

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CASTLE RIDGE ESTATES**

**THIS DECLARATION, MADE THIS 21st DAY OF OCTOBER, 2005, BY EAST RIDGE ESTATES, LTD., HEREINAFTER CALLED "DECLARANT",**

**WITNESSETH:**

WHEREAS, Declarant is the owner of the surface estate of the real property (sometimes referred to as the "Property") described in this Declaration; and

WHEREAS, Declarant desires to provide for the preservation of the value and amenities of the Property and to subject the Property described herein, to certain covenants, conditions, restrictions, liens and charges as hereinafter set forth; and

WHEREAS, Declarant will cause to be incorporated under the laws of the State of Texas a non-profit corporation for the purpose of administering and enforcing the said covenants, restrictions, changes and liens and disbursing the assessments and charges hereinafter created;

NOW, WHEREAS, **EAST RIDGE ESTATES, LTD.** ("East Ridge"), declares that the real property described herein, and such additions thereto as may hereafter be made, is and shall be held, transferred, sold conveyed subject to the following restrictions, covenants, conditions, easements, charges and liens.

# ARTICLE I

## GENERAL

### SECTION 1. DEFINITIONS

The following words, when used in this Declaration, shall have the meanings assigned to them as follows:

- a. **"Association"** shall mean and refer to the Castle Ridge Estates Property Owners' Association, its successors and assigns.
- b. **"Property"** shall mean and refer to the real property described in Exhibit "A", which is attached hereto and incorporated herein, and any additions thereto, as are subject to this Declaration.
- c. **"Common Properties"** shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the **"Owners"**. In addition, the Common Properties shall include the "Fence" (as said term is hereinafter defined).
- d. **"City Properties"** shall mean and refer to those areas of land within the Property, together with any Improvements thereon, which are owned by the City of Odessa, or any other governmental authority, including areas such as streets.
- e. **"Declarant"** shall mean and refer to EAST RIDGE ESTATES, LTD., its successors and any person or entity to whom or which Declarant may assign its rights and privileges, duties, and obligations hereunder, all of which are and shall be assignable.
- f. **"Fence"** shall mean and refer to the fence located around the perimeter of the Property.
- g. **"Lot"** shall mean and refer to any plot of land shown upon any recorded subdivision map or plat of the Property, as amended for time to time, which is zoned or restricted to a single family dwelling.
- h. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but notwithstanding any applicable theory of mortgage, the term "Owner" shall not include any mortgagee or trustee unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any proceeding in lieu thereof.
- i. **"Improvement"** or **"Improvements"** shall mean and refer to all structures or other improvements to any Lot of any kind whatsoever, whether above or below grade,

including, but not limited to, structures, buildings, utility installations, storage, loading and parking facilities, walkways, driveways, landscaping, swimming pools, signs, site lighting, site grading and earth movements, and any exterior additions, changes or alterations thereto, including both original Improvements and all later changes and Improvements.

## **SECTION 2. PROPERTY SUBJECT TO DECLARATION**

All of the Property and any right, title or interest therein shall be owned, held, leased, sold and/or conveyed by Declarant, and any subsequent owner of or any part thereof, subject to this Declaration and the covenants, restrictions, charges and liens set forth herein.

## **SECTION 3. ADDITIONS TO PROPERTY SUBJECT TO DECLARATION**

Additional property may become subject to this Declaration in the following manner:

- a. If Declarant or any other person, firm or corporation is the owner of any property which it desires to add to the scheme of this Declaration, it may do so by filing of record a

Supplemental Declaration which shall extend the scheme of this Declaration to such property; PROVIDED HOWEVER, if property is added to the scheme of this Declaration by any person, firm, or corporation other than Declarant, the Association, acting through its Board of Directors, must give written consent thereto. Each Supplemental Declaration shall include a geographical description of the property added.

- b. Such Supplemental Declaration shall contain covenants and restriction to which the added property shall be subject. Such covenants and restrictions may contain additions, deletions and modifications to those contained in this Declaration as may be necessary to reflect the different character, if any, of the added property. In no event however, shall such Supplemental Declaration revoke, modify or add to the covenants established by this Declaration for the Property, nor revoke, modify or add to the covenants established by previously filed Supplemental Declarations for previously added real property, nor shall such Supplemental Declaration in any way remove, revoke, modify or restrict any right or privilege of Declarant established by this Declaration.
- a. Any additions made pursuant to this Section 3, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the property added.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

#### SECTION 1. MEMBERSHIP

Each and every Owner of any Lot shall automatically be a member of the Association. Membership shall be appurtenant to and inseparable from such ownership. In the event of multiple Owners of any Lot, votes and rights of use and enjoyment shall be as provided herein.

#### SECTION 2. CLASSES OF VOTING MEMBERS

The Association shall have two classes of voting membership:

- a. Class "A". Class "A" members shall be all those members described in Sections 1 of Article II hereof with the exception of the Class "B" members, if any.

Class "A" members who are Owners of Lots shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one person seeks to exercise it. Any Owner of Lots which are leased may, in the lease or other written instrument, assign the voting rights appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the secretary prior to any meeting.

- a. Class B. Class "B" members shall be the **Declarant**. The Class "B" members shall be entitled to five (5) votes for each Lot in which Declarant holds the interest required for membership. The Class "B" membership shall terminate and be converted into Class "A", membership, upon the later to occur of: (i) the date upon which the total votes outstanding in the Class "A" membership equal the total votes outstanding in the Class "B" membership, or (ii) December 31, 2030. Notwithstanding the foregoing, Class B members may voluntarily relinquish their Class B status in favor of Class A status at any time. From and after the happening of said event, the Class "B" members shall be deemed to be Class "A" members entitled to one (1) vote each Lot in which the interest required for membership under Section 1 of Article II is held. At such time, the Declarant shall call a meeting as provided in the bylaws of the Association for special meetings to advise the membership of the termination of Class "B" status.

## **ARTICLE III**

### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

#### **SECTION 1. COMMON PROPERTIES AND CITY PROPERTIES**

The Association, subject to the rights of the Owners set forth in this Declaration shall be responsible for the exclusive management and control of the Common Properties and all Improvements thereon, and shall keep them in good, clean attractive and sanitary condition, order and repair, pursuant to the terms and conditions hereof. Further, the Association shall be responsible for the maintenance of the City Properties as if they were a part of, and to the same standard of, the Common Properties.

#### **SECTION 2. ADDITIONAL COMMON PROPERTIES**

The Association, acting through its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property in addition to the Common Properties initially designated by this Declaration. The Board of Directors acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Property conveyed to it by the Declarant. Notwithstanding anything contained in this Declaration to the contrary, Declarant, and the Association upon its succeeding to Declarant's rights, shall have the right, power and authority to dedicate to any public or quasi-public authority water lines, sanitary sewer systems, storm water facilities, streets, parkways, courtyards and any esplanades situated in the Common Properties and to terminate or modify the restrictive covenants contained in this Declaration with respect to such dedicated property. Such dedication and acceptance thereof shall not prohibit the Association from maintaining the land and any Improvements located within such dedicated areas (and the Association shall have the express right hereunder to do so) nor relieve the Owners of the obligation to participate in the payment of the cost of such maintenance.

#### **SECTION 3. RIGHT TO CONTRACT**

The Association, acting through its Board of Directors may enter into contractual arrangements for the maintenance or improvement of any of the Common Properties and the City Properties, for the provision of any services deemed by the Board of Directors to benefits the Owners, and for any other purposes consistent with the duties of the Association and the interest of the members thereof.

#### **SECTION 4. RULES AND REGULATIONS**

The Association, acting through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration and shall be set forth in the bylaws of the Association. Sanctions for violation of such rules and regulations may include reasonable monetary fines which shall constitute a lien upon any Lot belonging to an Owner in violation, and suspension of such Owner's right to vote and right to use the Common Properties. In addition, the Board of Directors shall have the power to seek relief in any court for any such violations or to abate unreasonable disturbances.

#### **SECTION 5. IMPLIED RIGHTS**

The Association may exercise any other right or privilege given to it expressly by this Declaration or the bylaws of the Association, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonable necessary to effectuate any such right or privilege.

## **ARTICLE IV**

### **ASSESSMENTS**

#### **SECTION 1. COVENANTS AND ASSESSMENTS**

The Declarant, for each Lot owned by it within the Property, hereby covenants and agrees to pay, and each purchaser of any such Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant to pay to the Association (or to a mortgage company or other collection agency designated by the Association): (1 ) annual assessments or charges (as specified in Section 3 of this Article IV); (2) special assessments for capital Improvements (as specified in Section 4 of this Article IV); (3) individual special assessments (as specified in Section 5 of this Article IV); and (4) special parcel assessments (as specified in Section 6 of this Article IV), all of such assessments to fixed, established and collected from time to time as hereinafter provided.

#### **SECTION 2. PURPOSE OF ASSESSMENTS**

The assessments levied by the Association shall be used exclusively for the purpose of promoting the comfort, health, safety, recreation and welfare of the Owners of the Property, or any part thereof, and in particular, but without limitation, for (1 ) the operation, improvement and maintenance of the Common Properties and the City Properties; (2) the payment of taxes and insurance on the Common Properties and any Improvements thereon; (3) the acquisition of additional Common Properties; (4) the provision of irrigation water, security and other services deemed by the Association to be in the interests of the Owners of the Property, and (5) the carrying out of the purposes of the Association as stated in its Articles of Incorporation.

#### **SECTION 3. ANNUAL ASSESSMENT**

For the first fiscal year of the Association, each Owner of any party of the Property shall pay to the Association (or to a collection agency designated by the Association) an annual assessment determined in accordance with the initial budget of the Association.

If the Board of Directors of the Association determines that the initial annual assessment is insufficient to meet the needs of the Association during the remainder of the Association's initial fiscal year, the Board of Directors may, by majority vote, increase that annual assessment not more than fifteen percent (15%) above the amount hereinbefore stated. Any proposed annual assessment in excess of fifteen (15%) above such amount prior to the end of the Association's initial fiscal year shall be subject to approval by a majority vote of the voting power of the Association.

Commencing on the first day of the first full fiscal year of the Association, the maximum annual assessment for any fiscal year may be increased by the Board above the annual assessment for the previous fiscal year without a vote of the membership of the Association and effective no sooner than the first day of each fiscal year, any such increase to be in an amount no more that fifteen percent (15%) of the annual assessment for the previous fiscal year of the Association. Any increase in the annual assessment which exceeds the maximum increase authorized in this Section 3 shall require the vote or written consent of members representing a majority of the voting power

of the Association.

The Board of Directors may, after consideration of current and future anticipated needs of the Association, reduce the actual assessment for any year to a lesser amount than specified herein and in any such event, any future increases of such assessment which may be permitted herein without a vote of the Membership of the Association shall be computed and based upon such actual assessment for the previous fiscal year of the Association.

#### **SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS**

In addition to the annual assessments authorized by Section 3 of this Article IV, the Association may, by vote of its members as set out in Section 7 of this Article IV, levy in any assessment year or years a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a particular improvement including the necessary fixtures and personal property related thereto, or for carrying out other purposes of the Association as stated in its Articles of Incorporation. Notwithstanding the foregoing, however, in the event the aggregate of such special assessments for any fiscal year of the Association does not exceed fifteen percent (15%) of the budgeted expenses of the Association for such fiscal year, such special assessment may be levied by the Board of Directors of the Association without the vote or consent of the members.

#### **SECTION 5. INDIVIDUAL SPECIAL ASSESSMENTS**

In addition to the annual assessments authorized by Section 3 thereof, the Association may, acting through its Board of Directors, levy in any assessment year or years a special assessment against individual Lots for reimbursement for repairs occasioned by the willful or negligent acts omissions of the Owners of such Lots, their agents, contractors, employees or invitees.

#### **SECTION 6. SPECIAL PARCEL ASSESSMENT**

In addition to the annual assessments authorized by Section 3 of this Article IV, the Board of Directors of the Association may, by majority vote, levy in any assessment year or years a special assessment against Lots located in particular portion of the Property of whose particular benefit, rather than for the benefit of the Association as a whole, expenses are or are expected to be incurred. Except as otherwise noted in this Section 6, such assessment shall be set, made payable, increased or otherwise treated as if it were an annual assessment described in Section 3 of this Article IV.

#### **SECTION 7. VOTE REQUIRED**

Other than as set forth in Section 3 of this Article IV, any increase in the rate of the annual assessment and special parcel assessments as authorized by Sections 3 and 6 of this Article IV and any special assessments authorized by Section 4 of this Article IV must be approved by a majority of the total eligible votes of the membership of the Association as defined in Article II hereof, voting in person or by proxy, at a meeting dully called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purposes of the meeting.



#### **SECTION 8. COMMENCEMENT DATE OF ANNUAL ASSESSMENTS: DUE DATES**

The annual assessments provided for herein shall commence as to all of the Property on July 1, 2006, and, except as hereinafter provided, shall be payable no more frequently than monthly and no less frequently than annually, as the Board of Directors of the Association shall determine, each such payment to be made in advance, on the first day of each assessment period as established by the Board of Directors. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The first annual assessment shall be due and payable in as many equal installments as there are assessment periods remaining in the first year, said installments to be due and payable on the first day of each such assessment period. The same pro-rata reduction in the amount of said assessment shall apply to the first annual assessment levied against any property which is hereafter added to the Property now subject to assessment at a time other than the beginning of any assessment period.

The due date, or dates if it is to be paid in installments, of any other assessment or special assessment under Section 4, 5 or 6 of this Article IV, shall be fixed in the respective resolution authorizing such assessment

#### **SECTION.9. BOARD OF DIRECTORS DUTIES WITH RESPECT TO ASSESSMENTS**

The Board of Directors of the Association shall fix the date of the commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association. Written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto. The Board of Directors shall upon demand at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board of Directors for the issuance of such certificate.

#### **SECTION 10. OWNER'S PERSONAL OBLIGATION FOR PAYMENT OF ASSESSMENTS**

The annual and special assessments provided for in Section 3, 4, 5 and 6 of this Article IV shall be the personal and individual debt of the Owner of the Lot covered by such assessments. No Owner may exempt himself from liability for such assessments. If any assessment or any part thereof is not paid on the date(s) when due (being the dates specified in Section 8 of this Article IV), then the unpaid amount of such assessment shall be deemed delinquent. If any assessment or part thereof is not paid within thirty (30) days after the delinquency date, the Owner shall be deemed in default in the payment of any such assessment, and the Owner of the Lot shall be obligated to pay interest thereon from the due date thereof to the date of payment thereof, at a rate equal to the lesser of eighteen percent (18%) per annum or the highest lawful rate permitted in the State of Texas, together with all costs and expenses, including attorney's fees.

#### **SECTION 11. ASSESSMENT, LIEN AND FORECLOSURE**

All sums assessed in the manner provided in this Article but unpaid, together with interest as provided in Section 10 of this Article IV, and the cost of collection, including attorney fees as hereinafter provided, shall thereupon become a continuing lien and charge on the Lot covered by such assessments, which shall bind such Lot in the hands of the Owner and the Owner's heirs, devisees, personal representatives and assigns. The aforesaid lien shall be superior to all other liens and charges against the said Lot except only for tax lien and all sums unpaid on any bona fide deed of trust lien of record which secure sums borrowed for the purchase or improvement of the Lot in question. The Association shall have the power to subordinate the aforesaid assessment lien to any other lien; provided, however the exercise of such power shall be entirely discretionary with the Association. To evidence the aforesaid assessment lien (but in no manner being a condition precedent to the creation of the same), the Association shall prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association, and shall be recorded in the office of the County Clerk of Ector County, Texas. Such lien for payment of assessments shall attach with the priority set forth above from the date that such payment becomes delinquent and may be enforced, upon default, by foreclosure of the lien against the defaulting Owner's Lot by the Association of a notice of assessment lien as provided hereinabove, or the Association may institute suit against the Owner personally obligated to pay the assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or non-judicial, the Owner' shall be required to pay the cost, expenses, and reasonable attorney fees incurred. The Association shall have the power to bid on the Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any mortgagee holding a prior lien on any part of the Property, the Association shall report to said mortgagee any assessments remaining unpaid for longer than thirty (30) days after the same are due.

## **SECTION 12. COMMON PROPERTIES EXEMPT**

All Common Properties, all City Properties and all other portions of the Property owned by or otherwise dedicated to any other political entity (including, without limitation, municipal utility districts), shall be exempt from the assessments and liens created herein.

# ARTICLE V

## ARCHITECTURAL REVIEW BOARD

### SECTION 1. DESIGNATION OF ARCHITECTURAL REVIEW BOARD

The Architectural Review Board, hereinafter called the "Review Board", shall be composed of three (3) members who shall be natural persons. The initial members of the Review Board shall be appointed by Declarant who shall have the right and power to appoint and remove any or all of said members and to fill any vacancy thereon until December 31, 2008, unless Declarant shall have earlier given written notice to the Board of Directors of its waiver of such right, in which event such right shall terminate as of the date given in such notice. Thereafter, the Board of Directors of the Association shall have exclusive right and power at any time and from time to time to create and fill vacancies on the Review Board.

### SECTION 2. FUNCTION OF REVIEW BOARD

The Review Board shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board of Directors including the inspection of construction in progress to assure its conformance with plans approved by the Review Board. No construction, alteration, addition, modification or reconstruction of an improvement situated upon the Property shall be commenced or maintained, until the plans and specifications therefor and location of the same shall have been submitted to, and approved in writing by, the Review Board, The Owner submitting the plans (the "Applicant") shall obtain a written, dated receipt for the plans and specifications from an authorized agent of the Review Board. Until changed by the Review Board, the address of the submission of such plans and specifications shall be in care of Declarant.

### SECTION 3. CONTENT OF PLANS AND SPECIFICATIONS

All residential building plans must utilize 1/4"= 1' scale. The plans and specifications to be so submitted and approved shall include the following information, provided, however, the Review Board may require different or more detailed information than herein set forth:

- a. SITE PLAN showing the location, description of materials and architectural treatment (by cross section or word description) of all walks, driveways, fences and walls. Main and secondary structures should also be located. All existing and planned final contour lines of the site, shown on 1' intervals, must be shown. Describe or show drainage considerations with respect to all structures and 5' of all adjacent property. Indicate precisely how drainage will be handled in order that all water will be removed from the entire perimeter of the structures. The site plan may utilize a 1/16" to 1' scale.
- b. FOUNDATION PLAN indicating on its face the source of the design of the foundation. Also, a typical cross section of foundation components must be indicated, including, but not limited to, steel reinforcing bars (size, number, and placement), dimensions and concrete mix. Minimum concrete strength of 2500 p.s.i.

with steel reinforcing will be used in the foundation.

- c. FLOOR PLAN must show exact window and door locations, exterior wall treatment and materials, and the total square feet of air conditioned living area
- d. EXTERIOR ELEVATIONS of all sides of any building must be included. The type of roofing materials must be indicated. The type, use and color of exterior wall materials must be clearly indicated throughout.. Windows and door types and treatments must be similar on all sides of the building, as should all four sides of the building provide for the same architectural treatment Front, rear, and side elevations must show all ornamental and decorative details. Fences shall receive a compatible architectural treatment within the building and area. Chain link fences will not be approved as a permanent fence.
- e. SPECIFICATION OF MATERIALS may be attached separately to the plans of written on the plans themselves. Plans will not be approved without specifications. Specifications must include type, grade of all exterior materials, and color of all exposed materials. Actual samples of any brick and roofing material specified must be submitted.
- f. LANDSCAPING PLAN including walkways, fences and walls, elevation changes, watering systems, vegetation, ground cover and trees. The landscaping plan may utilize a 1/6" to 1' scale.

All computations must be shown on the face of each plan submitted. For example, if a minimum square footage of any area in any improvement is required, the plan must demonstrate by actual computations that said requirement is met

#### **SECTION 4. BASIS OF APPROVAL**

Approval of plans and specifications shall be based, among other things, on adequacy of site dimensions, structural design, proximity with and relation to existing neighboring structures and sites as well as proposed and future neighboring structures and sites, relation of posed and future neighboring structures and sites, relation of finished grades and elevations be existing neighboring sites, and conformity to both the specific and general intent of the protective covenants set forth in Article VI hereof. The Review Board shall not approve proposals or plans and specifications submitted for its approval unless it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Properties or the enjoyment thereof by the members of the Association, and that the upkeep and maintenance thereof will not become a burden on the Association. The Review Board may condition its approval of proposals or plans and specifications for any Improvement (1) upon the Applicants furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance

which may be recorded against all or any portion of the Property as a result of such work, (2) upon such changes therein as it deems appropriate, (3) upon the agreement by the Applicant to grant appropriate easements to the Association and any utility, cable television or security company for the maintenance of the Improvements, utilities, cable television and security company for the maintenance of the Improvements, utilities, cable television and security systems, respectively, (4) upon the agreement of the Applicant to reimburse the Association for any additional cost of maintenance of such Improvements, or (5) upon any other appropriate prerequisite or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Review Board shall adopt rules or guidelines setting forth procedures for the submission of plans for approval, and it may require a reasonable fee to accompany each application for approval. The Review Board may provide that the amount of the fee shall be uniform, or that it be determined in any other reasonable manner, such as based upon the reasonable cost of the construction, alterations or additions contemplated. The Review Board may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floorplans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Review Board of all required plans and specifications or other information or materials, the Review Board shall not be obligated to review any plan submitted for approval. Decisions of the Review Board and reasons for the decisions shall be transmitted by the Review Board to the Applicant at the address set forth in the application for approval, within thirty (30) days after receipt by the Review Board of all materials required by the Review Board. If plans and specifications are not sufficiently complete or are otherwise inadequate, the Review Board may reject them as being inadequate or may approve or disapprove certain portions of the same, whether conditionally or unconditionally.

#### **SECTION 5. LIMITATION OF LIABILITY**

Neither the Declarant, the Association, the Review Board nor any of the members of such Review Board shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Owner or any other person or entity by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans and specifications.

#### **SECTION 6. MEETINGS OF THE REVIEW BOARD**

The Review Board shall meet from time to time as necessary to perform its duties hereunder. The Review Board may from time to time by resolution unanimously adopted in writing designate a Review Board representative (whose may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Review Board, except the granting of variances pursuant to Section 11 of this Article V. In the absence of such designation, the vote of a majority of the Review Board or the written consent of a majority of the Review Board or the written consent of a majority of the Review Board taken without a meeting, shall constitute an act of the Review Board.

#### **SECTION 7. NO WAIVER OF FUTURE APPROVALS**

The approval of the Review Board of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent

of the Review Board, shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matter subsequently or additionally submitted for approval or consent

#### **SECTION 8. COMPENSATION OF MEMBERS**

The members of the Review Board shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder; provided, however, the Review Board may engage the services of others, on a paying basis, to assist in performing the duties of the Review Board.

#### **SECTION 9. CORRECTION OF DEFECTS**

Inspection of work and correction of defects therein shall proceed as follows:

- a. The Review Board or its duly authorized representative may at any time inspect any Improvement for which approval of plans is required under this Article V. However, the Review Board's right of inspection of any Improvement for which plans have been submitted and approved shall terminate ten (10) days after the Improvement has been completed and the respective Owner has given written notice to the Review Board of such completion. The Review Board's rights of inspection shall not terminate pursuant to this paragraph if plans for the Improvement have not previously been submitted to and approved by the Review Board. If, as a result of such inspection, the Review Board finds that the Improvement was done without obtaining approval of the plans thereof or was not done in substantial compliance with the plans approved by the Review Board, it shall notify the Owner in writing of failure to comply with this Article V within ten (10) days after the inspection, specifying the particulars of noncompliance. The Review Board shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.
- b. If upon the expiration of thirty (30) days from the date of such notification, the Owner has failed to remedy the noncompliance, the Review Board shall notify the Board of Directors in writing of such failure. Upon notice and hearing as provided in the bylaws, the Board of Directors shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date that notice of the Board of Directors' ruling is given to the Owner. If the Owner does not comply with the Board of Directors' ruling within that period, the Review Board, at its option, may record a Notice of Noncompliance and may peacefully remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorney's fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board of Directors shall levy a special assessment against the Owner for reimbursement as proved in this Declaration. The right of the Association to remove a noncompliance shall be in addition to all other rights and remedies which the Association may have

at law, in equity or in this Declaration.

- c. If for any reason the Review Board fails to notify the Owner of any noncompliance with previously submitted and approved plans within ten (10) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved plans.
- d. Upon the completion of any Improvement in accordance with the approved plans for the same, the Review Board shall issue a "Certificate of Completion" as documentation of such completion. No warranty of any kind, express or implied, including habitability and fitness for any particular purpose, shall be deemed given by the issuance of any Certificate of Completion. The Review Board may promulgate rules concerning the issuance of such Certificates of Completion.

#### **SECTION 10. VARIANCES**

The Review Board may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least a majority of the members of the Review Board, and shall become effective upon their execution and may be recorded. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. **THE GRANTING OF SUCH VARIANCE SHALL NOT OPERATE TO WAIVE ANY OF THE TERMS AND PROVISIONS OF THIS DECLARATION FOR ANY PURPOSES EXCEPT AS TO THE PARTICULAR PROPERTY AND PARTICULAR PROVISION HEREOF COVERED BY THE VARIANCE, NOR SHALL IT AFFECT IN ANY WAY THE OWNER'S OBLIGATION TO COMPLY WITH ALL GOVERNMENTAL LAWS AND REGULATIONS AFFECTING THE USE OF THE PROPERTY.**

## ARTICLE VI

### PROTECTIVE COVENANTS

#### SECTION 1. USE LIMITATIONS

All of Lots, and any building and structures located on the Lots, shall be used for residential purposes only, as specifically set forth herein.

- a. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling and a private garage for not less than two and for not more than four cars. No building shall be erected, altered, placed or permitted to remain on any Lot other than single family detached dwellings.
- b. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may become an annoyance, dangerous, or nuisance to the neighborhood. The Association, acting through its Board of Directors, shall have exclusive right and discretion to determine what constitutes a nuisance or annoyance.
- c. Except as may be otherwise permitted herein, no structure of a temporary character, including, but not limited to, a trailer, recreational vehicle, mobile home, modular home, prefabricated home, tent, shack, barn or any other structure or building (other than the residence to be built thereon) shall be placed on any Lot either temporarily or permanently. No house, garage or other structure appurtenant thereto, shall be moved upon any Lot from another location. However, the Declarant reserves the right to erect, place and maintain, and to permit builders to erect, place and maintain such facilities in and upon any Lot as in its discretion may be necessary or convenient during the period of or in connection with the improvement and/or sale of any Lots.
- d. No animals of any kind shall be raised, bred, or kept on any Lot except that dogs, cats, or other similar domesticated household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose. The keeping of any animal or other pet shall be subject to rules and regulations adopted by the Association through its Board of Directors. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.
- e. No rubbish, trash, garbage, debris or other waste shall be dumped or allowed to remain on any Lot.
- f. Except as otherwise provided herein, no trailer, mobile home, boat, recreational vehicle, truck larger than 3/4 ton, or vehicle other than passenger automobiles shall be permitted to park overnight on any streets located within the Property.



- g. No trailer, mobile home, boat, recreational vehicle, truck larger than 3/4 ton, or vehicle other than passenger automobiles shall be parked, maintained, stored or kept on a Lot unless housed completely within an enclosed structure approved by the Review Board. Approval of the enclosed structure shall be limited to those designs using materials compatible with the main structure on the Lot and which, to the greatest extent possible, conceal the boat, trailer or vehicle from view from any street or other public areas.
- h. No clothesline may be maintained on any Lot.
- i. No antenna, tower, or other similar vertical structure shall be erected on Lot for any purposes; however, a flagpole will be permitted where approved in writing by the Review Board. No antenna or tower shall be affixed to the outside of any dwelling on any Lot without the prior written consent of the Review Board. No satellite reception device or equipment used in the reception of satellite signals shall be allowed on any Lot or structure unless approved in writing by the Review Board and approval will be granted only where the devices are concealed from view of any street, other public areas and neighboring Lots, and structures.
- j. No manufacturing, trade, business, commerce, industry, profession, garage or yard sale, business or commercial activity shall be permitted on any Lot or in any building or other structure erected thereon; however, Declarant reserves the right to use its Lots and the structures thereon as models, management offices or sale offices, and to permit builders to use their lots and to permit builders to use their Lots and the structures thereon as models, temporary management offices or temporary sales offices, until Declarant or any such builder conveys title thereto to another owner.

## **SECTION 2. MINIMUM SET BACK LINES FOR LOTS**

No structure of any kind and no part thereof shall be placed forward of the set back lines as established for each Lot. The following improvements are expressly exempt from these set back restrictions:

- j. Structures below and covered by the ground.
- k. Steps, walks, below ground-level swimming pools, uncovered patios, driveways and curbing.
- l. Landscaping as approved by the Review Board pursuant to Article V hereof.
- m. Any other Improvements exempted from the set back restrictions by the Review Board on a case-by-case basis and as provided in Article V hereof; however, roofed structures (other than guardhouses, gatehouses, swimming pool equipment houses, cabanas, and greenhouses) may not be exempted from said set back restrictions.)

### SECTION 3. FENCES WALLS AND HEDGES

- a. DEFINITIONS. The following words shall be deemed to have the following meanings as used herein.
- (1) "Rear Yard": That portion of a Lot existing from the rear of the main structure located thereon to the rear property line and from side property line to side property line (an illustration of the same being attached hereto as Exhibit "D").
  - (2) "Front Yard": That portion of a Lot existing from the front of the main structure located thereon to the front property line and from side property line to side property line (an illustration of the same being attached hereto as Exhibit "D").
  - (3) "Side Yard": That portion of a Lot existing between the front and rear of the main structure located thereon and from the side of such main structure to the side property line (an illustration of the same being attached hereto as Exhibit "D").
- b. REQUIREMENTS. The following requirements shall apply to all Lots.
- (1) Rear Yard and Side Yard Fenced and Walls. The entire Rear Yard and Side Yard of all Lots shall be fenced. Fences and walls shall be approved by the Review Board before construction or installation. Approval shall be limited to those fences and walls which:
    - (a) Are a minimum of six feet in height; and
    - (b) are constructed of wood, brick, stone or cinder block, unless otherwise approved by the Review Board; excepting, however, any fence exposed to view from any street or other public area, which fence must be composed of an aesthetically pleasing combination of the brick, stone, or stucco and wood used on the main structure. Any wood utilized in the composition of any fence shall be capped so that no pickets exist. Gates shall be constructed using materials compatible with the adjacent fence or fences and otherwise shall be subject to the approval of the Review Board as set forth in Article V hereof.
  - (2) Front Yard Fences, Walls and Hedges. Fences, walls and hedges shall not be permitted within the Front Yard of any Lot; provided, however, decorative fences, walls and hedges shall be allowed which do not exceed thirty-six inches (36") in height and which are approved by the Review Board.

### SECTION 4. CONSTRUCTION STANDARDS FOR LOTS

In addition to meeting all applicable building codes, all Improvements on each Lot shall meet with the following requirements (except as modified by the Review Board):

- a. MINIMUM FLOOR AREAS: The air conditioned floor area of the main structure located on each Lot, exclusive of porches and garages, shall be as follows:
- (1) All residencies constructed on Lots 1 through 30, Block 1, shall have a minimum of 2500 square feet of living space.
  - (2) All residences built on Lots and Blocks 2, 3 and 4 shall have a minimum of 2000 square feet of living area.
  - (3) Unless specifically approved in writing prior by the Architectural Review Board prior to the commencement of construction, the first story of all 1½ and 2 story dwellings shall have a minimum ratio to the second story of not less than 3 to 1.
- b. EXTERIOR WALLS. The exposed exterior wall area, exclusive of doors, windows and covered porch area shall be at least 75% brick, stone, or polymer stucco. Brick, stone, or polymer stucco samples shall be submitted to the Review Board as provided in Article V hereof and no brick, stone, or polymer stucco shall be utilized until approved by the Review Board. Generally, (i) brick approved will be domestic, hard fired modular brick which is even in color and texture, not excessively bright in color nor of a color inconsistent with the general color scheme of the neighborhood, and (ii) polymer stucco approved will not be excessively bright in color nor of a color inconsistent with the general color scheme of the neighborhood.
- c. ROOFS. Roofing material shall be tile, standing seam metal, wooden shingle, composition type shingle, or other material approved by the Review Board. All materials, of whatever type, shall be dark brown or gray or approximate the color of weathered cedar shingles unless otherwise approved by the Review Board. All roof stacks and flashings must be painted to coordinate with the color of the structure. Mansard roofs, flat roofs and other "exotic" roof forms as determined by the Review Board shall not be permitted. The minimum allowable roof pitch shall be 4 in 12 and maximum allowable roof pitch shall be 12 in 12. Exceptions to stated roof pitch requirements shall be permitted only where approved by the Review Board.
- d. CHIMNEYS. All fireplace chimneys shall be constructed of brick, stone, or polymer stucco. Prefabricated metal fireplaces and metal flues may be used so long as their chimneys are masonry-clad.
- e. SIDING. Wood siding shall be horizontal lap type. No diagonal or vertical siding shall be used except where approved by the Architectural Review Board. Rough-sawn wood siding, other than cedar shakes or shingles used as siding, shall not be used. All wood siding shall be stained or painted as approved by the Review Board. No composition wood product, such as hardboard or particle board, shall be used in any exterior application.

- f. GARAGES. All garages and carports shall meet the following requirements (the term "Garage", when used herein, shall be deemed to include carports):
- (1) All garages shall be given the same architectural treatment as the main structure located on such Lot.
  - (2) The interior walls of all garages must be finished (taped, floated and painted as a minimum).
  - (3) All garage doors shall be of wood, wood veneer or metal construction and no windows shall be permitted on any garage door.
  - (4) No garage shall be enclosed for living area or utilized for any other purpose than storage of automobiles and related normal uses.
  - (5) All garages shall be located at the back of the residence for rear entry.
- g. OUTBUILDINGS. All outbuildings located on a Lot shall be given the same or similar architectural treatment as the main structure. Such outbuildings must be constructed and designed in an ecstatically pleasing manner. All outbuildings will contain a minimum of 4' wainscoting composed of brick, stone or polymer stucco.
- h. EXTERIOR LIGHTING. No exterior light taller than thirty inches (30") shall be installed or maintained on any Lot between the set back lines and the Property lines; nor shall any exterior light be installed or situated such that neighboring Lots are unreasonable lighted by the same. All freestanding exterior lights located between the set back lines and the main structure shall be architecturally compatible with the main structure and shall be approved by the Review Board prior to installation.
- i. DRIVEWAY. Driveways shall be constructed of concrete, stone or other material approved by the Review Board and shall be no wider than 25 feet unless approved by the Review Board. Any concrete used shall have a minimum strength of 2500 p.s.i. with steel reinforcing.
- j. WINDOW UNITS. No structure shall utilize window mounted or wall type air conditioners or heaters.
- k. SKYLIGHTS. All skylight, solar collector and solar system plans and designs shall be submitted with those plans and specification required pursuant to Article V hereof, and the design, plans, and installation of the skylights, solar collectors and solar systems shall be subject to the approval of the Review Board.
- l. SWIMMING POOLS. No above ground-level swimming pool may be installed or

placed on any Lot, and no below ground-level swimming pool shall be constructed or installed until the design, plans and specifications for the pool have been approved by the Review Board.

- m. TENNIS COURTS. Tennis Courts shall not be allowed on the Lots.
- n. SIDEWALKS. A concrete sidewalk shall be constructed across the entire width of each Lot at the front thereof at such time as the Lot is improved. Such walk shall abut the curb so that no space is left between the back of the curb and the sidewalk. Concrete used shall have a minimum strength of 2500 p.s.i. with steel reinforcing. In the case of corner Lots, the sidewalk shall also extend the entire length of the premises and abut the curb as aforesaid. The width of the sidewalk and other construction requirements shall conform to the City of Odessa standards.

## **SECTION 5. LANDSCAPING OF LOTS**

- a. Landscaping shall be required on all Lots contemporaneously with completion of other Improvements, but in no event later than 180 days after issuance of a Certificate of Completion.
- b. Landscaping shall conform to a landscaping plan approved by the Review Board pursuant to Article V hereof. Such approval will be limited to landscaping plans which:
  - (1) Permit reasonable access to public and private utility lines and easements for installation and repair;
  - (2) Do not obstruct the line of sight at street or driveway intersections;
  - (3) Provide an aesthetically pleasing variety of trees (of varieties approved by the Review Board), shrubs, grass and plants;
  - (4) Provide for landscaping of 100% (exclusive of driveways and walkways) of the Front Yard, Rear Yard, and Side Yard as that term is defined above. Landscaping shall include grass, trees, shrubs, vegetation and other plant life. Landscaping shall not include gravel, concrete, timbers or rocks except where used as borders, walkways, accent pieces or as otherwise approved by the Review Board. A swimming pool, where approved by the Review Board, may be considered landscaping in calculating the minimum lot area to the landscaped.
- c. All Lots shall have installed an automatic underground sprinkling system which shall be designed in such a manner so as to adequately water the entire Lot not covered by the main structure or other structural Improvements. The design, plans

and specifications for the sprinkling system shall accompany the landscape plan submitted to the Review Board pursuant to Article V hereon, and installation of the sprinkling system shall not occur until the plans have been approved by the Review Board.

## **SECTION 6. SCREENING**

All utility meters, equipment, air conditioning compressors, swimming pool filters, heaters and pumps, and any other similar exposed mechanical devices must be visually screened and located as approved by the Review Board. To the extent that this provision may conflict with other provisions herein regarding fences, walls, and hedges, this provision shall control.

## **SECTION 7. UTILITIES**

In addition to the requirements stated above as to lines or wires for communication or for transmission of current, all public or private utilities and service connections including, but not limited to, gas, water, electricity, telephone, cable television or security systems or any wires, cables, conduits, or pipes used in connection therewith, located in any of the streets, alleys or upon any portion of the Property, shall be underground; except that fire plugs, gas meters, supply pressure regulators, electric service pedestals, padmount transformers, and street lights may be located above ground only where necessary to furnish the service required by the use of any such utilities. In no event shall any poles be permitted, other than for street lights or as otherwise permitted herein, and no wires or transmission lines to or from such street lights shall exist above the ground.

## **SECTION 8. SIGNS**

The Review Board shall have the power to promulgate and enforce rules concerning the placement and maintenance of signs, billboards, banners, flags and pennants upon any Lot. No sign, billboard, banner, flag or pennant shall be placed or maintained upon any Lot except as may be provided in rules to be promulgated by the Review Board will be available to each owner at the office of the Association. Notwithstanding the foregoing to the contrary, Declarant shall have the right to place signs, billboards, banners, flags and pennants for directional purposes and for the promotion of the sale of any Lot or Lots upon such property as it owns or upon any of the Common Areas. Declarant's right and easement as stated herein shall not be eliminated by amendment to this Declaration.

## **SECTION 9. GENERAL**

- a. **CONSTRUCTION DEBRIS.** During the construction or installation of Improvements on any Lot, construction debris shall be removed from the Lot on a regular basis and the Lot shall be kept as clean as possible.
- b. **STOPPAGE OF CONSTRUCTION.** Once commenced, construction shall be diligently pursued to the end that it may not be left in a partly finished condition any longer than reasonably necessary.

- c. CERTIFICATE OF COMPLETION. No dwelling shall be occupied until the Review Board issued a Certificate of Completion as provided in Article V hereof.

## **ARTICLE VII**

### **EASEMENTS**

#### **SECTION 1. RESERVATION OF EASEMENTS**

Easements for the installation and maintenance of the Fence, Irrigation System, utilities, cable television systems, drainage facilities and other uses are reserved as shown on the recorded plat of the Property. Right of use for ingress and egress shall be had at all times over any dedicated easement for the installation, operation, maintenance, repair or removal of the Fence, Irrigation System, or any utility, together with the right to remove any obstruction that maybe placed in such easement which would constitute interference with the use, maintenance, operation of installation of same. No utility company, water district, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees, or servants, or shrubbery, trees or flowers, or to other property of the Owner situated within any such easement



# **ARTICLE VIII**

## **MAINTENANCE**

### **SECTION 1. DUTY OF MAINTENANCE**

Each Owner and occupant (including any lessee of an Owner) of any part of the Property shall jointly and severally have the responsibility, at his or their sole cost and expense, to keep that portion of the Property so owned or occupied, including any Improvements thereon, in a well maintained, safe, clean and attractive condition at all times. Such maintenance shall include, but is not limited to, the following:

- a. Prompt removal of all leaves, litter, trash, refuse and waste.
- b. Regular lawn mowing.
- c. Tree and shrub pruning.
- d. Keeping lawn and garden areas alive, free of weeds, and attractive.
- e. Watering.
- f. Keeping parking areas, driveways and roads in good repair.
- g. Complying with all government health and police requirements.
- h. Repainting of Improvements.
- i. Repair of exterior damage to Improvements.

### **SECTION 2. ENFORCEMENT OF MAINTENANCE OBLIGATION**

If, in the opinion of the Board of Directors of the Association, any such Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Board of Directors of the Association may give such person written notice of such failure and such Owner or occupant must, within ten (10) days after receiving such notice, perform the care and maintenance required. Should any such Owner or occupant fail to fulfill his duty and responsibility within such period, then the Board of Directors of the Association through its authorized agent or agents shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. Each Owner and occupant (including lessees) of any part of the Property on which such work is performed shall be jointly and severally liable for the cost of such work and shall promptly reimburse the Association for such cost. If such Owner or occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then such indebtedness shall be a debt of all of said Owner and occupants jointly and severally, and shall constitute a lien against that portion

of the Property on which said work was performed. Such lien shall have the same attributes as the lien for assessments set forth in Section 11, of Article IV above which provisions are incorporated herein by reference, and the Association shall have identical powers and rights in all respect, including but not limited to, the right of foreclosure in the event of the nonpayment of the indebtedness above described.

## ARTICLE IX

### COMMON PROPERTIES

#### SECTION 1. EASEMENTS OF ENJOYMENT.

Subject to the provisions of Section 3 of this Article IX, every member of the Association shall have a right and easement of enjoyment in and to the Common Properties.

#### SECTION 2. EXTENT OF EASEMENTS.

The rights and easements of enjoyment created hereby shall be subject to the following:

- a. The right of the Association to prescribe the rules and regulation for the use, enjoyment, and maintenance of the Common Properties;
- b. The right of the Association of dedicate, sell and convey the Common Properties or any part thereof, provided such sale or conveyance is approved by majority of the total eligible votes of the membership of the Association as defined in Article II hereof, voting in person or by proxy at the meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advances and shall set forth the purpose of the meeting;
- c. The right of the Association to borrow money for the purpose of improving the Common Properties, or any part thereof and to mortgage the Common Properties, or any part thereof,
- d. The right of the Association to take such steps as are reasonably necessary to protect the Common Properties, or any part thereof, against foreclosures; and
- e. The right of the Association to suspend the easements of enjoyment of any member of the Association during the time any assessment levied under Article IV hereof remains unpaid, and for any period not exceeding thirty (30) days for any infraction of its published rules and regulations.

#### SECTION 3. TITLE TO COMMON PROPERTIES

Declarant shall convey ownership of the Common Properties to the Association at such point in time as is deemed reasonable and appropriate by the Declarant and, thereafter, the Association shall be responsible for their operation and maintenance. Further, Declarant shall have the right and option, at any time, to convey to the Association additional real property located with the Property; thereafter such additional property shall be deemed a part of the Common Properties for all purposes hereunder and the Association shall thereafter maintain the same for the benefit of all Owners.

## **ARTICLE X**

### **DECLARANT'S OPTION TO REPURCHASE**

Each Owner of any Lot, by his claim or assertion of ownership or by accepting a deed to such Lot; whether or not it shall be so expressed in said deed is hereby conclusively deemed to covenant and agree with the Declarant, as a covenant running with the land, to commence the actual construction of one or more Improvements approved by the Review Board upon such Lot within three (3) years from the date such Owner acquires title to such Lot, continuously prosecute such construction for at least ninety (90) days, and thereafter diligently prosecute such construction to completion. For purposes hereof, the construction of Improvements on any Lot shall be deemed to have commenced on the date on which the first foundation or foundations are poured.

If, after the expiration of said three (3) year period, the actual construction of Improvements approved by the Review Board shall not have commenced, or if such construction, when commenced, is not continuously prosecuted for at least ninety (90) days, then the Declarant shall have the option, but not the obligation, exercisable at any time such Owner shall have defaulted hereunder, of paying the Owner the Refund Price (as hereinafter defined) and entering into possession of said Lot. "Refund Price" shall mean an amount equal to the original purchase price paid to Declarant for a Lot minus the unpaid principal balance and accrued but unpaid interest (if any) owing on any existing promissory note a Declarant secured by liens on all or any portion of such Lot, and minus any accrued ad valorem taxes or other assessments or impositions of any kind then existing on or assessed against such of and minus any real estate brokerage commissions paid or agreed to be paid by Declarant upon the sale of such Lot from Declarant to such Owner. All conveyances of Lots by the Declarant shall be made and accepted on condition that the purchaser, grantee or Owner shall reconvey such Lot to Declarant upon the exercise by the Declarant of the aforesaid option under the conditions herein set forth. Any such reconveyance shall be evidenced by a deed from the then Owner of such Lot containing a special warranty and free and clear of all liens, encumbrances and exceptions other than those to which this Declaration is subject.

In the event the Declarant elects to exercise its option to require a reconveyance of such Lot, the Declarant shall deliver to the then Owner of such Lot (1) a Deed to Declarant in the form hereinabove provided, (2) a draft in the amount of the Refund Price, which draft shall provide for the payment thereof upon sight by the bank upon which it is drawn, when presented with such Deed (properly executed and acknowledged and without change in form or substance) attached together with sufficient evidence that the Lot is being conveyed free and clear of all liens (3) a letter notifying such Owner of the Declarant's election to exercise the option herein set out, demanding that such Owner execute such Deed and present such draft and Deed to the bank upon which such draft is drawn, and showing the manner in which the Refund Price for such Lot was calculated. Such Owner shall have a reasonable time, not to exceed five (5) business days following his receipt of such letter, Deed and draft in which to execute said Deed and present such draft and Deed to the bank on which such draft is drawn. In the event such Owner defaults in his obligations as set out in this Article X, the Declarant shall have all of the rights and remedies to which it may be entitled at law or in equity including, specifically, and without limitation, specific

performance.

The rights of the Declarant under this Article shall be enforceable only by the Declarant and any successor or assign of the Declarant to whom shall have been transferred such specific enforcement right. The Declarant may, as to any Lot, at its sole election, and at any time or from time to time, (1) extend the time within which such construction must be commenced on such Lot, (2) subordinate Declarant's, rights under this Article to the rights of any holder of a mortgage lien on such Lot, and/or (3) release and terminate Declarant's rights under this Article as to such Lot. In the event Declarant, relative to any Lot, shall elect to extend the time within which construction must commence under this Article, elect to subordinate its rights under this Article to the rights of a mortgage lien holder, or elect to release and terminate its rights under this Article, such election in no event shall operate to require Declarant to grant any extension of time to commence construction, or subordinate or release its rights under this Article as to any other Lot or require any further extensions as aforesaid to the Lot in question.

# ARTICLE XI

## MISCELLANEOUS PROVISIONS

### SECTION 1. DURATION

This Declaration and the covenants, restrictions, charges, and liens set out herein shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, and every Owner of any part of the Property, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded, and continuing until December 31, 2030, after which time said covenants shall be automatically extended for successive periods of five (5) years each, unless amended as provided in Section 2 of this Article XI; provided, however to amendment shall be effective prior to the recording of certified copies of a resolution executed by the secretary of the Association evidencing the approval of such amendment in the Deed Records of Ector County, Texas.

### SECTION 2. AMENDMENTS

The covenant, conditions and restrictions of this Declaration may be amended or terminated only as follows:

- a. By the Members. This Declaration may be amended or terminated only be the affirmative vote of Members representing a majority of the total number of votes of the Association. Member may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days in advance and shall set forth the purpose of such meeting. Notwithstanding the foregoing to the contrary, no amendment may remove, revoke, modify or restrict any right or privilege of Declarant, nor may any amendment or termination become effective prior to December 31, 2030, without the written consent of Declarant.
- b. By the Declarant. For so long as there is a Class "B" membership, Declarant reserves to itself and shall have the continuing right, at any time, and from time to time, without the joinder or consent of any part, to amend this Declaration by any instrument in writing duly executed, acknowledged and filed of record for the purpose of clarifying or resolving any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by the Declaration, and shall not impair or materially adversely affect the vested property or other rights of any Owner or his mortgagee.

### SECTION 3. ENFORCEMENT

The Association shall have the right (but not the duty) to enforce any of the covenants and restrictions set out in the Declaration or any Supplement Declaration hereafter filed by Declarant or any party as provided herein. Enforcement of the covenants and restrictions shall be by any

proceeding at law or in equity against any persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against real property, to enforce any lien created by these covenants. Failure by the Association or any Owner to enforce any such covenant to restriction shall in no event be deemed a waiver of the right to do so thereafter.

#### **SECTION 4. ADDITIONAL RESTRICTIONS**

Declarant may make additional restrictions applicable to any Lot by appropriate provision in the deed conveying such Lot to the Owner, without otherwise modifying the general plan set forth herein, and any such other restrictions shall inure to the benefit of and binding upon the parties to such deed in the same manner as set forth at length herein.

#### **SECTION 5. RESUBDIVISION OR CONSOLIDATION**

No Lot shall be re-subdivided in any fashion, nor shall any Lots or portions thereof be consolidated, unless the Owner or Owners of such Lots first obtain the approval of the Review Board.

#### **SECTION 6. SEVERABILITY OF PROVISIONS**

If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court with competent jurisdiction to the illegal, null or void the remaining paragraphs, sections, sentences, clauses, or phrases of this Declaration shall continue in full force and effect and shall not be effected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses, or phrases shall become or be illegal, null or void.

#### **SECTION 7. NOTICE**

Wherever written notice to a member (or members) is permitted or required hereunder, such notice shall be given by mailing the same to such member at the address of such member appearing on the records of the Association, unless such member has given written notice to the Association of a different address, in which even such notice shall be sent to the member at the address so designated. In such event, such notice shall conclusively be deemed to have been given by the Association by placing same in the United States mail, properly addressed, whether received by the addressee or not.

#### **SECTION 8. TITLES**

The titles, heading, and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

This Declaration is executed this the 10<sup>th</sup> day of October, 2012, at Odessa, Texas.

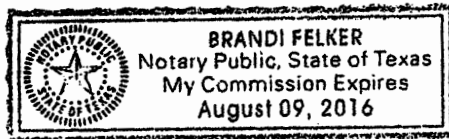
**ELDON BLOUNT CONSTRUCTION CO., INC.**

BY: William Eldon Blount Jr.  
William Eldon Blount, Jr., President

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
                                     §  
COUNTY OF ECTOR       §

This instrument was acknowledged before me on October 10, 2012 by William Eldon Blount, Jr., President of ELDON BLOUNT CONSTRUCTION CO., INC., a Texas corporation on behalf of said corporation.



Brandi Felker  
Notary Public, State of Texas

Printed Name Brandi Felker

My commission expires: 8/9/16