of the resulting Lots is smaller than the smallest of the Lots resubdivided. Nothing herein would be deemed to prohibit a replat as otherwise contemplated in this Declaration.

10.3. Construction Limitations.

10.3.1 Height. No building on any Lot shall exceed the height, as measured from the finish grade plat elevation as shown on the approved grading plan and approved by the Architectural Control Committee.

10.3.2. Design Materials, and Colors. It is the intent of this Declaration to impose design standards on the Property and in the Subdivision that generally conform to a Southwestern style, with a substantially uniform scheme or schemes for all Lots as to appearance, considering structure design, location, orientation, exterior and roofing materials, colors, sidewalks, walls, screening, and landscaping. The Architectural Control Committee, as hereinafter defined in Section 11 hereof, may, from time to time, reasonably adopt detailed specifications as to such items, as to minimum square footage, and as to other matters, and such standards as adopted, will be made available to any Owner upon request therefore, and will be binding as if set forth herein. Declarant may also, by Supplemental Declaration, set forth detailed specifications and standards. Any purchaser of a Lot is deemed to have consented to such standards, and will be obligated to comply with such standards as may be in effect at the time said Purchaser applied or should have applied for Architectural Control Committee approval pursuant to Section 11 hereof. Notwithstanding anything contained herein to the contrary, the Subdivision Plat was approved and filed pursuant to significant guidelines by the City El Paso,

Texas. In addition to the significant conditions and requirements contained in the Subdivision Plat, there are significant conditions and requirements contained in the records of the City of El Paso, Texas, including but not limited to the records of the City Plan Commission and City Council for the City of El Paso and the real property records of El Paso County, Texas (the "Conditions and Requirements")

Construction on any Lot shall comply with these Conditions and Requirements including but not limited to the requirement that each structure built on each Lot shall comply with the specific dimensions and terms described therefore on the Subdivision Plat including but not limited to square footage amount, layout design, location and grading height and design.

10.4. Setbacks. Setbacks shall be as shown in the Subdivision Plat.

10.5. Prohibited Structures, Activities, Etc.

10.5.1. Temporary Structures and Outbuildings. No outbuildings, detached garages (unless originally constructed by Declarant), temporary structures, or other structures other than the main residence and attached garage and pool shall be built on any Lot. With prior notice and written Architectural Control Committee approval, however, limited structures may be permitted in accordance with regulations which they be adopted controlling such structures.

10.5.2. Garbage and Refuse. Adequate closed garbage and refuse receptacles shall be used and shall be appropriately screened from public view. The Owners or occupants of all Lots shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner; shall not permit the accumulation of garbage, trash or rubbish of any kind thereon; and shall in no event use any Lot for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted.

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10.5.3. Signs. Except for advertising devices displayed by Declarant and standard real estate listing signs, no sign of any kind shall be displayed on any Lot or on the Common Areas or Private Drives.

10.5.4. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or on any portion of the Common Areas, except that dogs, cats, or other common household pets (not to exceed three (3) adult animals) may be kept, but they shall not be bred or kept for commercial purposes.

10.5.5. Antennas and Satellite Discs. Without prior written approval and the authorization of the Board of Trustees, no exterior television or radio antennas, or satellite discs of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Property, nor upon any structure situated upon the Property other than an aerial for a master antenna system, provided that such master system or systems be utilized and require any such exterior antenna.

10.5.6. Vehicles and Trailers. No trailers, motor homes, boats or boat trailers, commercial vehicles, machinery or equipment may be parked on any Lot or in the Common Areas or on the Private Drives, except for temporary periods not to exceed three (3) days.

10.5.7. Nuisance. No noxious or offensive activity shall be carried on or permitted upon any Lot or upon the Common Areas or on the Private Drives, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners. The Board of Trustees of the Association shall have the sole and exclusive discretion to determine what constitutes a nuisance or annoyance.

10.5.8. Screened Activities. The following activities or items shall be screened from public view: the drying of clothes, yard equipment, wood piles or storage piles which are incident to the normal residential requirements of a typical family.

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10.5.9. Security Bars. No exterior security bars visible from the outside shall be allowed on windows and doors on any structure on any Lot. The Architectural Control Committee may, however, in its sole discretion, waive this restriction on a case by case basis if it has first received detailed plans and specifications for any proposed installation, and approves the same in writing prior to installation based upon its determination that the same will be aesthetically pleasing in said committee's discretion, and compatible with the uniform scheme established herein.

10.5.10. Appearance. Both the Lot and the dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring Lots. The Architectural Control Committee is the arbitrator of acceptable appearance standards.

10.5.11. Drainage. No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the Board of the Association.

10.5.12. Driveways. The driveway portion of a Lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage. Without the Board's prior approval, a driveway may not be used:

- (1) for storage purposes, including storage of boats, trailers, and inoperable vehicles; or
- (2) for repair or restoration of vehicles.

10.5.13. Fires. Except for barbecue fires, no exterior fires on a Lot are permitted.

10.5.14. Hoops. Without the Architectural Control Committee's prior written approval, basketball goals and other recreational or sporting equipment may not be used, attached, mounted, or installed in a front yard, on a front driveway, in an unfenced portion of a side yard, or on the street side exterior portion of a dwelling. This prohibition also applies to portable goals and equipment. If the Architectural Control Committee grants approval for such

equipment, the approval may be revoked if the equipment is not maintained or used, or if it becomes unsightly.

10.5.15 Leasing of Homes. An Owner may lease the dwelling on his Lot. Whether or not it is so stated in a lease, every lease is subject to this Declaration. An Owner is responsible for providing his tenant with copies of this Declaration and the rules and regulations of the Association and notifying him of changes thereto. Failure by the tenant or his invitees to comply with this Declaration and the rules and regulations of the Association, federal or state law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant'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 tenant. The Owner of a leased Lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Declaration and the rules and regulations of the Association against his tenant. 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 this Declaration and the rules and regulations of the Association against the Owner's tenant.

10.5.16. Noise & Odor. A resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy residents of neighboring lots.

10.5.17. Occupancy. Other than the completed principle dwelling, no thing or structure on a Lot may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage, mobile homes, motor homes, campers, and storage

sheds.

10.6. Property Exempt from Restrictions. Notwithstanding any provision herein to the contrary, the Common Areas, shall not be subject to or burdened by the building and use restrictions set forth in this Section 10, except as to the extent same are made specifically applicable to the Common Areas.

11. ARCHITECTURAL CONTROL COMMITTEE.

11.1. Approval of Plans and Contractors. No building, structure, fence, wall, party wall, or other improvements shall be commenced, erected, constructed, reconstructed, placed, altered, removed, permitted to remain, or maintained upon any portion of the Property and/or any Lot, until the detailed plans and specifications therefore shall have been submitted to and approved in writing as to compliance with minimum structural and mechanical standards, location and situation on the Lot, and as to harmony of external design or location in relation to property lines, building lines, easements, grades, surrounding structures, walks, and topography (including the orientation of the front and rear of any such building with respect to the Lot lines) by the Architectural Control Committee constituted as provided herein. The submitted plans and specifications shall specify, in such form as the Architectural Control Committee may reasonably require, structural, mechanical, electrical, and plumbing detail and the nature, kind, shape, height, exterior color scheme, materials to be incorporated into, and location of the proposed improvements or alterations thereto. In the event said Architectural Control Committee fails to approve or disapprove such plans and specifications within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and the provisions of this Section will be deemed to have been fully complied with; provided, however, that the failure of the Architectural Control Committee to approve or disapprove such plans and specifications

within such thirty (30) day period shall not operate to permit any structure to be commenced, erected, placed, constructed, reconstructed or maintained on any Lot in the subdivision in a manner inconsistent with any provision of this Declaration. Without limitation of the powers herein granted, the Architectural Control committee shall have the right to specify requirements for each Lot as follows: minimum setbacks: the location, height, and extent of fences, walls, or other screening devices; the orientation of structures with respect to garage access and major entry and frontage, exterior design, exterior materials and colors, roof exposures, common wall construction, landscaping, driveways and mailboxes. The Architectural Control Committee also shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in the sole discretion of the Architectural Control Committee, with a residential subdivision of high quality or with the design or overall character and aesthetics of the Property. The Architectural Control Committee shall be entitled to charge any Owner a reasonable fee for review of plans. The Architectural Control Committee shall also in its discretion have the right to grant variances of not more than 10% with reference to any setback requirement or minimum residence square footage requirement referred to in this Declaration.

11.2. Committee Membership. The Architectural Control Committee shall be initially composed of Ted Reed and Keith W. Alexander, who by a majority vote may designate a representative or representatives to act for them [the term "Architectural Control Committee" as use herein shall refer to the individuals named above, their assignee as permitted herein, or the Committee's designated representative(s)]. In the event of death or resignation of any member or members of Architectural Control Committee, the remaining member or members shall appoint a successor member or members, and until such successor member or members have been so

appointed, the remaining member or members shall have full right, authority and power to carry out the functions of the Architectural Control Committee as provided herein, or to designate a representative with like right, authority and power.

11.3. Transfer of Authority to the Association. Until the Conversion Date, as defined in subsection 5.4. hereof, the appointment of the members of the Architectural Control Committee will be by Declarant, and any or all members of such committee may be removed by the Declarant without cause. After the Conversion Date, the Board shall have the exclusive right and authority at any time to appoint, remove and fill vacancies on the Architectural Control Committee.

11.4. Limits on Liability. The Architectural Control Committee has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the Architectural Control Committee have no liability for the Architectural Control Committee's decisions made in good faith, and which are not arbitrary or capricious. The Architectural Control Committee is not responsible for:

- (1) errors in or omissions from the plans and specifications submitted to the Architectural Control Committee,
- (2) supervising construction for the Owner's compliance with approved plans and specifications, or
- (3) the compliance of the Owner's plans and specifications with city codes and ordinances, state and federal laws.

11.5. Prohibition of Construction, Alteration & Improvement. Without the Architectural Control Committee's prior written approval, a person may not construct a dwelling or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property and/or Lot, if it will be visible from a street, another Lot, or the Common Areas. The Architectural Control Committee has the right but not the duty to evaluate every aspect of



construction, landscaping, and property use that may adversely affect the general value or appearance of the Property and/or Lot.

11.6 No Approval Required. No approval is required to repaint exteriors in accordance with an Architectural Control Committee-approved color scheme, or to rebuild a dwelling in accordance with originally approved plans and specifications. Nor is approval required for an Owner to remodel or repaint the interior of a dwelling.

11.7. Building Permit. If the application is for work that requires a building permit from the city, the Architectural Control Committee's approval is conditioned on the city's issuance of the appropriate permit. The Architectural Control Committee's approval of plans and specifications does not mean that they comply with the city's requirements. Alternatively, approval by the city does not ensure Architectural Control Committee approval.

11.8. Architectural Control Committee Guidelines. The Association may publish architectural restrictions, guidelines, and standards developed by the Architectural Control Committee, subject to revision from time to time, including revisions to reflect changes in technology, style, and taste. The Association, acting through the Architectural Control Committee, has the right to establish and enforce architectural restrictions, guidelines, and standards relating to every aspect of proposed or existing improvements on a Lot, including but not limited to dwellings, fences, and landscaping, and further including replacements or modifications of original construction or installation.

## 12. GENERAL PROVISIONS

12.1. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or

the Owner of any land subject to this Declaration or any Supplemental Declaration, their respective legal representatives, heirs, successors and assigns, for so long as the Property exists as a Residential Subdivision under the terms and meaning herein stated and defined.

12.2. Amendments. The covenants, conditions and restrictions of this Declaration may be changed or terminated only by an instrument signed by sixty percent (60%) of the then Owners of all Lots in the Subdivision and properly recorded in the appropriate records of El Paso County, Texas. If a Lot is owned by more than one person, any one of the Owners may bind the others to an amendment hereof. In addition to any other approvals required to be obtained herein, changes of a material nature must be approved by eligible mortgage holders representing at least fifty-one percent (51%) of the Lots which are subject to mortgages held by eligible mortgage holders. As used herein, the term "eligible mortgage holders" shall mean those holders of a first mortgage on a Lot who have requested that the Association notify them of any proposed action which requires the consent of a specified percentage of eligible mortgage holders. A change to any of the following shall be considered of a material nature:

- (a) voting rights;
- (b) changes in the boundaries of any Lot;
- (c) expansion or contraction of the Subdivision, or the addition, annexation or withdrawal of property to or from the Subdivision;
- (d) insurance or fidelity bonds;
- (e) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot;
- (f) restoration or repair of any part of the Subdivision (after a casualty damage or partial condemnation) in a manner other than specified in this Declaration or the Bylaws;

- (g) any action to terminate the legal status of the Subdivision after substantial destruction or condemnation occurs;
- (h) any provisions hereof which expressly benefit mortgage holders, insurers or guarantors;
- (i) a decision by the Association to establish self-management when professional management had been required previously by a mortgage holder.

The approval of an eligible mortgage holder to any amendment other than a material change shall be implied if such holder fails to respond to any written proposal for an amendment within thirty (30) days of mailing such proposal.

Notwithstanding any provision in this Declaration to the contrary, the legal status of the Subdivision may not be terminated for reasons other than substantial destruction or condemnation of the Subdivision unless eligible mortgage holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Lots agree. Moreover, any amendment or termination is subject to rights granted to the City of El Paso under this Declaration, if any. Until the Conversion Date the following actions require the prior written approval of the U.S. Department of Housing and Urban Development ("HUD/FHA") or the U. S. Department of Veterans Affairs ("VA") so long as HUD/FHA insures or VA guarantees a Deed of Trust (mortgage) on a Lot:

- (1) annexation of additional property to the Property, except for annexation by Declarant pursuant to a plan of development previously approved by HUD/FHA or VA;
- (2) merger or consolidation with another property Owners association;
- (3) mortgaging of Common Areas;

- (4) dedication of Common Areas to a public entity;
- (5) amendment of this Declaration; or
- (6) dissolution or amendment of the articles of incorporation. The approval of HUD/FHA or VA, as the case may be, is implied when it fails to respond within 30 days after receiving written request for approval of a proposed action, provided the request was delivered by certified or registered mail, return receipt requested.

12.3. Amendments by Declarant. The Declarant shall have and reserves the right at any time prior to the Conversion Date, without the joinder or consent of any other party, to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for records for the limited purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any Owner or his mortgagee, or for the purpose of meeting requirements of any governmental or quasi-governmental agency with respect to provision of public services or meeting financing requirement for purchasers of Lots, or to effect any replat, if necessary or advisable.

12.4. Unrestricted Owners Rights to Sell and Mortgage. Nothing in this Declaration shall be construed to permit the Association to restrict an Owner's right to sell, transfer or convey his Lot. Nor may an Owner be required to give the Association a right, of first refusal before his Lot can be sold. Nothing in this Declaration shall be construed to restrict an Owner's right to mortgage his Lot. Nor may an Owner's financing options be limited by requiring the use of a specific lending institution or a particular type of lender.

12.5. Rights of Mortgage Holders, Insurers and Guarantors. Any mortgage holder, insurer or guarantor of a mortgage may obtain written notice of any of the items or events

described below upon written request therefore to the Association setting forth the name and address of the mortgage holder, insurer or guarantor, as the case may be, as well as the Lot number or address of the Lot which is subject to said mortgage, insurance or guarantee. Upon submission of such request, the mortgage holder, insurer or guarantor will be entitled to receive notice of the following: (a) any condemnation or casualty loss that affects either a material portion of the Subdivision or the Lot mortgaged, insured or subject to guarantee; (b) any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot mortgaged, insured or subject to guarantee; (c) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (d) any proposed action that requires the consent of a specified percentage of eligible mortgage holders. A first mortgage holder, upon request, is entitled to written notification from the Association of any default in the performance by an Owner of any obligation set forth in this Declaration not cured within sixty (60) days from the date of said default. First mortgage holders may jointly or singly: (i) pay taxes or other charges that are in default and that may or have become charges against any Common Areas; and (ii) pay overdue premiums on fire and extended coverage insurance policies or secure new fire and extended coverage insurance for the Common Areas in case of lapse of any such policy. Any first mortgage holder making any payment described in the immediately preceding sentence shall be entitled to immediate reimbursement from the Association. Nothing in this Declaration shall be construed to give any Owner or the Association priority over the rights of first mortgage holders to insurance proceeds or condemnation awards for losses to or the taking of a Common Areas.

12.6. Omissions. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provisions appearing in this Declaration shall be omitted here from, then it is hereby declared that such omission was

unintentional and that the omitted punctuation, word, clause, sentence or provisions shall be supplied by inference.

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

12.8. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

12.9. Severability. Invalidity of any one or more of the covenants, restrictions, conditions, or provisions contained in this Declaration, or any part thereof, shall in no manner affect any of the other covenants, restrictions, conditions or provisions hereof, which shall remain in full force and effect.

12.10. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

12.11. Enforcement. The Association, as a common expense to be paid out of Regular Annual Assessments, or any Owner at his own expense, shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservations, liens, charges, assessments, and all other provisions set out in this Declaration. Failure of the Association or of any Owner to take any action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of their right to take enforcement action upon any

subsequent breach or default. The prevailing party in any enforcement action shall be entitled to recover his costs, including reasonable attorney's fees.

12.12. Rights Cumulative. All rights, remedies and privileges granted to the Association or any Owner pursuant to the provisions of this Declaration, the Articles of Incorporation of the Association, the Bylaws or all rules and regulations promulgated pursuant to this Declaration, shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies and privileges shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges, as may be available to such party at law or in equity.

12.13. Acceptance of Governing Rules. The Association, all present or future Owners, tenants or future tenants, or any other persons using the facilities of the Property are subject to and shall comply with this Declaration, the Articles of Incorporation of the Association, the Bylaws and all rules and regulations promulgated by the Association and pursuant to this Declaration, and the acquisition, occupancy or rental of a Lot shall signify that all such documents are accepted and ratified. In the event of a conflict in any of the provisions of any such documents, the documents shall govern or control in the following order or preference: (i) this Declaration; (ii) the Articles; (iii) the Bylaws; and (iv) the Rules and Regulations.

12.14. Declarant Signing. A. R. Construction, Inc. has signed this as Declarant.

12.15. Security. The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and its Trustees, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and resident 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 and resident further acknowledges that Declarant, the Association, and its Trustees, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and resident acknowledges and agrees that Declarant, the Association, and its Trustees, 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.

IN WITNESS WHEREOF, A. R. CONSTRUCTION, INC. has executed this Declaration to be effective as of the 14<sup>th</sup> day of July, 2005.

A. R. CONSTRUCTION, INC.

By: Ted Reed  
TED REED, PRESIDENT

Attest:

[Signature]  
Secretary

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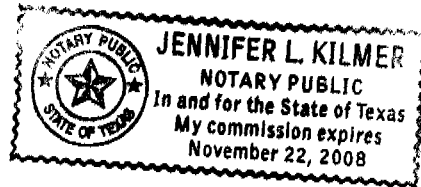


STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

BEFORE ME, the undersigned authority, on this day personally appeared TED REED, PRESIDENT of A. R. CONSTRUCTION, INC., on behalf of said corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER HAND AND SEAL OF OFFICE, this the 14<sup>th</sup> day of July, 2005.

Jennifer L. Kilmer  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

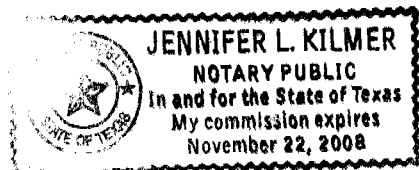


STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

BEFORE ME, the undersigned authority, on this day personally appeared MONICA REED, SECRETARY of A. R. CONSTRUCTION, INC., on behalf of said corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER HAND AND SEAL OF OFFICE, this the 15<sup>th</sup> day of July, 2005.

Jennifer L. Kilmer  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



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EXHIBIT 1.1

Legal Description of the Private Drives and Common Areas.

PRIVATE DRIVES:

Indian Bluff Drive: Lot 22, Block 1, Diamond Pointe Patio Homes  
Subdivision; Teresa Del Mar Street and Tierra Del Mar Street: Lot 21,  
Block 1, Diamond Pointe Patio Homes Subdivision

COMMON AREAS:

Lot 14, Block 1, Diamond Pointe Patio Homes Subdivision

Doc# 20050078835

Pages 58 #FPages 1

08/30/2005 03:21 PM

Filed & Recorded in  
Official Records of

EL PASO COUNTY

WALDO ALARCON

COUNTY CLERK

Fees \$128.80

59

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



EL PASO COUNTY, TEXAS

*Waldo Alarcon*

*Return to:  
Lone Star Title Co.  
6701 N. Mesa  
El Paso, TX 79912*