



**COLONIES UNIT NO. 22 AMENDED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

Recitals

A. Rockrose Development, LLC, a Texas limited liability company, and Happy Horizons Properties L P, a Texas limited partnership, are all of the owners of the Property described in Section 1.15.

B. Declarant intends for the Property to be developed as a single-family residential subdivision. Declarant declares that the Property is to be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions set forth in this Declaration which:

- (1) are for the purpose of establishing a general scheme for the development of the Property and for the purpose of enhancing and protecting the value, attractiveness, and desirability of Lots within the Property;
- (2) run with title to the Property and are binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof; and,
- (3) inure to the benefit of each Owner of the Property.

C. Each Lot is subject to the Master Declaration described in Section 1.11.

D. **IMPORTANT NOTICE:** THE PROPERTY IS LOCATED IN A PUBLIC IMPROVEMENT DISTRICT AUTHORIZED BY THE CITY OF AMARILLO IN RESOLUTION NO. 2-13-01-1 TO CONSTRUCT, INSTALL, AND MAINTAIN ENHANCED PUBLIC IMPROVEMENTS WHICH ARE IN ADDITION TO THE PUBLIC IMPROVEMENTS AND SERVICES THAT NORMALLY WOULD BE PROVIDED BY THE CITY. THE COSTS OF THE ENHANCED PUBLIC IMPROVEMENTS WILL BE PAID FROM SPECIAL ASSESSMENTS LEVIED BY THE CITY AGAINST LOTS LOCATED IN THE PUBLIC IMPROVEMENT DISTRICT. UNTIL CHANGED BY THE CITY OF AMARILLO, THE SPECIAL ASSESSMENT FOR THE PUBLIC IMPROVEMENT DISTRICT WILL BE BASED UPON THE NUMBER OF SQUARE FEET IN A LOT. AN OWNER OF A LOT MAY NOT AVOID PAYMENT OF THE SPECIAL ASSESSMENTS FOR THE PUBLIC IMPROVEMENT DISTRICT.

E. **IMPORTANT NOTICE:** PURSUANT TO THE MASTER DECLARATION, UPON PURCHASING A LOT EACH OWNER BECOMES A MEMBER OF THE ASSOCIATION AND BECOMES OBLIGATED TO PAY TO THE ASSOCIATION ASSESSMENTS (IN ADDITION TO THOSE REQUIRED UNDER THIS DECLARATION) AND WHICH MAY NOT BE AVOIDED BY AN OWNER. EACH OWNER'S ATTENTION IS DIRECTED TO THE MASTER DECLARATION FOR THE SPECIFIC TERMS APPLICABLE TO AN OWNER PURSUANT TO THE MASTER DECLARATION. WHEN THE TERMS OF THE MASTER DECLARATION CONFLICT WITH THE TERMS OF THIS DECLARATION, THE TERMS OF THIS DECLARATION WILL CONTROL.

F. **LIEN DISCLOSURE:** EACH LOT IS SUBJECT TO ASSESSMENT LIENS DESCRIBED IN ARTICLE 3 OF THE MASTER DECLARATION.

G. **NOTICE OF STATUTE:** EACH OWNER OF A LOT IS ADVISED THAT SECTION 202.004 OF THE TEXAS PROPERTY CODE AUTHORIZES COURTS TO ASSESS CIVIL DAMAGES FOR THE VIOLATION OF RESTRICTIVE COVENANTS IN AN AMOUNT NOT TO EXCEED \$200.00 FOR EACH DAY OF THE VIOLATION.

Declaration

Now, therefore, Declarant adopts the above Recitals and adopts, establishes, and imposes the following covenants, conditions, liens, and restrictions upon the Property and declares that the Property will be held, owned, leased, transferred, sold, conveyed, used, and occupied subject to such covenants, conditions, liens, and restrictions.

Article 1

Definitions

The use of any of the following defined terms in their capitalized form will have the meaning designated below. The use of any of the following defined terms in their uncapitalized form will indicate the words have their normal meaning:

1.0 **"Architectural Control Committee"** means Declarant until 95.0% of the land within the PID is sold by Developer, and after 95.0% of the land within the PID has been sold by Developer, "Architectural Control Committee" means a committee of three elected by the Members of the Association.

1.1 **"Association"** means the Colonies Master Association, Inc., a Texas non-profit corporation.

1.2 **"Building Plan"** has the meaning set forth in Section 4.0.

1.3 **"City"** means the City of Amarillo, Texas.

1.4 **"Common Areas"** means the areas designated as "Common Areas" on Plats of the Property.

1.5 **"Declarant"** means Rockrose Development, LLC, a Texas limited liability company, and Happy Horizons Properties L P, a Texas limited partnership, their successors or assigns to whom rights and powers expressly reserved herein to Declarant are conveyed or assigned in writing, but excluding any Person merely purchasing one or more Lots from Declarant.

1.6 **"Declaration"** means this document entitled "Colonies Unit No. 22 Amended Declaration of Covenants, Conditions, and Restrictions".

1.7 **"Garden Home Lots"** means Lots 5 through 23, Lots 27 through 41, Block 11, and Lots 73 through 125, Block 5, as shown on the Plat.

1.8 **"Landscape Requirements"** has the meaning set forth in Section 5.0.

1.9 **"Landscaped Areas"** mean the following described areas:

- (1) all tracts designated as a "Common Area" on any Plat; and,

- (2) all landscaped areas located in the unpaved public rights-of-way adjacent to each Lot.

1.10 **"Lot"** means each Lot (*each a "Lot" and collectively "Lots"*) shown on the Plat as amended from time to time, including improvements located on the Lots, except for the Common Areas and Streets.

1.11 **"Master Declaration"** means the Colonies Master Declaration recorded in the Official Public Records of Randall County, Texas, under Document No. 0118218.

1.12 **"Owner"** means the record Owner of the fee simple title to a Lot on which there is or will be built a Residence but not including those having an interest merely as security for the performance of an obligation.

1.13 **"PID"** means the Colonies Public Improvement District approved by the City in Resolution No. 2-13-01-1 adopted by the City Commission on February 13, 2001.

1.14 **"Plat"** means the plat recorded in the Official Public Records of Randall County, Texas, under Document No. 04-22119.

1.15 **"Property"** means the following described property:

All of The Colonies Unit No. 22 Amended, an Addition to the City of Amarillo, Randall County, Texas, according to the plat thereof recorded in the Official Public Records of Randall County, Texas, under Document No. 04-22119;

including other tracts of land within the PID that Declarant, or any Developer as defined in subsection (n) of Article 1 of the Master Declaration, may acquire in the future and subject to this Declaration. Declarant or any other Developer of land included in the PID may, in its sole discretion and without the joinder of any other person, subject land included in the PID to any portion of this Declaration by recording a document imposing upon such land any of the provisions of this Declaration. The document must describe the land to be subjected to this Declaration and must be recorded in the Official Public Records of Randall County, Texas.

1.16 **"Residence"** means one detached single-family residence.

1.17 **"Streets"** mean any land located in an easement or a right-of-way dedicated for motor vehicle use.

1.18 **"Street Trees"** has the meaning set forth in Section 5.1.

1.19 **"Zero Lot Line"** is the Lot line designated with a "Z" on the Plat.

Capitalized terms used in this Declaration, to the extent not otherwise defined herein, have the same meanings as in the Master Declaration.

Article 2

Restrictions on Use of Lots

2.0 **Residential Use.** All Lots are to be used for single-family residential purposes only; however, Declarant may authorize Lots to be used by builders temporarily for model homes. Subject to the provisions of Section 2.3, no building may be erected, altered, placed, or permitted to

remain on any Lot other than one Residence per Lot and other buildings approved by the Architectural Control Committee.

2.1 Single-Family Use. No Residence may be occupied except by one family consisting of persons related by blood, adoption, or marriage, or by no more than three unrelated persons living and cooking together as a single housekeeping unit, together with any household employees who are being paid a reasonable salary for their services.

2.2 Restrictions on Resubdivision. No Lot may be subdivided into a lesser depth than that shown on the Plat except by City condemnation for extra width of Streets. None of the Lots may be subdivided without Declarant's consent.

2.3 Composite Building Site. Any Owner of one or more adjoining Lots may, with the prior approval of Declarant, consolidate such Lots into a single building site. Owners of three adjoining Lots may, with the prior approval of Declarant, consolidate such Lots into one or two separate building sites. The side Lot setback for such building site will be measured from the exterior of the combined Lots. The combined building sites will become one Lot for voting purposes but will remain separate for Assessment purposes (*e.g., if a building site consists of one and one-half Lots, Owner will be obligated to pay one and one-half Assessment*). If one or more adjoining Lots are consolidated as provided above, the minimum floor area applicable to the building site will be the larger minimum floor area required in Section 3.9.

2.4 Temporary Structures. No temporary dwelling, shop, trailer, mobile home, manufactured home, modular home, or structure of any kind of a temporary character will be permitted on any Lot except: (i) children's playhouses and dog houses which may be placed on a Lot only in places which are not visible from any Street unless otherwise approved by the Architectural Control Committee; (ii) buildings for storage of lawn maintenance equipment may be placed on a Lot only in places which are not visible from any Street unless otherwise approved by the Architectural Control Committee; and (iii) a builder or contractor may have a temporary construction trailer on a Lot during construction of the Residence on that Lot.

2.5 Greenhouses and Gazebos. As required in Section 4.0, no greenhouse or gazebo may be placed or constructed on a Lot without the prior approval of the Architectural Control Committee.

2.6 New Construction. No prefabricated structure or any type of building may be moved onto a Lot unless otherwise approved by the Architectural Control Committee. All structures on a Lot must be constructed on the building site unless otherwise approved by the Architectural Control Committee.

2.7 Vehicles. No automobile, van, pickup truck, truck, boat, trailer, marine craft, hovercraft, aircraft, recreational vehicle, pick-up camper, travel trailer, motor home, camper body, tractor, or similar vehicle or equipment may be parked for storage in the Street or in any driveway or front yard of any Residence on the Property, nor may any such vehicle or equipment be parked for storage in the side or rear yard of any Residence if it is highly visible from the Street. No such vehicle or equipment may be used as a Residence or office temporarily or permanently. This restriction does not apply to any vehicle, machinery, or equipment temporarily parked and used for the construction, maintenance, or repair of a Residence or a Common Area in the immediate vicinity. Only passenger automobiles, passenger vans, and pickup trucks that are in operating condition, have current license plates and inspection stickers, and are in regular use as motor vehicles on the Streets and highways of the State of Texas may be temporarily parked on the Street or in the driveway where visible from the Street.

2.8 Hazardous Materials. No vehicles of any size which transport flammable, explosive, or hazardous cargo may be kept on the Property at any time.

2.9 Prohibited Animals. No animals, livestock, or poultry of any kind may be raised, bred, or kept on the Property except dogs, cats, and other household pets to provide companionship for the private family. Animals are not to be raised, bred, or kept for commercial purposes or for food. No person can keep cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, geese, chickens, turkeys, ostriches, emus, skunks, or any other similar animal or fowl on a Lot. No pet may be kept on a Lot that interferes with the quietude, health, or safety of the community.

2.10 Outdoor Pets. No more than two outdoor pets will be permitted on each Lot. Pets must be restrained or confined on the back of the Lot inside a fenced area or within the Residence unless the pet is properly supervised and leashed and does not create a threat or a nuisance. It is the pet owner's responsibility to keep the Lot reasonably clean and free of pet debris. All pets must be properly tagged for identification and vaccinated against rabies. Dog owners must keep the dogs from excessive barking so as not to disturb other Lot Owners. All pets must be properly supervised. Owners must clean-up and remove all pet debris when Owners are walking and exercising their dogs on public sidewalks and the Common Areas.

2.11 Uncontrolled Animals. If an Owner violates the provisions of Section 2.9 or 2.10 (e.g., failing to control barking dogs) Declarant, the Association, the Owner of any Lot included in the PID, or any other Owner may recover from the violating Owner reasonable attorney's fees and court costs incurred in enforcing the provisions of Sections 2.9 and 2.10. All such costs will be assessed as a "Special Owner Assessment" pursuant to Section 3.4 of the Master Declaration without the requirement of a Majority Vote of the Members. The Owner incurring such expense shall give notice of the expense to the Board of Directors of the Association who shall then issue a Special Owner Assessment against the violating Owner pursuant to Section 3.4 of the Master Declaration. The person incurring such attorney's fees and court costs may enforce the provisions of this section as provided (i) in Article 3 of the Master Declaration, or (ii) in Section 7.7 hereof, or (iii) by applicable law.

2.12 Junk/Trash. No portion of the Property may be used as a dumping ground for junk, dead tree limbs, rubbish, or as a site for the accumulation of unsightly materials of any kind, including but not limited to broken or rusty equipment, disassembled or inoperative vehicles, and discarded appliances and furniture. Trash, garbage, and other waste may not be kept on any Lot except in the City's approved containers. Tree limbs must be placed adjacent to back of the Lot in the alley in accordance with City Ordinances. If trash, garbage, waste, or debris will not fit into the City approved containers, it must be temporarily contained out of site from public view until it can fit into the City approved containers or completely removed from the Property and not stored on any portion of the Property.

2.13 Antennas. Unless otherwise approved by the Architectural Control Committee, no antennas, dishes, satellite dish, or any form of communication device, including but not limited to video, audio and internet services, for receiving or sending sound, video or any electronic messages will be permitted on the Property which are highly visible from the Streets.

2.14 Prohibited Activities. No Lot or improvement may be used for retail or manufacturing purposes of any kind. No noxious or offensive activity may be undertaken on the Property, and nothing may be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this Section 2.14 prohibits a builder's temporary use of a Residence as a sales office or model home, but a builder must cease using the Residence as a sales office or model home within six months after written notice from Declarant. Nothing in this Section 2.14 prohibits an Owner's use of a Residence for quiet, inoffensive activities such as home office, tutoring, or giving music or art lessons so long as such activities (i) do not materially increase the number of cars parked on the Lot

or Street or interfere with other Owners' use of Streets and the enjoyment of their Residences and yards and (ii) are in compliance with City ordinances.

2.15 Easement Protection. Within easements on each Lot, no structures, planting, or materials may be placed or permitted to remain which may: (i) damage or interfere with the installation and maintenance of utilities, (ii) change the direction of flow within drainage channels, or (iii) obstruct or retard the flow of water through drainage channels.

2.16 Signs. No sign of any kind may be displayed to the public view on any Lot except (i) one sign of not more than twelve square feet advertising the Residence for rent or sale, (ii) signs used by a builder during construction and sales periods, (iii) signs used by Declarant to advertise the Property during the development. Political signs shall not exceed nine square feet and may not be displayed for more than 30 days before a national, state, or local election day. Signs must be removed within two days after such election. The Architectural Control Committee or its agents have the right to remove any sign, billboard, or other advertising structure that does not comply with this Section 2.16 and in so doing, will not be subject to any liability for trespass or any other liability in connection with such removal.

2.17 Clothes Drying/Yard Equipment. The drying of clothes in public view is prohibited. An enclosure must be constructed as required by the Architectural Control Committee to screen from public view clothes drying facilities, yard maintenance equipment, and other equipment and materials.

2.18 No Fires. Except within fireplaces in the Residence or within other approved outdoor wood burning structures approved by the Architectural Control Committee and except for outdoor cooking on appropriate outdoor cooking equipment, no burning of anything is permitted anywhere on the Property.

2.19 No Foreign Items on Common Areas. No trampolines, jungle gyms, swing sets, or any other type of playground equipment or any other items or structures may be placed on the Common Areas unless they are owned and maintained by the PID or the Association.

2.20 No Vehicles in Common Areas. No golf carts, go-peds, go-carts, motorcycles, mopeds or any other motorized vehicles of any type are permitted on the Common Areas or on sidewalks in the Common Areas except wheelchairs, carts, and scooters being used by the physically impaired and landscape equipment being used to maintain the Common Areas.

2.21 Parties on the Common Areas. Disruptive parties and disruptive congregations of people on the Common Areas are prohibited.

Article 3

Construction Procedures

3.0 Front Elevation of Residence. All Residences must be constructed to front on the Street on which the Lot fronts unless the Lot fronts on two Streets in which case, the Residence must front, as required by the Architectural Control Committee, on either of the two Streets or partially on both.

3.1 Height of Residence. No Residence may be more than 2-1/2 stories in height above ground unless otherwise approved by the Architectural Control Committee.

3.2 Garage Required. Unless otherwise approved by the Architectural Control Committee, each Residence must have a minimum of a two-car attached garage which must

conform in design and materials with the main structure of the Residence. All garages must be only rear entry from the alley unless otherwise approved by the Architectural Control Committee.

3.3 Garage Location. All garages must be only rear entry from the alley unless otherwise approved by the Architectural Control Committee. Side entry garages on corner lots are allowed in some cases however, on Lots 10, 16, 24 and 41, all in Block 11 and Lots 113 and 114, Block 5, side entry garages are specifically prohibited. All garage orientations that are not rear entry from the alley are subject to review and approval by the Architectural Control Committee.

3.4 Driveways. All driveways must be surfaced with concrete or a similar substance approved by the Architectural Control Committee. No circle driveway or other driveway may be constructed in the front of a Residence unless approved by the Architectural Control Committee.

3.5 New Materials. All building materials must be new unless approved by the Architectural Control Committee; however, used brick is acceptable.

3.6 Building Materials. No building material of any kind or character may be placed or stored upon a Lot until the commencement of construction of improvements. During construction, material must be placed only within the property lines of the Lot upon which the improvements are to be erected. Construction and use of material must progress without undue delay.

3.7 Completion of Residence. All Residences and other structures must be completed within 12 months from the date construction is commenced unless extended by the Architectural Control Committee.

3.8 HVAC Systems. All exterior heating, ventilation, and air conditioning systems ("HVAC") must be screened so the HVAC systems are not visible from the Streets. If the screen around the HVAC systems is not brick, the Lot Owner must obtain the approval of the Architectural Control Committee for the design and materials for the screen around the HVAC systems. HVAC systems may not be installed in front of a Residence. HVAC systems may not be installed on the roof of a Residence where they are visible from any Street unless approved by the Architectural Control Committee. No window air-conditioning apparatus or evaporative cooler may be attached to any front wall or front window of a Residence or at any other location where it is visible from any Street.

3.9 Underground Utilities. All utilities must be installed underground.

3.10 Minimum Floor Area. The total air conditioned living area of the Residence, as measured to the outside of exterior walls but exclusive of open porches, garages, patios, basements and detached buildings, must be at least:

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| (a) | 1,650 square feet, but if two stories, there must be at least 1,100 square feet on the ground floor on: | Lots 73 thru 85, both inclusive, Block 5; |
| (b) | 1,800 square feet, but if two stories, there must be at least 1,200 square feet on the ground floor on: | Lots 5 thru 9, both inclusive, Block 11;
Lots 27 thru 41, both inclusive, Block 11;
Lots 114 thru 125, both inclusive, Block 5 |
| (c) | 2,000 square feet, but if two stories, there must be at least 1,300 square feet on the ground floor on: | Lots 86 thru 94, both inclusive, Block 5;
Lots 17 thru 23, both inclusive, Block 11 |
| (d) | 2,200 square feet, but if two stories, there must be at least 1,400 square feet on the ground floor on: | Lots 95 thru 113, both inclusive, Block 5 |

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| (e) | 2,400 square feet, but if two stories, there must be at least 1,800 square feet on the ground floor on: | Lots 10 thru 16, both inclusive, Block 11;
Lots 24 thru 26, both inclusive, Block 11;
Lots 126 thru 134, both inclusive, Block 5 |
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3.11 Exterior Walls. Unless otherwise approved by the Architectural Control Committee, the exterior walls of each building constructed on a Lot must be at least 75.0% brick, brick veneer, stone, or stone veneer, or any combination of brick and stone materials. Other masonry material, synthetic stucco, stucco, or other siding may only be used if approved by the Architectural Control Committee. All chimneys must be 100.0% brick, brick veneer, stone, or stone veneer unless otherwise approved by the Architectural Control Committee,

3.12 Setback Requirements. All Residences must be constructed so they comply with the following:

- (a) On Lots 24 thru 26, Block 11 and Lots 126 thru 134, Block 5; as shown on the Plat, the setback requirements are as follows:
 - (1) front yard – 25 foot minimum;
 - (2) side yard – 5 foot minimum;
 - (3) side street – 10 foot minimum; and,
 - (4) rear yard – as required by City ordinances.
- (b) On Garden Home Lots (*see definition in Section 1.7*), the Residence must be built on the Zero Lot Line and the other setback requirements are as follows:
 - (1) front yard - 15 foot minimum, 20 foot maximum; unless otherwise approved by the developer;
 - (2) side street – 10 foot minimum;
 - (3) rear yard – as required by City Ordinances
 - (4) side yard – are as follows

On Lots 9, 23, and 27, Block 11 and Lots 85, 125, Block 5 - the side yard adjacent to the alley is a 5 foot minimum. The adjacent lot side is a 10 foot minimum.

On Lot 13, Block 11 and Lot 94, Block 5 - both side yards are 10 foot minimum.

On Lots 95, Block 5 – the side yard adjacent to the zero lot line is a 10 foot minimum. The side yard adjacent to Lot 94, block 5 is a 5 foot minimum.

On Lots 104 and 106, Block 5 – the side yard adjacent to the zero lot line is a 10 foot minimum. The side yard adjacent to Lot 105, block 5 is a 5 foot minimum.

On Lot 105, Block 5 – both side yards are 5 foot minimum.

On Lot 5 and 17, Block 11 and Lot 73 and 86, Block 5 - the alley side is a 5 foot minimum.

All remaining garden home lots are to be built with zero setback on the zero lot line side and a 10 foot minimum on the opposite side.

3.13 Zero Lot Line Windows. The wall constructed on the Zero Lot Line must be a solid wall except for windows which must be permanently opaque or must be of such material that cannot be seen through and must not open. Except as provided in the preceding sentence, all walls constructed on the Zero Lot Line must be a solid wall constructed out of materials required in Section 3.10.

3.14 Gutters. All Residences constructed on the Zero Lot Line must have rain gutters with downspouts to the ground level constructed so as to minimize the runoff onto the adjacent Lot.

3.15 Roof Pitch

- (a) All roofs must have a minimum pitch of 7 and 12 on Lots 27 thru 41, Block 11 and Lots 114 thru 125, Block 5, unless otherwise approved by the Architectural Control Committee.
- (b) All other Lots must have a minimum roof pitch of 8 and 12, unless otherwise approved by the Architectural Control Committee.

3.16 Roof Materials. Unless otherwise approved by the Architectural Control Committee, roof colors shall consist of the following: blacks and charcoal or similar dark colors. The Architectural Control Committee has the right to approve the color of all roofing materials. Unless otherwise approved by the Architectural Control Committee, all roofs having composition shingles must be laminated shingles with at least a 30-year warranty by the manufacturer;

3.17 Outbuildings. Any outbuilding to be constructed on a Lot must be in compliance with Article 4.

3.18 Fences. If a fence is not a six-foot wood or brick fence or combination thereof, the Owner must obtain approval from the Architectural Control Committee before construction of the fence. No fence or wall will be permitted to extend nearer to a Street abutting the front Lot line than the front of the Residence, unless otherwise approved by the Architectural Control Committee. Fences or walls erected by Declarant or any builder will become the property of the Owner of the Lot on which the same are erected and—if no other party maintains the fences or walls—must be maintained and repaired by the Lot Owner. There cannot be any chained link or wire fence which is visible from a Street or alley on any Lot. No chained link or wire fence may be used for an exterior perimeter fence except for a temporary construction fence. Any temporary construction fence is subject to approval by Architectural Control Committee

3.19 Sidewalks. When building a Residence on a Lot, an Owner must build a sidewalk adjacent to the back of the curb that complies with City ordinances and the Americans with Disabilities Act.

3.20 Portable Sanitary Systems. During construction on any Lot, each builder must provide a portable sanitary system for use by contractors, subcontractors, and their employees until

the construction is completed. The portable sanitary system must be located at the rear of the Lot and must be timely serviced and cleaned to prevent odors.

3.21 Construction Debris. During construction on a Lot, the builder must put all construction trash which is susceptible to being blown from the construction site in an approved container to prevent trash from blowing off of the construction site. The container must be emptied periodically so there is always room for the trash. Builders must prevent to the extent possible construction trash from blowing out of the container and off the construction site. Each Lot Owner is responsible for the control of and the disposal of left over construction material and construction debris. No construction material or construction debris may be dumped on any of the Property except on the building site and must be periodically removed so that the building site is cleaned of construction material and debris.

3.22 Concrete Washout. During construction on any Lot, each builder must coordinate with his concrete contractor to conduct all concrete washing only at areas designated by Declarant for disposal of excess concrete. If a concrete contractor dumps any excess concrete at any place on the Property which is not approved by Declarant, the builder or Owner who contracted with the concrete contractor must immediately remove the concrete from the Property.

Article 4

Architectural Control

4.0 Authority. No Residence, building, greenhouse, gazebo, fence, wall, driveway, or other structure may be commenced, erected, placed, maintained, altered, reroofed, or replaced, or the exterior stained, painted, or repainted until all colors, plans and specifications, and a plot plan (**collectively the "Building Plan"**) have been submitted to and approved in writing by the Architectural Control Committee, but if the exterior color scheme is not being changed from the color scheme previously approved by the Architectural Control Committee, it will not be necessary to obtain approval from the Architectural Control Committee. The Architectural Control Committee may refuse to approve a Building Plan which may, in the reasonable opinion of the Architectural Control Committee, adversely affect the enjoyment of Owners or the general value of Lots. In considering the harmony of external design between existing structures and the Building Plan, Declarant will consider only the general appearance of the proposed building as can be determined from exterior elevations on submitted plans.

4.1 Plan Submittal. A complete copy of the Building Plan must be submitted in duplicate to the Architectural Control Committee or its designee either by (i) certified mail, return receipt requested or (ii) personal delivery, but personal delivery will not be valid unless receipt of the Building Plan is acknowledged in writing by the Architectural Control Committee or its designee. The Building Plan must be submitted at least 15 days before commencement of staining or painting or commencement of construction of the improvements or reroofing. The Building Plan must—if at all possible—show the nature, kind, shape, height, materials, exterior color scheme, and location of all improvements, including but not limited to elevations and floor plans on each structure to be built, square footage, roof pitch, and percentage of brick or other material to be used on the exterior. The Building Plan must specify building location on the Lot. Samples of proposed construction materials must be delivered promptly to the Architectural Control Committee upon request.

4.2 Multiple Submissions of Building Plan. If the Building Plan submitted to the Architectural Control Committee does not include all the information required in Section 4.1 at the first submittal, the remaining information must be submitted to the Architectural Control Committee within 45 days after the date of the first submittal. If all the information required in Section 4.1 is not included in the Building Plan submitted to the Architectural Control Committee the second time, no future submittal of the Building Plan will be considered or approved unless the person submitting the

Building Plan pays the Architectural Control Committee a non-refundable submission fee as established by the Architectural Control Committee which may not exceed \$250.00 per submission.

4.3 Approval Procedure. When the Building Plan meets the approval of the Architectural Control Committee, the Architectural Control Committee will sign and mark "APPROVED" on one Building Plan and return it to the person furnishing the Building Plan and will sign and retain the duplicate Building Plan. If not approved by the Architectural Control Committee, the Building Plan will be returned marked "NOT APPROVED" and will be accompanied by a statement of the reasons for disapproval signed by a representative of the Architectural Control Committee. Any exterior modification of an approved Building Plan must again be submitted to the Architectural Control Committee for approval. The Architectural Control Committee's approval or disapproval, as required herein, must be in writing. Verbal statements about the Building Plan will not be binding upon the Architectural Control Committee. If the Architectural Control Committee fails to approve or disapprove the Building Plan within 15 days after the date of submission of all information required, written approval of the proposal will not be required and compliance with this Article 4 will be deemed to have been completed. In case of a dispute about whether the Architectural Control Committee responded within the required time period, the person submitting the Building Plan will have the burden of establishing the date the Architectural Control Committee received it.

4.4 Standards. The Architectural Control Committee shall use its best efforts to promote and insure a high level of architectural design, quality, harmony, taste, and conformity throughout the Property consistent with this Declaration. The Architectural Control Committee will have sole discretion with respect to taste, design, exterior color, and all standards specified herein. One objective of the Architectural Control Committee is to prevent the building of unusual, radical, curious, odd, bizarre, peculiar, or irregular structures on the Property. The Architectural Control Committee, from time to time, may publish and promulgate bulletins regarding architectural standards which shall be fair, reasonable, and uniformly applied and will carry forward the spirit and intention of this Declaration.

4.5 Rules and Regulations. The Architectural Control Committee may promulgate and enforce reasonable rules and regulations to carry out its architectural control duties or conduct its proceedings, including the formulation of guidelines to govern construction and maintenance of improvements and for the establishment and collection of a reasonable fee for performance of its architectural control duties and functions. The Architectural Control Committee may, in its sole discretion, change the guidelines in any manner to supplement, amend, delete, modify, or abandon the guidelines as it deems reasonable.

4.6 Arbitration. An Owner aggrieved by a decision of the Architectural Control Committee regarding the Owner's Lot will have the right to submit the Architectural Control Committee's decision to arbitration. To do so, within 15 days following the date of the Architectural Control Committee's decision, the Owner must give the Architectural Control Committee written notification of the Owner's intention to submit the decision to arbitration; otherwise, the right to arbitration is waived. Within 10 days of the notice to the Architectural Control Committee, the Owner must appoint an architect or designer, the Architectural Control Committee must appoint an architect or designer, and the two appointees must, within 10 days of their appointment, appoint an architect who has been licensed as an architect under the laws of the State of Texas for at least five years. If designers are appointed, they must have practiced architectural drafting of residential house plans for at least five years and neither the architects nor designers may have prepared the Building Plan. The architects and designers will serve as an arbitration board to review the decision of the Architectural Control Committee. The decision of two of the arbitration board will be final and binding upon the Owner and the Architectural Control Committee. The prevailing party must pay the fee of the architect or designer appointed by that party and the losing party must pay the fees of the other two appointees.

4.7 Deviation. The Architectural Control Committee may, at its sole discretion, permit reasonable modifications of and deviations from any of the requirements of this Declaration or its rules and regulations relating to the type, kind, quantity, or quality of the building materials to be used in the construction of any building or improvement on any Lot and of the size and location of any such building or improvement when, in the Architectural Control Committee's sole judgment, such modifications and deviations will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Property and its improvements as a whole. The Architectural Control Committee may require the submission to it of such documents and items as it deems appropriate in connection with its consideration of a request for a variance. The Architectural Control Committee may require an Owner to pay the Association a reasonable fee determined by the Architectural Control Committee for granting a request for a variance.

4.8 Liability Limitation of the Architectural Control Committee. The members of the Architectural Control Committee and the partners, officers, directors, agents, employees, shareholders, and attorneys of any member of the Architectural Control Committee have no liability for decisions made by the Architectural Control Committee so long as such decisions are made in good faith and are not arbitrary or capricious. Any errors in or omissions from the Building Plan will be the responsibility of the Owner of the Lot. The Architectural Control Committee has no obligation to check for errors in or omissions from the Building Plan or to check the Building Plan for compliance with the general provisions of this Declaration, State or Federal statutes or the common law, setback for Lot lines, building lines, easements, or any other matters.

Article 5

Landscaping

5.0 Landscape Requirements. Unless otherwise approved by the Architectural Control Committee or the Association, each Owner must comply with the landscape requirements set forth in this Article 5 (the "Landscape Requirements").

5.1 Trees. For the purposes of this Article 5, approved trees (the "Street Trees") are:

- (a) Cedar Elm (*Ulmus crassifolia*);
- (b) Red Oak (*Quercus texana* or *shumardi*);
- (c) Lace Bark Elm (*Ulmus parvifolia*); and,
- (d) Green Glory Locust (*Gleditsia triacanthos inermis* [sterile only]).

5.2 Tree Measurements. The Street Trees must be only single trunk of at least 3-inch caliper as measured at a point 12 inches above the surface of the root ball. All Street Trees must comply with criteria as set forth in the latest edition of the American Standards for Nursery Stock as published by the American Association of Nurserymen.

5.3 Tree Location. The Owner of each Lot must plant the number of Street Trees as required by the Architectural Control Committee. The Street Trees must be placed on each Lot to comply with line of site requirements of the City. Street Trees must be planted along all Street frontages 8 feet behind the curb and approximately 30 feet apart as determined by the Architectural Control Committee after considering the location of driveways, sidewalks, and other improvements. The Architectural Control Committee will have the sole right to approve or not to approve the location of Street Trees along Street frontages. An Owner will have no right to change the location of Street Trees along the Street frontages as originally designated by the Architectural Control

Committee. A Street Tree Plan may be obtained from Declarant to show locations of Street Trees on each Lot.

5.4 Landscaping. Except for sidewalks, patios, driveways, and other landscape approved by the Architectural Control Committee, all yards visible from any Street must be covered with shrubbery, live ground cover, or sod as required by the Architectural Control Committee. A Lot Owner may plant live trees other than the Street Trees anywhere on the Lot except only Street Trees may be planted along Street frontages as required by the Architectural Control Committee.

5.5 Irrigation System. Unless otherwise approved by the Declarant, upon completion of a Residence, the Owner must install an automatic irrigation system in all yards visible from any Street.

5.6 Completion of Landscaping. Landscape Requirements must be completed within 180 days after the first to occur of the following: (i) substantial completion of the Residence, (ii) issuance of the final certificate of occupancy by the City, or (iii) occupancy of the Residence. An Owner will have no right to change the location of Street Trees along the Street frontages as originally designated by the Architectural Control Committee.

5.7 Maintenance of Landscaping. Each Owner must comply with the Landscape Requirements at the Owner's own cost and expense. The Owner's maintenance obligation will include, but will not be limited to responsibility for:

- (a) replacing dead or damaged Street Trees in a timely manner with live approved Street Trees along Street frontages in the same locations as originally designated by the Architectural Control Committee;
- (b) watering and fertilizing all landscaping;
- (c) pruning trees;
- (d) mowing grass;
- (e) edging grass along sidewalks;
- (f) insect control for all landscaping;
- (g) maintaining the yards in a sanitary and attractive manner; and,
- (h) maintaining the irrigation system in good operating condition.

Grass, weeds, and vegetation on each Lot must be mowed at regular intervals to maintain the Lot in a neat and attractive manner. The Owners of all Lots with completed homes must not permit weeds or grass to grow in an unsightly or unattractive manner. Upon failure of any Owner to maintain any Lot or replant trees as required, the Association, Declarant, or its assigns may, at its option, replant trees and have the grass, weeds, and vegetation cut as often as necessary in its judgment, and the Owner of the affected Lot will be obligated, when presented with an itemized statement, to reimburse the Association or Declarant for the cost of the work. This provision may be enforced as a Special Owner Assessment as provided in Section 3.4 of the Master Declaration without the necessity of a vote by the Members.

5.8 Lot Appearance. Owners of all Lots without completed Residences must keep their Lots reasonably free of weeds and debris and must maintain the Lots in a neat and attractive manner.

Article 6

Easements

6.1 Utility Easements. Declarant, the Association, and providers of utility services have and are granted easements for installation, maintenance, repair, removal, and operation of utilities and drainage facilities on, under, and across the easements and for the removal of any obstruction that may be placed in an easement that would constitute interference with the use of the easement or with the use, maintenance, operation, or installation of the utility. Neither the City, utility companies, Declarant, nor the Association has any obligation to repair any improvements or landscaping installed in any easement.

6.2 Other Easements. Declarant and the Association have an easement as reasonably necessary for ingress and egress at all times over and upon the Property to carry out all of their rights, functions, duties, and obligations set out in this Declaration. Any entry by Declarant or the Association upon a Lot must be made with as little inconvenience to the affected Owner as practical. Each Owner of a Lot must mow weeds and grass and keep and maintain in a neat and clean condition any easement which may traverse any portion of the Lot.

6.3 Side Yard Easements. The Lot on which the 5-foot easement is shown on the Plat for Garden Home Lots is called the "**Servient Estate**". The Lot on which a structural wall of a Residence is erected on the Zero Lot Line is called the "**Dominant Estate**". The purpose of the Servient Estate is for a roof overhang and drainage and access for construction, maintenance, repair, and restoration of the roof and structural wall located on the Dominant Estate. In addition to the 5-foot easement as shown on the Plat across the Servient Estate, the Owner of the Dominant Estate will have a temporary construction easement over the 10-Foot Setback during construction of improvements on the Dominant Estate, but this additional easement will automatically terminate upon substantial completion of construction of the residence on the Dominant Estate. The rights of the Dominant Estate are subject to the rights of any other easement holder—such as a utility—and to the right of the Owner of the Servient Estate to receive prior notice from the Owner of the Dominant Estate of his intention to enter the Servient Estate. The Owner of the Dominant Estate must indemnify the Owner of the Servient Estate from all liens, claims, or liabilities arising out of or connected with the use of the Servient Estate. The Owner of the Dominant Estate will have the right at all reasonable times to enter the Servient Estate to build, repair, maintain, and restore the roof and any structural wall located on the Dominant Estate. The Owner of the Dominant Estate may remove fences or other materials interfering with his use of the Servient Estate, but the Owner of the Dominant Estate must replace the fence and other materials and restore—as much as reasonably possible—any landscaping damaged during use of the Servient Estate.

Article 7

General Provisions

7.0 Recorded Plat. All dedications, limitations, restrictions, and reservations shown on the Plat are incorporated herein and will be construed as being adopted in each contract, deed, or conveyance executed or to be executed by Declarant, whether specifically referred to therein or not.

7.1 Maintenance of Improvements. Each Lot Owner must:

- (a) maintain the exterior of the Residence, buildings, fences, walls, and other improvements on the Owner's Lot in good condition and repair;
- (b) replace worn and rotten materials;
- (c) regularly repaint or restain all exterior painted and stained surfaces; and,
- (d) not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, sidewalks, driveways, parking areas, or other exterior portions of the improvements to deteriorate.

7.2 Common Areas. The Common Areas may be used by the Owners of the Lots as a park for recreational purposes or for other approved gatherings. The Declarant or the Association may from time to time promulgate and enforce reasonable rules and regulations for the use of the Common Areas.

7.3 Mortgages. The breach of any provision hereof will not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any Lot or any part thereof encumbered by such mortgage or deed of trust, but the provisions will be binding as to Lots acquired by foreclosure, trustee's sale, or otherwise, only as to any breach occurring after such acquisition of title.

7.4 Term. This Declaration will run with and bind title to the Property and will remain in full force and effect for 30 years after this Declaration is recorded in the Official Public Records of Randall County, Texas. This Declaration will thereafter extend automatically for successive periods of 10 years unless amended as provided in Section 7.12.

7.5 Severability. If any condition, covenant, or restriction herein contained is invalid—which invalidity will not be presumed until it is determined by the final non-appealable judgment or final non-appealable order of a court of competent jurisdiction—such invalidity will not affect any other condition, covenant, or restriction, each of which will remain in full force and effect.

7.6 Binding Effect. Each of the conditions, covenants, restrictions, and agreements herein contained is made for the mutual benefit of, and is binding upon, each person acquiring any part of the Property and each person owning any land included in the PID. This instrument, when executed, will be filed for record in the Official Public Records of Randall County, Texas, so that each Owner or purchaser of any portion of the Property is on notice of the conditions, covenants, restrictions, and agreements herein contained.

7.7 Enforcement. Declarant, the Association, and the Owner of any Lot included in the PID have an easement and the right to have this Declaration faithfully carried out and performed with reference to each Lot, together with the right to bring any suit or undertake any legal process that may be proper to enforce the performance thereof and to recover damages. The Owner of each Lot has the right and easement to have this Declaration strictly construed and applied to all Lots whether owned by Declarant, its successors and assigns, or others, regardless as to whether or not reference to this Declaration is made in the document conveying the Lot to the Owner. Failure to enforce this Declaration will not be deemed a waiver of the right to do so thereafter.

7.8 Other Authorities. If other authorities, such as the City, impose more demanding, expensive, or restrictive requirements than those set forth herein, the requirements of such authorities must be met. Other authorities' imposition of lesser requirements than those set forth herein do not supersede or diminish the requirements herein.

7.9 Address for Plan Submission. Any plan submission, notice, or correspondence to the Architectural Control Committee must be made at the following address:

3905 S. Bell
Amarillo, TX 79109

7.10 Address for Notices or Correspondence. Any notices or correspondence to an Owner of a Lot must be addressed to the Street address of the Lot. Any notice or correspondence to Declarant must be made at the following address:

3905 S. Bell
Amarillo, TX 79109

7.11 Change of Address. Declarant or the Architectural Control Committee may change its address for notice and plan submission by recording a notice of change of address in the Official Public Records of Randall County, Texas.

7.12 Amendment. The Owners of legal title to at least 51.0% of the Lots included in the PID (as shown by the Official Public Records of Randall County, Texas) may amend the covenants, conditions, and restrictions set forth herein by recording an instrument containing such amendments, except that for 30 years following the recording of this Declaration, no such amendment will be valid or effective without the joinder of Declarant. Declarant will be under no obligation to consent to any amendment of this Declaration.

7.13 Assignability. Declarant and its successors and assigns may assign their rights, privileges, duties, and obligations hereunder by documents signed by Declarant or its successors or assigns specifically assigning its rights, privileges, duties, and obligations hereunder, which documents must be recorded in the Official Public Records of Randall County, Texas.

7.14 Approvals. All consents and other evidences of approval by Declarant or the Architectural Control Committee must be in writing and signed by Declarant or the Architectural Control Committee before they are binding.

7.15 Attorney's Fees. If attorney's fees are incurred for the enforcement of this Declaration, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs. Attorney's fees assessed against an Owner may be collected as a Special Owner Assessment as provided in Section 3.4 of the Master Declaration without the necessity of a vote by the Members.

7.16 Time. Time is of the essence.

7.17 Gender. When the context requires, the singular number includes the plural, the plural the singular, and the use of any gender includes all genders.

Dated the 25th day of August, 2005.

DECLARANT:

Rockrose Development, LLC,
a Texas limited liability company

By: *Matt Griffith*
Matt Griffith, Vice President

HAPPY HORIZONS PROPERTIES, L.P.,
a Texas limited partnership

By: **Happy Horizons Inc.,**
a Texas corporation,
General Partner

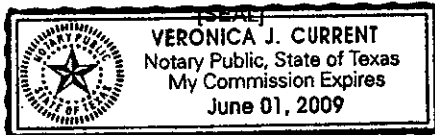
by: *Suzanne Boyce*
Suzanne Boyce, Secretary/Treasurer

THE STATE OF TEXAS

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§

COUNTY OF RANDALL

This instrument was acknowledged before me on this the 25th day of August, 2005, by **Matt Griffith**, Vice President of **Rockrose Development, LLC**, a Texas limited liability company, on behalf of said corporation.



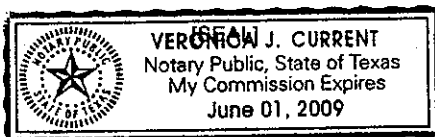
Veronica J. Current
Notary Public

THE STATE OF TEXAS

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COUNTY OF RANDALL

This instrument was acknowledged before me on this the 25th day of August, 2005, by **Suzanne Boyce**, Secretary/Treasurer of **Happy Horizons, Inc.**, a Texas corporation, on behalf of said corporation, as General Partner on behalf of **HAPPY HORIZONS PROPERTIES, L.P.**, a Texas limited partnership.



Veronica J. Current
Notary Public

Return to:
RockRose Development
3905 Bell
Amarillo TX 79109