

**THIRD AMENDED
DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS, AND
EASEMENTS**

FOR

LOS CERRITOS UNIT II REPLAT "A"

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**THIRD AMENDED DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
LOS CERRITOS UNIT II REPLAT "A"**

This Third Amended Declaration of Covenants, Conditions, Restrictions and Easements for Los Cerritos Unit II Replat "A" (the "Declaration") is executed by Residencial Vista Inc. (the Declarant").

RECITALS

1 Declarant is the Owner of Los Cerritos Unit II Replat "A", an addition to the City of El Paso, El Paso County, Texas, according to the map and plat thereof of record in Volume 71, Page 12, Real Property Records of El Paso County, Texas, as amended by that certain Los Cerritos Unit II Replat A dated February 28, 1997 of record in El Paso County Clerk File No. 96012014, Real Property Records of El Paso County, Texas, a copy of which is attached hereto as Exhibit "A" (the "Property")

2 The Declarant desires to adopt this Second Amended Declaration of Covenants, Conditions, Restrictions and Easements for the Property in order to promote the orderly development of the Property, enhance the quality of the development, and to ensure the development of a desirable residential neighborhood.

AGREEMENT

Declarant hereby covenants, agrees and declares that the Property, which shall be know as Los Cerritos Unit II Replat "A", shall hereinafter be subject to the covenants, conditions, restrictions, easements, limitations, reservations, liens, uses, and charges as provided in this Declaration, which shall run with the Property and shall be binding upon and inure to the benefit of Declarant, its successors and assigns, and any person or entity acquiring any right, title or interest in the Property, or any part thereof, their heirs, devisees, personal representatives, grantees, successors and assigns from the date of the recordation hereof in the Real Property Records of El Paso County, Texas until the expiration of Forty (40) years, at which time the same shall be automatically extended for successive periods of ten (10) years, unless otherwise agreed by two-thirds of the then record title Owners of Lots within the Property.

**ARTICLE I
General Purposes**

The Property and each and every Lot therein is subject to the covenants, conditions, restrictions, easements, limitations, reservations, uses, liens and charges hereby declared to insure the best use and the most appropriate development and improvement of each Lot and Improvements thereon, to protect each Owner against such improper use of surrounding Lots and Improvements thereon which may tend to depreciate the value of each Owner's Lot; to preserve, so far as practicable, the natural state and beauty of the Property including the common areas; to guard against the construction thereon of poorly designed or proportioned structures and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to ensure the highest and best development of the Property; to encourage and assure the construction and

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maintenance of attractive homes on each Lot within the Property within appropriate locations on Building Sites; to prevent haphazard and inharmonious Improvements on the Lots or Building Sites herein; to secure and maintain proper setbacks from streets and adequate open spaces between structures; and, in general, provide adequately for a high grade and quality of Improvements on each Lot and Building Site thereon within the Property and thereby to enhance the value of investments made by each Owner of a Lot.

ARTICLE II **Definitions**

The following terms used in this Declaration and in any document relating to the Property, unless otherwise provided or unless the context provides otherwise, are defined as follows:

2.1 Architectural Control Committee

"Architectural Control Committee" and/or "ACC" shall mean the committee designated in this Declaration whose successors shall be appointed by the Board of Directors to control and supervise the construction, renovating and landscaping activities of the Owners with respect to their Lots herein declared to be subject to the control and supervision of the Association.

2.2 Articles

"Articles" shall mean and refer to the Articles of Incorporation of the Association.

2.3 Association

"Association" shall mean and refer to Los Cerritos Unit II Homeowner's Association, Inc., its successor and assigns.

2.4 Board of Directors

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

2.5 Building Site

"Building Site" shall mean that portion of each Lot, as designated by or approved by the Architectural Control Committee, upon which it shall be permissible for an Owner to construct or cause to be constructed a Single Family Dwelling.

2.6 Bylaws

"Bylaws" shall mean and refer to the Bylaws of the Association.

2.7 Common Areas

"Common Areas" shall mean and refer to the following lots shown on the Map: Lots 11,

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15 80 and 81, Block 6, the pool area, private streets, medians and the security gate (including security systems) and the entrance improvements and landscaping relating thereto and all other landscaping to common areas and all street lights and mailboxes and areas for mailboxes.

2.8 Member

Member" shall mean and refer to a member of the Association.

2.9 Common Assessment

Common Assessment" shall mean an assessment for Common Expenses.

2.10 Common Expenses

Common Expenses" shall mean and refer to (a) the expenses of, or reasonable reserves for, the maintenance, management, operation, repair and replacement of those portions of the Property, including Common Areas, which it is the responsibility of the Association to maintain, manage, operate, repair and replace and which will be used to promote the health, safety, welfare and recreation of the owners; (b) water, sewer, garbage, electrical, lighting, telephone, gas, and other necessary utility service for the common area; (c) acquisition of furnishings and equipment for the common area as may be determined by the association, including without limitation all equipment, furnishings, and personnel necessary or property for use of the recreational facilities; (d) fire insurance covering the full insurable replacement value of the common area, with extended coverage; (e) liability insurance insuring the association against any and all liability to the public, to any owner, or to the invitees or tenants of any owner arising out of their occupation or use of the common area. The policy limits will be set by the Association, and will be reviewed at least annually and increased or decreased in the discretion of the association; (f) worker's compensation insurance to the extent necessary to comply with applicable law or as may be deemed necessary by the Board of Directors of the Association; (g) any other insurance deemed necessary by the Board of Directors of the Association; (h) at the option of the Board of Directors, a standard fidelity bond covering all members of the Board of Directors of the Association and all other employees of the Association in an amount to be determined by the Board of Directors; (i) any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the association is required to secure or pay pursuant to the terms of this Declaration or the Bylaws, or which will be necessary or proper in the opinion of the Board of Directors of the Association for the operation of the common areas, for the benefit of lot owners, or for the enforcement of these restrictions; (j) the cost of capital improvements which the Association may from time to time authorize, (k) the expenses of management and administration of the Association, including without limitation, compensation paid by the Association to a manager, or accountants, attorneys, or other employees or agents; (l) any other item or items designated by or in accordance with other provisions of this Declaration or the Bylaws of the Association referred to as Common Expenses; and (m) any other expenses reasonably incurred by the Association of behalf of the Owners.

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2.11 Declarant

Declarant" shall mean and refer to Residencial Vista Inc. its successors and assigns, if such successors or assigns should acquire each and every Lot from Declarant for the purpose, development.

2.12 Detached Single Family Dwelling

Detached Single Family Dwelling" or "Single Family Dwelling" shall mean a building or structure built and maintained for private, residential purposes and designed for occupancy by a single family.

2.13 Development Period

Development Period" shall be the period of time from date hereof until such time as Declarant is converted to a Class A member as contemplated and defined in Section 5.3 below.

2.14 Improvement

Improvement" or "Improvements" shall mean any and all alterations of the Property, Other than interior modifications of existing structures, including, but not limited to, Single Family Dwellings, out buildings, ramadas, patios, garages, guest houses, servant's quarters, swimming pools, walls, fencing, landscaping and driveway, whether intended to be temporary or permanent. It shall also include all acts done to exteriors whether for maintenance or for alterations of color or other aesthetic effect.

2.15 Lot

Lot" shall mean and refer to any numbered lot shown on the Map, excluding Lots 11, 15 80 & 81, Block 6, which is designated on the Map as Dedicated Open Space, roads, the gate entrance, landscape areas and certain other areas identified on the Map.

2.16 Map

Map" shall mean and refer to the map and plat of the Property, of record in Volume 71, Page 12, of the Real Property Records of El Paso County, Texas, as amended by that certain Los Cerritos Unit II Replat A dated February 28, 1997 of record in El Paso county Clerk File No. 96012014, Real Property Records of El Paso County, Texas, attached hereto as Exhibit "A".

2.17 Mortgage

Mortgage" shall include deeds of trust and recorded contracts of Sale of Real Estate wherein the purchaser is entitled to possession of a Lot.

occupancy of their respective Lots. Except for the gate area, a security entry system, pool area, streets, roadways, medians and utility easement. Provided, however, Declarant (or the Association if designated by the Declarant) shall have the right to develop, landscape and maintain common areas for drainage or for other reasons which are in the best interest of the subdivision or are provided in the Declaration.

3.2 Conveyance to Association

Prior to Declarant's conveyance of the first Lot to an Owner, Declarant shall convey to the association fee simple title to the Common Areas, subject to current real property taxes and reservation, easements, covenants and conditions and restrictions then of record, including those set forth in this Declaration except to the extent assigned to the Association. Such Conveyance shall not relieve Declarant of its responsibility to complete the initial development of the Common Areas (as provided herein) within a reasonable time thereafter. The Association shall agree to own, operate and maintain the Common Areas in accordance with the terms of this Declaration.

3.3 Owner's Easement of Enjoyment

Each Owner and the members of each Owner's family who reside in a Single Family Dwelling on the Owner's Lot shall have an easement in and to the Common Areas, and such easement shall be appurtenance to and shall pass with the title to every Lot, subject to the following:

- (a) The right of the Association to establish and enforce compliance with uniform Rules and Regulations governing the use of the Common Areas not inconsistent with the terms of this Declaration, and to amend such Rules and Regulations shall be delivered or mailed to each Owner and Mortgagee of whom the Association has record notice, promptly upon the adoption thereof.
- (b) The right of the Association to construct such facilities upon the Common Areas as the Association shall determine necessary for the use and enjoyment of the Owners and to provide maintenance services upon the Common Areas, provided, however, the Common Areas, except the gate area, pool area, streets and roadways, landscape zones, drainage areas, and such improvements and facilities shall be limited to those necessary to those areas.
- (c) The right of Declarant, its agents and employees, to the nonexclusive use of the Common Areas and the facilities thereof, for the completion of Declarant's initial development of the Common Areas (in the event same shall not have been completed prior to Declarant's conveyance of the Common Areas to the Association) and for display and exhibition purposes in connection with the sale of Lots, which right Declarant hereby reserves; provided, however, that no such use by Declarant shall otherwise unreasonable restrict the Owners in their use and enjoyment of the Common Areas or their Lots.
- (d) The easements upon the Common Areas according to the Map and those

easements and reservations contained in this Declaration.

- (e) The right to suspend the right of use of recreational facilities and the voting rights of any Owner for periods during which assessments against the Owner's lot remain unpaid, and the right, after hearing by the Board of Directors, to suspend such rights for a period not exceeding ninety (90) days for any infraction of the published rules and regulations of the Association.
- (f) The right to dedicate or transfer all or any part of the Common Area to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed on by the members. No such dedication or transfer will be effective unless an instrument executed by two thirds of each class of members agreeing to such dedication or transfer has been duly recorded.

3.4 Delegation of Use

An Owner may only delegate such Owner's easement of enjoyment in and to the Common Areas to an Owner's tenants or contract purchasers or family members who reside in the Owner's Single Family Dwelling, but such Owner shall notify the Association in writing of the name of any such delegee.

3.5 Alienation or Hypothecation

Except as herein otherwise specifically provided, no portion of the Common Areas may be alienated, released, transferred, hypothecated, encumbered, or for the Common Areas, excluding the gate area, pool area, streets and drainage areas, without the approval of two-thirds (2/3) of both the Class a and Class b Members present at any annual meeting (or special meeting called for such purpose) at which a quorum (as defined in the Bylaws) is present.

ARTICLE IV

Duties of the Association; Duties of an Owner

4.1 Duties of the Association

The Association, acting by and through its Board of Directors, shall be responsible for the proper and efficient management and operation of the Common Areas as more particularly described herein. The Association shall be responsible for:

- (a) maintaining and rebuilding, if necessary, the streets and all improvements relating thereto located upon the Common Areas;
- (b) landscaping and watering systems upon the Common Areas not improved as roadways or otherwise remaining in their current natural state, except as provided in Section 4.2 (a) hereof;
- (c) operating and maintaining the Property's restrictive entry system, gate area, and

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pool area and all improvements relating thereto;

- (d) operating, maintaining (including insuring) and rebuilding, if necessary, all street signs, rock walls retaining walls (if any), rock facing and other improvements originally constructed by Declarant or thereafter constructed by the Association;
- (e) paying real estate taxes, assessments and other charges against the Common Areas;
- (f) insuring all improvements which the Association is obligated to maintain against damage by fire or other insurable casualty with such companies and with such limits as the Association deems appropriate;
- (g) hiring, firing, supervising and paying employees and independent contractors including, but not limited to, property managers, watchmen and security personnel to operate the restricted entry system, workers, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein;
- (h) maintaining such liability insurance as the Association deems necessary to protect the Association, the Board of Directors of the Association and the Architectural Control Committee from any liability from occurrences or happenings on or about the Common Areas (including, but not limited to errors and omissions insurance for the Board of Directors and the Architectural Control Committee of the Association as may be available) or for any decisions or actions taken to enforce any provision of this Declaration;
- (i) maintaining worker's compensation insurance for the employees (if any) of the Association;
- (j) purchasing all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;
- (k) enforcing the provisions of this Declaration including, but not limited to, the Architectural Control provisions provided for in Article VIII hereof, the Construction Restrictions provided in Article IX hereof, the Use Restrictions provided for in Article X hereof;
- (l) establishing and maintaining such cash reserves as the Association deems reasonably necessary for the maintenance, repair and replacement of any portion of the Common Areas for which it is responsible to maintain and for unforeseen contingencies;
- (m) providing and paying for all utility services to the Common Areas (excluding those left in their current natural state) and except as provided in Section 4.2 (a) hereof;

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- (n) negotiating and entering into cost sharing agreements and entering into such agreements and thereafter performing such agreements and/or enforcing the performance of the same;
- (o) provide for trash collection as determined by the Association;
- (p) entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Property as a first class residential subdivision;
- (q) establishing, repairing, constructing, maintaining and cleaning of all drainage areas on Common Areas or easements retained by Declarant or the Association with respect to the Property, including the private sewer easement along the rear property of a portion of Lot 4 and of Lots 5 - 16, 28 - 31, 41 - 43, 52 - 55, and 61 - 63, Block 6, and the utility easement fronting all Lots in the subdivision; and,
- (r) collection and paying all taxes, charges and assessments, including franchise taxes, income taxes and all other taxes.

Notwithstanding anything in this Declaration to the contrary, in the event the need for maintenance, repairs or replacements required to be performed by the Association shall be caused by the negligent or tortuous acts or neglect of an Owner, a member of an Owner's family, or an Owner's agent, employee, invitee, licensee or tenant, then such Owner shall be responsible for all of such damage, which shall be considered a Special Expense. Furthermore, notwithstanding anything in this Declaration to the contrary, the Association shall not be liable to any Owner for any delay in the completion of any repair, restoration, replacement or maintenance 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.

4.2 Duties of Owner

- (a) Each Owner shall be responsible for the upkeep and maintenance of all Improvements and landscaping of the back yard and side yards not facing street, upon and abutting each Owner's Lot, including, but not limited to, maintaining and landscaping the rock retaining walls to be provided by Owner as specified in Section 9.7 below and maintaining, landscape automatic sprinkler watering the portion of their exposed yard to street with turf located between each Owner's Lot line and the concrete header curb adjacent thereto. The repair, replacement and maintenance required to be performed by the Owner upon those areas which are exposed to public view shall be done in a manner consistent with the first-class character of the Property and the intended development thereof and shall be subject to the control and supervision of the Association. In the event an Owner fails to perform the required maintenance or landscaping within thirty (30) days after written notice from the Association specifying the nature thereof, the Association may, but shall not be obligated to, enter upon or adjacent to such Owner's Lot and perform such maintenance for and on behalf of the Owner, and the cost thereof shall be considered a Special Expense of such Owner.
- (b) Each Owner, and not the Association, shall have the responsibility of obtaining and keeping in full force and effect, at each Owner's sole expense, (i) standard fire and extended risk insurance on all Improvements on each Owner's Lot and the personal property and furnishings contained in each Owner's Single Family Dwelling; (ii) broad form comprehensive liability coverage for each Owner's Lot (which shall be in addition to and not in lieu of the comprehensive liability coverage required to be purchased by the Association); and (iii) such other insurance coverage as each Owner may elect to purchase in addition to the

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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 Owners. The Lot Owner shall provide evidence of insurance upon written request from the Association. In the event an Owner shall fail to secure the insurance coverage herein required to be purchased and maintained by such Owner within thirty (30) days after written notice shall have been given such owner by the Association specifying the insurance coverage required, the Association may, but shall not be obligated to, secure and maintain such insurance coverage for and on behalf of such Owner, and the cost thereof shall be considered a Special Expense. Under no circumstances shall this provision or these Declarations require or place a duty upon the Association to insure that Lot Owners maintain insurance as provided herein. Nor shall the Association be responsible in the event a Lot Owner fails to have insurance or coverage as provided herein.

- (c) When casualty damage shall occur to any Improvement, the Owner thereof, shall, within ninety (90) days thereafter, commence and diligently pursue to completion, the restoration thereof. Any reconstruction shall be subject to the control and supervision of the Association and the Architectural Control Committee. The cost of such restoration shall be borne by such Owner.

ARTICLE V

Association

5.1 Administration of Property

The Property shall be administered by the Association, who shall be elected in accordance with the Bylaws, and whose duties will be governed by the terms of this Declaration, the Articles and the Bylaws of the Association. The Association may employ professional management agents to perform, subject to the supervision of the Board of Directors, such duties and services as the Board of Directors shall direct, including, but not limited to, management of the Common Areas and the collection of and accounting for assessments made by the Association. Any such management agreement shall provide for a rate of compensation to be established and/or approved by the Board of Directors, and shall further provide for the right of the Association to terminate the same with cause upon not more than thirty (30) written notice and without cause upon not more than sixty (60) days written notice.

5.2 Membership

Each Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the so qualification for membership. The membership held by an Owner shall not be transferred, pledged or alienated in any way, except upon the sale of such Lot, and then only to the purchaser of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. Evidence of transfer of membership shall be furnished to the Association in the form of a certified copy of the recorded conveyance of a Lot signed by the current Owner thereof as reflected upon the books and records of the Association.

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5.3 Voting Rights

The Association shall have two classes of voting membership with the voting rights hereinafter indicated:

Class A Members: Class A Members shall be all Owners with the exception of Declarant and each such Member shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in a Lot, all such persons shall constitute one Member, and the one (1) vote for such Lot shall be exercised as they among themselves shall determine, but in no event shall more than one vote be cast with respect to any such Lot.

Handwritten notes:
96 total lots x 30 lots owned = 90 votes
66 Class A - 136 total votes
Puma - 57.79% of votes

Class B Members: Declarant shall be a Class B Member and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to a Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equals 75% of the total votes; or
- (b) Should Declarant notify in writing the Association of Declarant's election to convert from a Class B Member to a Class A Member;

and (unless the next annual meeting of the Association shall come within one hundred twenty (120) days after such conversation) a special meeting of the Members shall be called by the Board of Directors within not more than one hundred twenty (120) days after such conversion for the purpose of electing a new Board of Directors. In all cases, Declarant shall be treated as a Member for purposes of this Declaration.

5.4 Suspension of Voting Rights

The voting rights of any Member shall be automatically suspended during any period during which such Member shall be delinquent in the payment of assessments due the Association.

5.5 Board of Directors

The Board of Directors of the Association shall be not less than five (5) in number; provided the initial Board of Directors pursuant to the Articles shall have three (3) members composed as listed in the initial Declaration with the current members being the following persons:

**Rodolfo Martinez
Luisa Martinez
Tony G. Conde**

until Declarant either removes any such initial Director or becomes a Class A Member

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and thereafter until their successors are elected pursuant to provisions of the Bylaws of the Association. Such original Directors shall serve at the pleasure of Declarant until such time that Declarant becomes a Class A Member of the Association and may be removed from office at any time by Declarant and during such period Declarant shall have authority, in its sole discretion, to fill any vacancies created or existing on the Board of Directors. The number of the Board of Directors shall be increased to five (5) members as the first meeting of the Members after Declarant becomes a Class A Member.

5.6 Architectural Control Committee

These individuals shall commence to serve at the time of recordation of this Declaration. The Board of Directors shall have the authority to appoint the successors to the initial Architectural Control Committee named herein and to delegate to such committee such power and authority to control and supervise to the extent and in such manner as shall be specified in the Bylaws or this Declaration the activities of individual Owners with respect to their Lots herein declared to be subject to the approval or control and supervision of the Association. The number and tenure of the members of the Architectural Control Committee shall be determined by the Board of Directors. The Architectural Control Committee is authorized to employ professionals, inspectors and others to assist in its functions.

5.7 Rules and Regulations

The Association shall have the authority, from time to time, to make reasonable rules and regulations regarding the use and enjoyment of the Common Areas which are not inconsistent with this Declaration or the Articles or Bylaws of the Association which rules and regulations shall be binding upon all Owners.

ARTICLE VI
Assessments

6.1 Establishment

The Association shall have the responsibility and authority to assess each Lot for Common Expenses and, as applicable, Special Expenses, and the Owner of his or her Lot shall be personally liable for the payment of such assessments levied during the time any such Owner owns a Lot and the assessment applicable to each Lot shall be a charge and continuing lien upon each such Lot. If there is more than one Owner of a Lot, then each Owner is jointly and severally liable for all assessments provided herein.

6.2 Initial Assessments

At the closing of a sale of Lots 1 through 95 to an Owner who will ^{be} the first user (Owner Occupant), each such Lot Owner shall at the time of closing such Owner's Lot pay \$1,200.00 to the Association as an Initial Assessment. Each Initial Assessment shall be placed in a separate account of the Association and invested in Certificates of Deposit.

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Money Market funds, U.S. Government securities or similar investments. The income earned on the corpus of the Initial Assessments shall be used to pay operating expenses for the Association as provided in these Declarations and to offset Annual Common Assessments as provided in Section 6.3 of these Declarations. The corpus of the Initial Assessments shall not be used without approval of two-thirds (2/3) of the Members.

6.3 Annual Common Assessment

Not less than thirty (30) days after the beginning of each fiscal year (to be determined in accordance with the Bylaws) the Board of Directors shall, after taking into consideration all anticipated items of Common Expense, for such fiscal year, together with a reasonable reserve or contingencies, fix and establish the amount of the Annual Common Assessment (the "Annual Common Assessment"); each Owner being required to pay each Owner's proportionate part thereof based on the Lot owned and based on Annual Common Assessment.

Following the establishment of the Annual Common Assessment, each Owner shall be given notice of the Annual Common Assessment and each Owner's proportionate part thereof, but the failure of an Owner to receive such notice shall not affect such Owner's liability for the payment of each Owner's proportionate part thereof. Each Owner's proportionate part of the Annual Common Assessment shall be due and payable by each Owner (excluding Declarant) in monthly or other periodic installments equivalent to each Owner's proportionate part of the Annual Common Assessment, in advance, on the first of each month or other period. Declarant shall not be obligated to pay Annual Common Assessments.

During the course of a fiscal year should the Board of Directors determine that the Annual common Assessments therefore assessed will be inadequate, the Board of Directors from time to time may increase the Annual Common Assessment for such fiscal year and each Owner's proportionate part thereof. Conversely, should the Board of Directors during the course of a fiscal year determine that the Annual Common Assessments therefore assessed will create a surplus in excess of that necessary as a reserve for contingencies, the Board of Directors from time to time may decrease the Annual common Assessment and each Owner's proportionate part thereof. In either such event, the Board of Directors shall notify each Owner of the adjustment and the revised amount of each monthly installment thereafter due by each such owner.

If the Board of Directors shall fail to fix and establish the Annual Common Assessment and the proportionate part due by each Owner of a Lot as herein provided, the Annual Common Assessment and the proportionate part due by each Owner of a Lot for the previous fiscal year shall automatically continue until such time as the Board of Directors shall meet and establish a new Annual Common Assessment in accordance with the provisions of this Declaration.

Each Owner of a Lot purchased from Declarant, on the date of the purchase thereof, shall become liable to the Association for a ^{rate} pro rate part of the Annual Common Assessment attributable to such Lot then established by the Association such ~~pro rate~~ part being a

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fraction, the numerator of which is the number of calendar days until the next ensuing January 1, and the denominator of which is 365. The prorated monthly payment for the month in which a Lot is purchased shall be due and payable by each such Lot Owner within ten (10) days after receipt from the Association of a statement therefor. Thereafter, the monthly installment paying such Owner's proportionate part of the Annual Common Assessment shall be due and payable by the Owner of a Lot purchased from Declarant by the first of each month.

Declarant shall not be required to pay any assessments, including but not limited to initial, annual or special assessments. Declarant may, but without obligation during the Development Period, pay to the Association from time to time as required, any amounts necessary (over and above payments to the Association by other Lot Owners) to satisfy the Association's current operating expenses on a cash basis. Declarant shall have no obligation to contribute any sums to the Association. This paragraph shall not be subject to amendment without the consent of Declarant.

6.4 No Exemptions

No Owner shall be exempt from liability for assessments duly established by the Association. Further, no diminution or abatement of assessments shall be allowed or claimed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or Lots or from any action taken to comply with any law, ordinance or order of a governmental authority.

6.5 Special Assessments

Special Assessments may be fixed and established by the Association against certain Lots for the payment of Special Expenses. Such Special Assessment shall be due and payable by the Owners of the Lots relating to the Special Assessments to the Association upon demand. No Special Assessment shall be established against a Lot until the Owner thereof shall have been given the opportunity to present evidence on such Owner's behalf at a hearing, and no such hearing shall be held until such Owner shall have received at least ten (10) days written notice specifying the reasons for the proposed Special Assessment and the exact time and place of the hearing. The decision of the Board of Directors shall be final and binding upon the parties.

6.6 Vendor's Lien

In each deed of a Lot by Declarant to an Owner there shall be expressly reserved a vendor's lien (the "Vendor's Lien") to secure payment of all assessments due and to become due pursuant to this Declaration which Vendor's Lien shall be transferred and assigned to the Association. By the acceptance of a deed from Declarant, each Owner (and such Owner's subsequent grantees) assumes and agrees to pay such assessments in accordance with the terms and provisions of this Declaration.

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6.7 Subordination

If any Lot subject to the Vendor's Lien and Assessment Lien reserved for the payment of the assessments due and to become due pursuant to the terms of this Declaration shall be subject to the lien of a Mortgage, sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first lien Mortgage, or by deed or other transfer in lieu thereof, shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

6.8 Delinquent Assessments

The payment of an assessment shall be considered delinquent and in default if not paid upon the due date thereof and shall bear interest from such date at the rate of twelve percent (12%) per annum until paid. The interest rate charged by the Association shall be uniform, reasonable and shall not exceed the maximum amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the delinquent amount or, if that has been paid, refunded. The Association shall also be entitled to collect a late charge in such amounts and upon such conditions as the Board of Directors may from time to time determine. Each Owner (whether on or more) shall be and remain personally liable for the payment of all assessments which may be levied against such Owner's Lot by the Association in accordance with the terms and provisions of this Declaration until the same shall be paid in full, both principal and interest. In the event of sale or conveyance of a Lot the purchaser of same shall be required and entitled to cause such delinquent assessments to be paid out of the sales price and, failing this, such purchaser shall become personally liable for payment of such delinquent assessments by such purchaser's acceptance of a deed to such Lot from an Owner in default.

6.9 Assessment Lien

The Association may enforce collection of delinquent assessments as provided in this declaration. The annual and special assessments, together with interest, costs, and reasonable attorney fees, will be a charge on the land and a continuing lien on each lot against which an assessment is made. Each such assessment, together with interest, costs, and reasonable attorney fees, will also be the personal obligation of the person or persons who own the lot at the time the assessment falls due, but such personal obligation will not pass to the successors in title of such person or persons unless expressly assumed by them. With respect to unpaid or delinquent assessments the Board of Directors or a managing agent appointed by the Board ("Managing Agent") may (but shall not be required to) prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the lot and a description of the Lot. Such notice shall be signed by one of the members of the Board of Directors or by one of the officers of the Association or by a representative of the Managing Agent and may be recorded in the office of the County Clerk of El Paso County, Texas. Such lien may be enforced by a foreclosure of the defaulting Owner's Lot by the Association in like manner as a Deed

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of Trust on real property subsequent to the recording of a notice provided for above. In any such proceeding, the Owner shall be required to pay the costs, expenses and attorney's fees incurred in connection with filing the lien, and in the event of any foreclosure proceeding, all additional costs, expenses and attorney's fees incurred in connection with any such foreclosure proceeding. The Owner of the Lot being foreclosed shall be required to pay to the Association the monthly Assessment for the Lot during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Association shall have the power to bid on the lot at foreclosure or other legal sale and to acquire and hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. Any Mortgagee may pay, but shall not be required to pay, any unpaid Assessments owing with respect to such Unit, but such payment shall not be deemed a waiver of the Owner's default by either the Association or such Mortgagee.

The amount of the Assessment and costs as mentioned above assessed against each Lot shall also be a debt of the Owner thereof at the time the Assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same.

Each Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, and to enforce the aforesaid liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code as may be amended from time to time, and such Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also temporarily suspend the Association membership rights of any Owner who is in default in payment of any Assessment in accordance with the Bylaws.

6.10 Commingling of Assessments

Except as otherwise expressly provided herein, all Assessments and funds collected by the Association may be commingled in a single fund and without the necessity of a specific accounting for each element of Common Expense or Special Expense for which such Assessments or collection have been made.

6.11 Assessment Roll

The Assessments against all Owners shall be set forth upon a roll of the Lots which shall be available in the office of the Association for inspection at all reasonable times by owners and Mortgagees or their duly authorized representatives. Such Assessment Roll shall indicate for each Lot the name and address of the Owner or Owners, the assessments for all purposes and the amounts of all assessments paid and unpaid. A certificate signed by an officer of the Association as to the status of an Owner's assessment account shall limit the liability of any person for whom made other than the Owner. The Association shall issue such certificates to such persons as an owner may request in writing and shall be entitled to charge a reasonable fee therefore in such

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amount as shall be determined by the Board of Directors from time to time.

6.12 Notice to VA and to Mortgagees

During the Development Period: (i) the Declarant must provide a copy of all amendments to this Declaration to the VA; and, (ii) the Association may not make any material amendments or take any extraordinary action as defined by the VA on the date hereof.

An Owner who shall give a mortgage upon such Owner's Lot shall notify the Association with the name and address of such Mortgagee. Each Owner authorizes the Association to disclose information to such Mortgagee concerning the Lot, assessments (and payments thereof), as well as all other matters regarding the Property, the development, operation and maintenance thereof, and the Association.

All Mortgagees that have provided notice to the board of directors of their interest and have filed with the Association an appropriate written request, shall be entitled to receive the following notices in writing from the Association:

- a Right to inspect association documents and records on the same terms as the members;
- b Notice of all material amendments to the association documents;
- c Notice of any extraordinary actions of the association;
- d Notice of any property loss, condemnation or eminent domain proceeding affecting the common areas resulting in losses greater than 10 percent of the annual budget or any unit insured by the association in which the mortgagee has an interest;
- e Notice of any termination, lapse or material modification of an insurance policy held by the association,
- f Notice of any default by an owner of a unit subject to a mortgage held by the eligible mortgagee in paying assessments or charges to the association which remains uncured for sixty consecutive days;
- g Notice of any proposal to terminate the declaration or dissolve the association at least 30 days before any action is taken;
- h Right of a majority of the eligible mortgagees to demand professional management; and
- i Right of a majority of the eligible mortgagees to demand an audit of the association's financial records.

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ARTICLE VII
Powers Reserved in Declarant

7.1 Changes

Declarant reserves the right to make such changes in the boundaries and designations of Lots not sold to other and in the Common Areas, as Declarant deems advisable, provided that any such changes shall not have a material adverse effect upon the boundaries or the beneficial use and enjoyment of any Lot then owned by Owners other than Declarant, and provided that such changes shall have been approved by the governing regulatory agencies exercising jurisdiction thereof.

7.2 Annexation Pursuant to Approval

Declarant reserves the right, upon the written consent of two-thirds (2/3) of the Class A Members, to annex any other real property to the Property.

ARTICLE VIII
Architectural Control

8.1 No Construction Without Approval

Except for improvements or alterations undertaken by the Declarant, no Improvements, whether by original construction, remodeling or maintenance, shall be commenced, erected or maintained upon any Lot, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION THERETO be made until detailed plans and specifications showing the nature, kind, shape, height, materials, plant materials, and location of the same shall have been submitted to and approved in writing as to compliance with the provisions and spirit of this Declaration and as to harmony of external design and location in relation to surrounding structures and topography, and quality of workmanship and materials, by the Architectural Control Committee (herein the "ACC").

8.2 Powers of Architectural Control Committee

The ACC shall have the exclusive right, exercisable in its sole discretion, to promulgate written rules, regulations and restrictions on construction and landscaping, to amend such rules, regulations and restrictions from time to time; and to follow, waive or modify any restrictions set forth in this Declaration, provided that in no event shall any waiver be effective unless in writing and signed on behalf of the ACC by a person duly authorized to sign such waiver, and further provided that no such waiver shall be deemed a waiver of the right to enforce such rules, regulations or restrictions in the future as to others.

The ACC shall have the right, but not the obligation, to obtain injunctive relief to halt construction and/or to remove nonconforming structures if it is determined that any construction is not substantially in accordance with the approved plans and specifications or if no plans have been submitted for approval prior to beginning construction. The

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ACC shall also have the right to enforce the requirements and provisions of this Declaration.

8.3 Plan Approval

Prior to making an Improvements, whether such Improvements be initial improvements or subsequent alterations, modifications or other changes, an Owner shall be required to obtain the written approval of the ACC. Each Owner shall submit to the ACC two complete sets of plans for proposed Improvements, specifications (including exterior color schemes) and plot plans all of which shall be to scale and shall include the location of all structures, including the Single Family Dwelling, and the proposed Building Site. At the time the plans are submitted to the ACC for approval, an Owner shall pay a fee of \$50.00. Such fee may be adjusted upward (not downward) from time to time in accordance with percentage increases (not decreasing) in the Consumer Price Index using the year 1995 as the base year. For Improvements other than the initial Improvements, such as the adding of a tennis court or wall or purchaser of 10 or more lots, the ACC shall establish a schedule of lesser fees relative to the cost and complexity of the Improvements. Approval, of plans shall be in the ACC's sole discretion. The sequence for plan approval shall be as follows:

- (a) Initial Approval - Site plans, elevation plans and building plans shall be submitted to the ACC for initial approval prior to submittal to the City of El Paso.
- (b) Final Approval - After approval by the City of El Paso authorizing construction, the plans approved by the City of El Paso shall be submitted to the ACC for final approval.

Approval of the plans and specifications shall be evidenced by the written endorsement of the ACC made on the plans and specifications. The ACC shall respond to the Owner within fifteen (15) calendar days after receipt of the plans, fee and all other requested information. A copy of the endorsed plans shall be delivered to the Owner (or the Owner's contractor or agent) of the Lot to be improved prior to the beginning of any construction, including dirt work. Failure by the ACC to deliver approval of any submitted plans shall not be construed as approval of the plans. The Owner is obligated to obtain the approval/endorsement of the ACC on any final plans prior to beginning the construction of any Improvement.

In the event, the ACC fails or refuses to act within a reasonable time not to exceed thirty (30) days, the Owner may petition the Board of Directors to review the appropriately submitted Plans to obtain an approval endorsement and the authority to proceed with the construction of any Improvements. One set of plans and specifications shall be retained by the ACC. No changes or deviations in or from the approved plans and specifications insofar as relating to the exterior of the proposed Improvements shall be made without the written approval of the ACC.

Under no circumstances shall the slab for the Improvements be poured before the ACC has received verification certifying that the Improvements are within the setback

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requirements required for the Lot as represented on 9.4.

The Owner of the Lot shall give notice to the ACC after framing is completed and prior to sheetrocking so the ACC may inspect and approve the structure, including the heights restrictions. The Owner of the Lot shall also provide notice to the ACC at the time of the structural inspection by the City of El Paso. The Owner must obtain the approval of ACC prior to continuing with any construction. The ACC shall inspect the premises within three (3) working days of receiving a request for inspection from the Owner or his agent. In the event the ACC fails to inspect the premises within three (3) working days after receipt of a request for inspection, the Owner may continue with construction of any Improvements provided that such Improvements comply with the restrictive covenants of this Declaration. The failure of the ACC to act shall not be construed as a waiver of any of the restrictions of this Declaration and the ACC may take any action necessary to enforce same. The ACC shall also be entitled to inspect the site from time to time to ensure compliance with the plans and specifications, including height restrictions, etc. Landscape plans for front yard shall also be submitted in sufficient detail to show the exact location of watering systems and plants. Planting must be selected from an approved list of plant materials promulgated by the ACC. Such plant list may be amended from time to time as deemed necessary by the ACC. All watering systems must conform to design requirements of the ACC.

8.4 Membership

The ACC shall consist of not less than two (2) nor more than five (5) members. the initial members shall be as provided in the initial Declaration and the current members being Luisa Martinez and Tony G. Conde, all of El Paso, Texas. In the event of the death or resignation of any initial member of the committee, the remaining member or members of the committee shall have full authority to designate a successor. If all of the initial members of the committee and their successors, resign or cease to be members, the Board of Directors of the Association shall appoint successors in accordance with the provisions of this Declaration.

8.5 Plan Approval Compensation and Liability

No member of the ACC shall be entitled to any compensation for services performed as a member pursuant to this Declaration; provided, however, the ACC be entitled to employ supervisors (which may include one or more of its members from time to time) and other professional to assist them in carrying out their functions under this Declaration. Architectural control of construction, as provided in this Declaration and other duties of the ACC being largely subjective in nature, the action or non-action by the ACC shall not subject any of its members or any agents or representatives of the ACC, or the Association, or any of its Board of Directors, agents or employees, to any liability whatsoever nor shall the members of the ACC be required to enforce the provisions herein. The members of the ACC shall not be proper parties to any litigation or action involving the enforcement or nonenforcement of any provisions.

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8.6 Minimum Criteria

In addition to complying with all provisions of this Declaration, all plans and Improvements must meet the following *minimum criteria* and such further criteria as the ACC promulgates:

- (a) Be in accordance with the provisions of this Declaration and in sufficient detail to permit the ACC to make its determination.
- (b) The location, style of architecture, exterior color schemes, height and location of exterior lighting, or all Improvements shall be in harmony with the general surroundings of the building or structure or proposed buildings or structures on any Lot subject to the covenants and restrictions in this Declaration.
- (c) The location of the Single Family Dwelling and other Improvements shall be located within a Building Site approved by the ACC.
- (d) Plans for any construction of Improvements must include the following:
 - (1) All floor plans;
 - (2) Exterior elevations (all sides) clearly showing proposed style and design and all proposed exterior materials including roofing;
 - (3) Sight plan clearly showing the location of the Single Family Dwelling and all Improvements including walkways, fences and drainage control;
 - (4) Landscape plans including all proposed plants and trees and their location, ground cover and sprinkler system on front yard sides of proposed Improvements up to the property lines;
 - (5) Mandated color and material samples selected for all exterior surfaces of the Improvements, including the roof;
 - (6) A one foot brick set back line shall be placed between the street curb and the sidewalk, with the brick to be approved by the ACC;
 - (7) Each unit shall have an enclosed garage receptacle area that is not visible from the view of the street;
 - (8) Construction specifications; and
 - (7) Any other information requested by the ACC.

8.7 No Responsibility

Neither the Association nor the ACC, nor any of their respective agents, representatives,

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directors or employees shall be responsible for any structural defects shown in any plans or specifications or in any building or structure erected. Neither the Association nor the ACC, nor any of their respective agents, representatives, directors or employees, shall be liable for damages to anyone submitting plans for approval or to any Owner of a Lot subject to this Declaration by reason of a mistake in judgment, negligence, nonfeasance or otherwise. Each Owner, by taking title to a Lot, waives any claims for such damages. By reviewing and approving plans specifications for compliance with the provisions of this Declaration, neither the Association nor the ACC nor any of their respective agents, representatives, employees or directors warrant or represent that any submitted plans are structurally sound, comply with any government codes or restrictions, or are without defects. The ACC and Association disclaim any implied warranties, including but not limited to, workmanship, merchantability, habitability or any other warranty of any plans reviewed or approved. Furthermore, the inspection of the Improvements from time to time by the Association or the ACC, or their respective agents, representatives, employees or directors shall not be construed as approval by the ACC that the Improvements are being constructed in accordance with the plans and specifications. The review and approval by the Association or ACC is solely for the basis that the Improvements comply with this Declaration. The function of the ACC is specifically limited to the review of submitted plans for compliance with the terms of this Declaration.

ARTICLE IX
Construction Restrictions

9.1 Construction Restrictions

The Property, every portion thereof, and every structure thereon or Improvement thereto shall be subject to the restrictions in this Declaration, including those in this Article IX.

9.2 Construction

All Single Family Dwelling and other Improvements shall be built and maintained as follows:

- (a) No structures shall be erected, altered, placed or permitted to remain on any Lot other than one Single Family Dwelling for private use, together with other customary Improvements.
- (b) The Single Family Dwelling and Improvements shall be of a size in square footage so as to be in harmony with the general surroundings, the size of the Lot, the location of the Building Site with the Lot, other structures or Improvements on the Lot, and the size of other Single Family Dwellings and Improvements on other Lots on the Property. Notwithstanding the forgoing, the Single Family Dwelling on Lots 3 thru 14, 16 thru 18, 28 thru 31, 40 thru 43, 52 thru 55 and 61 thru 64, Block 6 must have at least 2,000 square feet of living area. All other Residential Lots must have at least 1,500 square feet of living area. Exclusive of porches, garages or unfinished space.
- (c) The Improvements to each Lot must include at least a two car enclosed garage.

- (d) Car ports shall not be allowed. All private driveways shall be surfaced with concrete for a distance of at least ten (5) feet from the point at which the driveway joins the concrete header curb of the street. The remaining length of the driveway shall be surfaced with other material such as or bominite, color to match roof tile subject to the approval of the ACC.
- (e) All exterior lights shall be located and maintained so as not to be directed toward or interfere with surrounding properties or the Common Area, including streets. All exterior lighting shall be of a subdued, soft type of lighting. No flood lights or high intensity lights shall be permitted.
- (f) All aerial masts, satellite receiving stations, radio and television antennae are prohibited except for 2 feet dish antenna.
- (g) All mechanical equipment including evaporative coolers, air conditioning equipment, heating equipment, ducts, collectors or solar panels, wherever placed, shall not be allowed on roofs of structures or Improvements and shall be concealed from view from streets, other Lots and the Common Areas.
- (h) Special care shall be taken in the design of corner Lots so that structures shall present an attractive and substantial exterior to all visible sights. The ACC may require suitable fences or walls to be erected and maintained wherever necessary to accomplish such purposes and to prevent the appearance of unsightly conditions.
- (i) No construction or remodeling shall be permitted between the hours of 7:00 p.m. and 6:00 a.m. Monday through Friday. Any work on Saturday or Sunday shall be coordinated with the ACC by 12:00 p.m. the preceding Friday.
- (j) Any changes to the existing grade must be approved by the ACC.

9.3 Roofs

All roofs shall be subject to the following:

- (a) All roofs with a pitch of 1 ½ : 12 or less over any part of the Single Family Dwelling, garage or porch shall be constructed with parapets around their perimeter such that the approximately flat roof is not visible from any point of view around the structure. The parapet surfaces facing the roof shall be architecturally finished down to the roof surface, a max of 50% of unit may be flat roof and parapets. Only a red color acceptable to the Architecture Control Committee and/or the Declarant shall be used for the roof with parapets.
- (b) The roof shall be of Spanish tile type material as per product type in paragraph 9.9 (b).

9.4 Setbacks

The minimum setback requirements for any structures from the Lot lines on all sides of the Lot shall be as follows:

- (a) Front Yard (street side)

The face of any front entrance garage must be twenty (20) feet back from the Lot line

(street). Otherwise, a fifteen (15) foot setback requirement will apply.

- (b) Rear Yard 15 feet from construction line identified in Map
- (c) Side Yard 4 feet to main building wall
- (d) Side Yard next to Side Street 10 feet (for Garages on side yard same as (a))
- (e) No structure will be constructed closer than ten (10) feet from the top edge of a slope at a rear yard.
- (f) 4 feet side walks will be required One foot (1) from curb minimum within the 10 feet easement.

9.5 Maximum Structure Height

The maximum height of the roof and any roof projections, excluding any chimneys of any structure, including without limitation, the Single Family Dwelling, constructed on the Lot shall not exceed the following height from the lowest existing finished grade on the Lot upon which an improvement may be placed.

<u>Height</u>	<u>Lots</u>	<u>Blocks</u>
22 feet	Lots 17 & 18, 32 - 35, 44 - 47 and 56- 58 ⁵⁷	Block 6
24 feet	Lots 8-14 (from mean curb Elevation fronting lot)	Block 6
28 feet	All others	

Without limiting the foregoing height restrictions, the ACC is authorized to adopt and file as an amendment to this Declaration specified height limitations for each particular Lot, provided such limitations may not be less restrictive than those in this Declaration.

9.6 Street Frontage

Should the ACC require, the Owner of a Lot shall be responsible for constructing and maintaining a retaining wall on the property line abutting a street. The retaining wall shall be constructed of pre-determined stone or brick and shall be in uniformity with retaining walls on adjacent Lots with regard to height, width, structure and design, or as deemed acceptable by the ACC. Each Owner shall be responsible for providing ground cover, riprapp or other material or landscaping acceptable to the ACC in the area between the front Lot line or side Lot line abutting a street and the concrete curb of the street. The Lot Owner shall be responsible for constructing and maintaining where designated all sidewalks. Such construction shall be in accordance with all governmental codes.

9.7 Fences

All yard walls or fences, and additions thereto, shall be masonry walls constructed of stucco concrete block, except for retaining walls and those parts of the walls which consist of wrought iron fencing and stone. All garden walls above retaining walls shall be maximum of 2 feet height with 2 feet wrought iron. No unfinished or painted concrete block, chicken wire, barbed wire or chain link fence or gates shall be permitted at any location on any Lot. Without limiting the generality hereof:

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All yard wall stucco shall be El Ray Stucco or equal. If painted, the color shall be Dunn Edwards # 4007, S.P. Glory White Elestomeric, or equal. The same color shall apply to wrought iron fence.

- (a) The cost of all masonry walls on common property lines shall be shared equally by adjacent Lot Owners and Declarant shall not be obligated to share in such cost. All masonry wall on common property lines shall be constructed centered on the common property line. If the grade elevation difference between Lots and lot lines is less than six (4) feet, a structural retaining wall shall be constructed to the full height of the difference. If the grade elevation difference between Lots at lot lines is more than six (4) feet, walls as described in paragraph (c) below shall be constructed.
- (b) Maximum height of rear yard masonry side walls shall not exceed five (5.0) feet above the finish ground surface. At common property lines the five (5.0) feet maximum shall be measured from the finish ground surface of the highest adjacent Lot, except outside perimeter wall which should be 5 feet to 6 feet.
- (c) Rear yard masonry rear walls not more than two (2.0) feet high from the ground surface and not more than two (2.0) feet clear of the top or bottom edge of the major slopes shall be constructed by all Lot Owners at the rear or side of their Lot next to and parallel to the edge of the major slopes. The upper part of these walls shall consist of wrought iron with an average maximum height of five (4) feet.
- (d) Masonry walls, except for rear yard masonry wall, between Lots on the common side property line shall be constructed beginning at the nearest approximately perpendicular front wall of the rear yard and extending to front wall of residence.
- (e) Front masonry walls of side yards between and approximately perpendicular to the structure side wall and to the side lot line must be erected and shall be constructed no closer than ten (10.0) feet from the front building line of a structure.
- (f) Exceptions to these masonry yard wall requirements as to location and size may be permitted only by the ACC and/or the Declarant upon written request by the Owner.

9.8 Landscaping

The front and side facing street, of all Lots, shall be provided with landscaping, as stated in (a) below and shall be maintained by the Association.

- (a) It shall be the responsibility of the owner to landscape same, in a manner acceptable to the ACC to include at a minimum the sodding of the Lot and planting of at least two street trees (of at least two inches in caliper measured four inches above the ground) and five shrubs (of at least five gallon container size) for each fifteen hundred square feet of Lot area outside of the Dwelling Unit. Landscaping shall be completed within one month of the date of completion of the Dwelling Unit by the original purchaser. All Landscaping plans and any alteration thereof must be approved by the ACC prior to the commencement of the landscaping.

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In the event the Owner fails to install the landscaping in the time period prescribed above, in a manner satisfactory to the ACC, then the Board of Directors shall have the right and duty to install and/or maintain such landscaping, the cost of which shall be chargeable to such Owner by an Individual Assessment.

An initial landscaping of the front yard of each lot should be complete by the time the dwelling unit is constructed. This landscaping package is to unify and beautify the front yards of all units.

Each Lot is subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) for providing the installation and/or maintenance in accordance with the above.

- (1) Side slopes of corner Lots next to an adjacent street shall be landscaped to the adjacent sidewalk or curb. No masonry wall along the top of the side slope shall be permitted except for that required for private rear yard walls.
- (2) All side or rear yards of each Lot shall be maintained by the Owner of such Lot in clean and trim manner free of any unsightly thing or condition. All vegetation at such locations shall be properly watered as required to be maintained in a live, verdant condition. The front and side yard facing street shall be maintained by the association.
- (3) The Association at its option may correct any unsightly condition and the Owner of such Lot will be obligated to pay for such work, and shall be subject to a Restoration Assessment.

9.2 Harmony of Exterior

The Owner of each Lot shall keep all exterior walls and roofs of the Single Family Dwelling, all other structures, walls, fences, walkways, driveways, exterior light and landscaping on the Lot in good and safe condition at the Owner's expense. Any changes to the exterior of any Single family Dwelling on any Lot (including any additions thereto) shall be made so as to harmonize with the design, location and color of other Single Family Dwellings located in the subdivision and submitted for approval to the Architectural Control Committee as provisions herein contained. Any changes in use or any additional construction between the front of the Single Family Dwellings (including, but not limited to, the installation, removal or change in walls, fences, walkways and driveways) shall be made so as to harmonize the design, location, color and use of other structures located in the subdivision and in conformity with the architectural control provisions contained herein.

- (a) All exterior wall stucco shall be El Rey Stucco or equal and if painted, the color shall be Dunn Edwards # 4007, S.P. Glory White Elestomeric, or equal.

- (b) Roof tile shall be Espana Mission Tie or equal Southwest 100 Series, and shall be #147 Coronado Blend.

9.10 Drainage

All surface drainage from Lots must be in a directed and controlled manner approved by a Registered and Licensed Civil Engineer. Except as provided below, all Lots must slope the rear, side and front yards to drain toward the street in front of the Lot provided such surface drainage must be in controlled manner. Lots 5 thru 14, 18, 28 thru 31, 40 thru 43 52 thru 55 and 61 thru 63, Block 6 that naturally slope to rear may continue to slope and drain to the rear of the Lot provided such drainage must be in controlled manner approved by the ACC. In no event shall storm water be diverted to other Lots except through approved drainage easement.

9.11 Area Lighting

The median Landscaped Areas will be lighted and maintained by the Association. Each individual unit shall have exterior post light at the front yard next to 10' utility easement and said light to be automatically controlled by a photoelectric cell. The fixture shall be as specified on attachment to this document.

9.12 Utilities

- (a) The Improvements shall include enclosures in which all exterior heating and cooling apparatus, meters, mechanical equipment, tanks and space for trash or rubbish containers shall be located out-of-sight from private streets and/or adjoining Lots.
- (b) All electrical service and telephone service and telephone lines from the utility company lines shall be placed underground and no outside electrical and telephone lines shall be placed overhead. Service to the individual Building Site of such lines shall be taken from the point assigned by the ACC.
- (c) Slope Lots mentioned in (9.10) above may sewer to private sewer in rear of Lots.

9.13 Timeliness

Construction of Single Family Dwellings and Improvements shall be prosecuted diligently from the commencement thereof until completion. The Single Family Dwelling and related improvements on any Lot, once commenced, shall be completed in accordance with the approved plans and specifications in not more than twelve months from the date of commencement including landscaping.

In the event of reconstruction or restoration necessitated by damage to or destruction of any Improvements and/or landscaping, Improvements and/or Landscaping which must be restored to the original plans and specifications or such other plans and specification approved by the ACC in accordance with the terms of this Declaration, as soon as practicable but the construction must commence within one (1) year from the date of damage and the Owner must diligently pursue such construction until completion. All exceptions or deviations from the original Plans must be approved by the ACC.

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ARTICLE X
Use Restrictions

10.1 Use Restrictions

The Property and every portion thereof shall be subject to the use Restrictions contained in this Declaration, including this Article X.

10.2 Maintenance

- (a) All Improvements shall be maintained in accordance with the plans and specifications submitted and approved by the ACC. All landscaping on a Lot shall be kept trimmed so as to be attractive in appearance and not to obstruct the view from other Lots and Common Areas.
- (b) The Owner of each Lot shall keep all Improvements in the surrounding grounds in good condition and repair, free of debris, including, but not limited to, seeding, watering, mowing the lawns, pruning and cutting of trees and shrubs, the painting and other external care of all Improvements, all in a manner and with such frequency as is consistent with good property management. As to any slope located within a Lot, the Owner of such Lot shall maintain such slope, keep the slope clean and free of debris, weeds, or other unsightly conditions, and prevent erosion. No trash, leaves, grass, plants, settings, or branches shall be dumped or placed behind yard walls on to any level areas, slopes or undeveloped property.

10.3 Garages

No garage on any Single Family Dwelling or other structure shall be closed for living purposed or converted to any use other than as a garage for the storage of motor vehicles, without approval of the ACC. The garage doors shall always remain in place and operable. Garage doors shall remain closed except for ingress and egress.

10.4 Clotheslines

Clotheslines or other exterior clothes drying apparatus are prohibited.

10.5 Trash Containers

All Owners shall keep all trash containers concealed from view at all times, provided, however, if the trash service requires that the trash containers be located close to the street on the pick up days, then the trash may be placed next to the street, in plastic bags or trash containers. All storage areas for trash containers shall be standard and in accordance with the design approved by the ACC.

10.6 Guest Parking

Parking spaces around the designated areas are provided for quest parking only. No

motor vehicles, recreational vehicles or boats of any kind shall be stored in such parking areas or parked in such areas.

10.7 Nuisance

No Owner shall permit the development of any unclean, unhealthy, unsightly or unkempt condition of such Owner's Lot and/or the Improvements thereon. No Lot and/or the Improvements thereon shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot and/or Improvements thereon to be in an unclean or untidy conditions or that will be obnoxious to the reasonable person; nor shall any substance, thing or material be kept upon any Lot and/or the Improvements located thereon which will omit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet safety, comfort or serenity of surrounding Lot Owners. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort annoyance or nuisance to any Lot Owner adjacent thereto.

10.8 Signs

No signs of any type shall be permitted other than the name of the Owner and address. In the event a house is offered for sale, a temporary sign not larger than four (4) square feet may be placed on the Lot, for builders of spec and model homes only.

10.9 Lighting

Exterior lighting visible from any street shall not be permitted, except for (i) porch lights and outdoor lighting which complies with the standards as described at Section 9.2 (e) herein; (ii) seasonal temporary decorative lights; or (iii) front house illumination of a model home, if any, constructed by Declarant or any builder.

10.10 Pets

Subject to limitations and regulations as may from time to time be set by the Association, generally recognized house or yard pets, two house pets, may be kept and maintained on a Lot, provided such pets are not kept or maintained for commercial purposes. All pets must be kept under the control of the Owner when they are outside of the Lot and must not become a nuisance to other residents. No livestock or poultry of any kind shall be raised, kept or bred on any Lot.

10.11 Mineral Exploration

No minerals of any kind including sand, gravel, oil, natural gas, metals or otherside may be removed from the Lot or Common Areas for commercial purposed or for resale nor may they be removed in substantial quantities for any reason, except when necessary for construction of improvements.

STANDARD FORM NO. 100-108

construction and/or administrative offices for the builders is permitted.

10.18 Limit on Construction

No structures or improvements whatsoever, except public utility facilities and common facilities built by Declarant, shall be erected, placed or permitted to remain on any portion of the Property which does not constitute a Lot. Nothing contained herein shall be construed to prevent Declarant from erecting, placing or maintaining signs, structures, and offices as may be deemed necessary for the operation, development or sale of the Property or Lots described herein.

10.19 Value

The Owner shall not do or permit to be done any act which would tend to depreciate the value of such Owner's Residential Dwelling Unit or Improvements in the Property.

10.20 Leasing

No Residential Dwelling Unit or Improvements shall be rendered for transient or hotel purposes, nor shall any Residential Dwelling Unit or Improvement be leased during the first six (6) months after the Certificate of Occupancy is issued. No Residential Dwelling Unit or Improvement shall be divided into more than one living area for purposes of leasing to multiple persons or families.

10.21 Sight Distance at Intersections

No structure, wall, hedge, shrub, or other planting or landscaping which obstructs sight lines at elevations between two and six feet above the roadway shall be placed or permitted to remain on any corner lot or property within the triangular area formed by the street right-of-way line and a line connecting them at points twenty (20) feet from the intersection of the street right-of-way lines, or in the case of rounded property corners, from the intersection of the street right-of-way lines extended. The same sight-line limitations shall apply to any Lot or Property within ten (10) feet from the Intersection of this street right-of-way line with the edge of driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

10.22 Environmental Matters

Each Lot Owner shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Lot and Improvements. Each Lot Owner shall not do, nor allow anyone else to do, anything affecting the Lot and Improvements that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Lot of small quantities of Hazardous Substances that are generally recognized to be appropriate for normal residential uses and to maintenance of the Lot and Improvements.

Each Lot Owner shall promptly give Association written notice of any investigation,

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claim, demand, lawsuit or other action by an governmental or regulatory agency or private party involving the Lot or Improvements and any Hazardous Substance of Environmental Law of which Lot Owner has actual knowledge. If a Lot Owner learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Lot or Improvements is necessary, the Lot Owner shall promptly take all necessary remedial actions in accordance with the Environmental Law.

As used in this Section 10.22, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this section 10.22 "Environmental Law" means federal laws and laws of the jurisdiction where the Lot is located that relate to health, safety or environmental protection.

10.23 Access Prohibited from Belvidere

Access to Lots 1 thru 4, Block 8, Lots 1 thru 10, Block 7 and Lots 63 thru 79, block 6 shall be prohibited from Belvidere Street. All driveways shall provided ingress and egress to sold lots only from Via Appia Drive.

ARTICLE XI

Easements

11.1 Utility Easements

There is hereby created an easement for all utilities as reflected on and in accordance with the Map (including, but not limited to gas, electricity, water, cable, sewer, and other utility services commonly used by Lot Owners from time to time). Such easement shall also include mail and delivery services and the installation, repair and maintenance of receptacles for such services. All easements shall include the construction, repair and maintenance of such utilities.

11.2 Drainage and Sewer Easement

There is hereby created an easement in favor of the Association for drainage and sewer on the Property as identified and reflected on and in accordance with the Map or any amendments thereto.

Such easement shall include the right to install, repair, maintain and clean all drainage, private sewer lines and structures.

11.3 Maintenance of Drainage Easement

There is hereby created an easement in favor of the Association for maintenance, repair and the performance of such other actions as deemed necessary or advisable by the

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Association of the drainage easements identified in Section 11.2 of this Declaration, which easements are more particularly reflected on and in accordance with the Map or any amendments thereto.

11.4 Declarant's Easement to Correct Drainage

For a period of two (2) years from the date of conveyance of each Lot, Declarant and the Association shall have an easement and right on, over, and under the ground within the Property to maintain and correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance for the subdivision. Such right expressly includes the right to cut trees, bushes or shrubbery, make any grading of the soil or to take other similar action reasonable necessary, the following which the Declarant shall restore the affected Property to its original condition as near as practicable. The Declarant shall give timely notice of intent to take such action to all affected owners, unless, in the opinion of the Declarant, an emergency exists which prevents such notice.

11.5 Easement to Inspect and Correct Violations

There hereby is created an easement in favor of the Association for ingress and egress to any Lot during reasonable hours:

- (a) to inspect such property for alleged violation of and/or compliance with architectural standards and/or approved plans for authorization and Improvements, provided the Owner of such Lot is given written notice of the purpose and time of such inspection at least three (3) days in advance thereof, and
- (b) Performing such correction of violations or such maintenance on the Lot as required by the Declaration.

11.6 Easements for Governmental Personnel

A route of entry on any Lot or Common Area is hereby granted to law enforcement officers, fire and rescue and local animal control personnel and mail and delivery personnel as needed to carry out their duties, including enforcement cleared emergency vehicle access zones.

ARTICLE XII

Timely Development/Right of First Refusal

12.1 Covenant of Construction

Each Owner of a Lot, by the acceptance of a Deed and recordation thereof in the Real Property Records of El Paso County, Texas, covenants to substantially and in good faith commerce construction of a Single Family Dwelling upon the Lot so conveyed in accordance with plans and specifications approved by the ACC within one (1) year after

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the date the Deed to such Owner is recorded. Should any owner fail to commence construction as aforesaid within the time allowed, Declarant, or the Association if Declarant at the time shall have become a Class A Member, shall have the right and opt on for a period of one (1) year after the expiration of such two-year period to purchase the Lot upon which construction shall have not been commenced for a purchase price equal to the amount paid by the then Owner. Should Declarant, or the Association, whichever is applicable, elect to purchase the Lot, written notice thereof shall be given to the Owner and the Owner shall convey the Lot to the purchaser within thirty (30) days after the date of such notice free and clear of all liens and, simultaneously therewith, the purchase price shall be paid in cash. This provision shall not require Declarant or the Association to purchase any Lot nor shall the exercise by Declarant or the Association to purchase any Lot require the purchase of any other Lots pursuant to this provision.

12.2 Deeds

The rights herein reserved to Declarant and/or the Association shall be contained in each Warranty Deed from Declarant to a Lot Owner.

ARTICLE XIII
Default and Enforcement

13.1 Default and Remedies

Failure to comply with any of the terms of this Declaration, the articles, the Bylaws or the rules and Regulations referenced herein, shall constitute an event of default and shall be grounds for relief, which may include without limitation an action by the Association or any aggrieved Owner to recover sums due for damages and injunctive relief, or any combination thereof.

13.2 Costs

In any proceeding arising because of any alleged default by an owner, the Association or any aggrieved Owner, if successful, shall be entitled to recover the costs of the proceedings and reasonable attorneys' fees from such Owner which shall be considered Special expenses.

13.3 No Waiver

The failure of the Association or any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration, The Articles, the Bylaws or the Rules and Regulations, shall not constitute a waiver of the right of the Association or of any such Owner to enforce such right, provision, covenant or condition in the future.

13.4 Right Cumulative

All rights, remedies and privileges granted to the Association or any Owner pursuant to the provisions of this Declaration, the Articles, the Bylaws or the Rules and Regulations

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referenced herein, 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, not 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.

13.5 Enforcement

The Association, any Owner, the Declarant, or any Mortgagee, as their interest may appear, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now and hereinafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so hereafter.

ARTICLE XIV
Special Restrictions

14.1 Special Restrictions

In accordance with the provisions of the Warranty Deed, Real Property Records of El Paso County, Texas, the following restrictions to the Property shall apply:

- (a) No more than ninety-five (95) Single Family Dwelling Units shall be constructed on the Property.
- (b) All electrical, utility and telephone service lines from the utility company lines shall be placed underground and that no outside electrical and telephone lines shall be placed overhead.
- (c) No structure shall exceed twenty-four (24) feet in height from the finished concrete slab for such structure.

The restrictions of this Article XIV may not be amended without consent of the successor-in-interest

ARTICLE XV
General Provisions

15.1 Acceptance of Governing Rules

The Association, all present or future Owner, tenants future tenants, or any other persons using the Property are subject to and shall comply with this Declaration, the Articles, the Bylaws and the Rules and Regulations referenced herein, 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 provision of any such documents, the documents shall govern or control in the following order or preference: (i) this Declaration; (ii) the

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Articles, (iii) the Bylaws; and (iv) the Rules and Regulations reference herein.

15.2 Amendments

During the Development Period, Declarant shall have the right to amend this Declaration and thereafter, except for Article XI, this Declaration may be amended from time to time by a written instrument executed and acknowledged by Owners of Lots having not less than the seventy percent (70%) of the total votes held by owners of Lots with the Property.

15.3 Delivery of Notices

All notices or other documents required herein to be delivered by the Association to Owners may be delivered either personally or by mail. If delivered personally, the same shall be deemed to have been delivered when actually received by the Owner or when left at the front door of such Owner's Single Family Dwelling. If mailed, the same shall be deemed delivered when deposited in the United States Mail addressed to the Owner at such Owner's address as it appears on the records of the Association, with postage thereon prepaid.

All notices or other documents required herein to be delivered to the Association by Owners may be delivered personally or by mail to the appropriate address as designated by the Association from time to time.

15.4 Severability

If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase or word, or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of this Declaration, and the application of any provision, paragraph, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

15.5 Paragraph Titles

Paragraph titles used in this Declaration are for convenience of reference and are not intended to meaning, enlarge or change the meaning of the contents of the various paragraphs.

IN WITNESS WHEREOF, Declarant has duly executed this Third Amended Declaration this 6th day of June, 2003.

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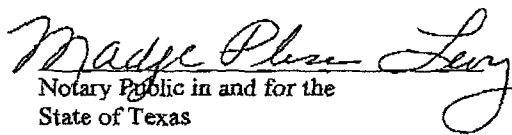
DECLARANT:
RESIDENCIAL VISTA, INC.

By 
RODOLFO MARTINEZ, President

THE STATE OF TEXAS }
 }
COUNTY OF EL PASO }

BEFORE ME, the undersigned authority, a Notary Public in and for El Paso County, Texas on this day personally appeared RUDOLFO MARTINEZ, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledge to me that the same was the act of said corporation and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6th day of June 2003.


Notary Public in and for the
State of Texas



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