

Return to:  
SELL AND GRIFFIN  
504 S. Polk #101  
Amarillo, TX 79101-2318

01 18218

COLONIES MASTER DECLARATION

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This Master Declaration for the Colonies is made by Rockrose Development, Inc., a Texas corporation.

Recitals

A. Declarant is in the process of developing the following described real property:

All of The Colonies Unit 5, 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, on December 29, 2000, under Document No. 00625729.

B. Declarant desires to create a procedure and an entity to perform the functions provided in this Master Declaration and to make Assessments.

C. **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.

D. **IMPORTANT NOTICE:** IN ADDITION TO THE ASSESSMENT BY THE CITY FOR THE PID, EACH OWNER OF A LOT WILL BE SUBJECT TO ASSESSMENTS BY THE COLONIES MASTER ASSOCIATION, INC., A TEXAS NONPROFIT CORPORATION.

E. **LIEN DISCLOSURE:** EACH LOT IS SUBJECT TO ASSESSMENT LIENS DESCRIBED IN ARTICLE 3.

F. **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, charges, 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, charges, and restrictions:

Article 1Definitions

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:

- (a) **"Affiliate"** means (i) any Person owned or controlled by Developer or by any shareholder of Developer and (ii) any Person owned or controlled by the Land Owners or by any shareholder, partner, or owner of the Land Owners.
- (b) **"Annual Membership Dues"** has the meaning set forth in Section 3.6
- (c) **"Assessments"** has the meaning set forth in Section 3.1.
- (d) **"Association"** means the "Colonies Master Association, Inc., a Texas nonprofit corporation".
- (e) **"Association Documents"** means this Master Declaration, the Restrictions, the Articles of Incorporation of the Association, and the bylaws of and resolutions adopted by the Association.
- (f) **"Board"** means the Board of Directors of the Association.
- (g) **"City"** means the City of Amarillo, Texas.
- (h) **"City PID Assessments"** has the meaning set forth in Section 3.7.
- (i) **"Common Areas"** means the areas designated as "Common Areas" on Plats of the Property.
- (j) **"Common Expenses"** means:
- (1) all costs and expenses incurred by the Association to construct, install, and maintain the Enhanced Public Improvements to the extent and standards of quality determined by the Board to be appropriate; and,
  - (2) all costs and expenses to hire, employ, retain, or contract with professional management companies or personnel as the Board deems appropriate to perform the day-to-day functions of the Association; and,
  - (3) Association accounting and management fees; and,
  - (4) all other costs and expenses, including but not limited to reasonable attorney's fees, necessary to enforce the Association Documents and to manage, operate, and perform the duties and functions of the Board, Architectural Control Committee, and the Association set forth in the Association Documents and to establish a reasonable reserve fund as determined by the Board.

- (k) **"Conversion Date"** means the date on which Developer owns in the aggregate less than 95.0% of the developed Lots and the land to be developed within the Property.
- (l) **"Declarant"** means Rockrose Development, Inc., a Texas corporation, and its 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. 0
- (m) **"Default Rate of Interest"** means the lesser of (i) 18.0% per annum or (ii) the maximum allowable contract rate of interest under applicable law.
- (n) **"Developer"** means any Person who files any of the Plats (*defined in (aa) below*) in the Official Public Records of Randall County, Texas, including Declarant. 3
- (o) **"Enhanced Public Improvements"** means the public improvements constructed, installed, and maintained in the Common Areas and the unpaved public right-of-way for Hillside and Soncy Rd. adjacent to the Property and in the center of the entry way off of Coulter Street onto Continental Parkway including but not limited to the following:
- (1) planting grass, trees, shrubbery, ground cover, and other vegetation;
  - (2) turf maintenance, which includes fertilizing, mowing, edging, trimming, and application of herbicides as required;
  - (3) horticultural maintenance;
  - (4) installation and maintenance of irrigation systems and management of seasonal watering;
  - (5) seasonal planting in Common Areas;
  - (6) tree care which includes fertilization, pruning, and insect disease control;
  - (7) water and electricity;
  - (8) installation and maintenance of ground lighting;
  - (9) supplementary security service;
  - (10) construction, repair, and maintenance of enhanced drainage areas, fences, clock towers, bell towers, park benches, park lighting, architectural and landmark features;
  - (11) installation, operation, and maintenance of Christmas lighting in Common Areas;

- (12) other services incidental to the installation and maintenance of landscaping; and,
- (13) installation, maintenance, and repair of special fencing.
- (p) **"Land Owners"** mean Sam Attebury; Attebury Elevators, Inc., a Texas corporation; Sam Attebury and Julianne Attebury, Trustees of the Josephine Attebury Trust C; Attebury Farm Partnership, a Texas general partnership; and Rockrose Development, Inc., a Texas corporation.
- (q) **"Landscaped Areas"** mean the following described areas:
- (1) all tracts designated as a "Common Area" on any Plat; and,
  - (2) landscaped areas located in the unpaved public right-of-way of Hillside and Soncy Rd. adjacent to the Property and in the center of the entry way off of Coulter Street onto Continental Parkway.
- (r) **"Lot"** means each Lot (each **"a Lot"** and collectively **"Lots"**) shown on the Plats as amended from time to time and improvements located on a Lot, except for the Common Areas.
- (s) **"Majority Vote of the Members"** has the meaning set forth in Section 2.4.
- (t) **"Master Declaration"** means this "Colonies Master Declaration" and any amendments or modifications thereto filed in the Official Public Records of Randall County, Texas.
- (u) **"Member"** has the meaning set forth in Section 2.1.
- (v) **"Member in Good Standing"** has the meaning set forth in Section 2.2.
- (w) **"Non-Member Owners"** has the meaning set forth in Section 2.1.
- (x) **"Notice of Unpaid Assessments"** has the meaning set forth in Section 3.12.
- (y) **"Owner"** means each Person who is a record owner of a fee simple interest in any Lot, but excluding any Person who holds only a lien or interest in the Lot as security for the performance of any obligation.
- (z) **"Person"** means any natural person, corporation, partnership, limited liability company, trust, or other legal entity.
- (aa) **"PID"** means the Colonies Public Improvement District authorized by the City in Resolution No. 2-13-01-1 adopted by the City Commission on February 13, 2001.
- (bb) **"Plats"** mean all Plats (each **"a Plat"** and collectively **"Plats"**) of real estate included in the PID recorded at any time in the Official Public Records of Randall County, Texas.

- (cc) "**Property**" means the real estate described in Item A under Recitals above and all other real estate included in the PID.
- (dd) "**Quorum**" has the meaning set forth in Section 2.4. 0
- (ee) "**Regular Assessments**" has the meaning set forth in Section 3.2.
- (ff) "**Restrictions**" means all Declarations of Covenants, Conditions, and Restrictions placed on the Property at any time and any amendments or modifications thereto.
- (gg) "**Special Group Assessments**" has the meaning set forth in Section 3.3.
- (hh) "**Special Owner Assessments**" has the meaning set forth in Section 3.4. 5
- (ii) "**Streets**" means the streets dedicated on the Plats for motor vehicle use.
- (jj) "**Transfer Assessment**" has the meaning set forth in Section 3.5.
- (kk) "**Transfer Certificate**" has the meaning set forth in Section 3.5.
- (ll) "**Trustee**" has the meaning set forth in Section 3.14.

Other terms used in this Master Declaration are defined in various provisions hereof.

## Article 2

### Membership and Voting Rights in the Association

2.1 **Membership.** Each Owner, including Developer, automatically is a member of the Association ("**Member**"), except for the following which are considered "**Non-Member Owners**":

- (a) the City is not a Member unless it owns a Lot other than the Common Areas, Landscaped Areas, Streets, or public easements;
- (b) a public school district is not a Member unless it owns a Lot other than that used as a public school; and,
- (c) a utility provider is not a Member unless it owns a Lot other than utility easements.

Membership in the Association is appurtenant to and cannot be separated from ownership of a Lot. Any transfer of fee simple title to any Lot automatically transfers membership in the Association to the new Owner. The word "Owner" as used in this Master Declaration does not include any Non-Member Owner.

2.2 **Member in Good Standing.** A Member will be a "**Member in Good Standing**" and eligible to vote if the Member:

- (a) has, within 10 days before the taking of any vote by the Association, fully paid all Assessments and other sums required herein and in the Association Documents;

- (b) does not have a Notice of Unpaid Assessments filed by the Association against any Lot owned by the Member;
- (c) has discharged all other duties and obligations to the Association as provided in the Association Documents; and,
- (d) has complied with the requirements of Section 5.7 of this Master Declaration.

The Board may determine the good standing of any Member at any time and shall make such determination with respect to all Members before any vote is taken by the Association. The Board may, but is not obligated to, waive the 10-day prior payment requirement and require only that such payment be made before the vote is taken. Any Member not declared by the Board to be a Member in Good Standing is disqualified from voting on matters before the Association until the Member in Good Standing status is attained and so declared by the Board.

2.3 Classes of Members. The Association will have two classes of voting Members:

- (a) Class A. "Class A Members" will be all Owners except Developer. Class A Members will be entitled to one vote for each Lot owned by the Class A Member. If a Member owns a Lot plus a portion of an adjacent Lot, the Member will only have one vote. If a Lot is owned by more than one Owner, the number of votes attributable to the Lot will be the same as if there was only one Owner, and the vote attributable to the Lot may be cast only if—before time of the vote in question—all Owners who own the Lot have delivered to the Board a written agreement setting forth how such vote is to be cast or designating one of such Owners to cast the vote attributable to such Lot. Any Owner who is not a natural person must designate to the Board in writing an individual who has the authority to represent such Owner in Association matters and to cast all votes of such Owner. An Owner may delegate its right to vote to any tenant occupying the Lot owned by such Owner provided such delegation is made in writing to the Board.
- (b) Class B. The sole "Class B Member" will be Developer. The Class B Member will be entitled to three votes for each Lot owned by Developer; but the Class B Member will cease on the Conversion Date, and Developer thereafter will become a Class A Member for so long as Developer owns any Lot.

2.4 Quorum, Voting, and Notices. Members holding 25.0% of the aggregate votes entitled to be cast by all Members in Good Standing—all of whom must be represented at a meeting of the Members in person or by legitimate proxy in a form approved by the Board—will constitute a quorum (a "Quorum") for voting on matters brought before the Members at meetings of the Association. If a Quorum is not present at a meeting, the meeting shall be adjourned and another notice of the meeting shall be given to the Members stating the date of the next meeting which must not be less than 10 days nor more than 30 days after the previous meeting. Such notice shall advise the Members that a Quorum was not present at the previous meeting and that the requirements for a Quorum at the next meeting will be 5.0% less. Notice requirements for all actions of the Association which require approval by its Members are in the Association Bylaws.

The term "Majority Vote of the Members" means, at the time such vote is taken, the vote of a Quorum of Members in Good Standing. A Majority Vote of the Members will be the act of the Members.

- 2.5 No Cumulative Voting. There will be no cumulative voting.

### Article 3

#### Assessments

3.1 Covenants for Assessments. The Owner of a Lot, by acceptance of a deed or other conveyance document (*whether or not any agreement to pay Assessments is included in such deed or document*), will be deemed to covenant and agree to pay to the Association, or to any Person designated by the Association, all of the following assessments (collectively the "Assessments"): 7

- (a) Regular Assessments as provided in Section 3.2;
- (b) Special Group Assessments as provided in Section 3.3;
- (c) Special Owner Assessments as provided in Section 3.4;
- (d) Transfer Assessment as provided in Section 3.5;
- (e) Annual Membership Dues as provided in Section 3.6; and,
- (f) City PID Assessments as provided in Section 3.7.

3.2 Regular Assessments. "Regular Assessments" will be determined, allocated, and expended for 12-month periods that coincide with the annual budget period of the PID, and each such 12-month period will constitute a fiscal year of the Association. If there is no annual PID budget period, the fiscal year of the Association will be a calendar year. Regular Assessments will be used to pay Common Expenses. Regular Assessments for each fiscal year of the Association will be set by the Board 30 days before the expiration of the preceding fiscal year or as soon thereafter as reasonably possible. Regular Assessments will be allocated among the Owners (*including Developer*) in the same manner and proportion as the costs and expenses of the PID are assessed by the City against the Owners. If the City for any reason has not made PID assessments before the time the Board determines that Regular Assessments are necessary for the payment of Common Expenses, the Board may levy Regular Assessments and allocate them in an equitable manner as determined by the Board. The Board has the right at any other time to levy Regular Assessments to pay Common Expenses not paid or scheduled to be paid by PID to be allocated on the same basis as the City last allocated them, or if the City has not previously made such allocation, the allocation will be established by the Board in an equitable manner. If the City fails to make a PID assessment for any fiscal year, unless approved by a Majority Vote of the Members (*with the Class B Member only having one vote for this purpose for each Lot owned by the Class B Member*):

- (a) the first Regular Assessments thereafter levied may not exceed in the aggregate 110.0% of the last year's PID assessments by the City; and,

- (b) Regular Assessments thereafter may not exceed in the aggregate 110.0% of the prior year's Regular Assessments.

Should a surplus from Assessments—other than necessary reserves—exist at the end of any fiscal year, the Board must reduce the next year's Regular Assessments by an amount equal to such surplus.

3.3 Special Group Assessments. With the approval of a Majority Vote of the Members (with the Class B Member having only one vote for this purpose for each Lot owned by the Class B Member), the Board may levy at any time by written notice to Owners "Special Group Assessments" to pay any unanticipated expenses that normally would have been paid by Regular Assessments. Special Group Assessments will be allocated in the same manner as Regular Assessments.

3.4 Special Owner Assessments. The Board may levy "Special Owner Assessments" against an Owner to pay the costs and expenses:

- (a) to maintain improvements and landscaping on a Lot if the Owner of the Lot fails to properly maintain the improvements and landscaping;
- (b) to repair and replace the Enhanced Public Improvements if they are damaged or destroyed, directly or indirectly, by the acts or omissions of an Owner or its agents, contractors, employees, or occupants or visitors of an Owner, as determined by the Board; and,
- (c) of reasonable attorney's fees and court costs incurred to enforce the Association Documents and for the collection of the Assessments.

3.5 Transfer Assessment. Each Owner—except Developer—must pay or cause to be paid to the Association a "Transfer Assessment" each time title to a Lot is transferred. If title to a Lot is transferred because of a foreclosure, the Transfer Assessment must be paid by either the lender foreclosing on a Lot or the buyer at the foreclosure sale. Upon receipt of the Transfer Assessment, the Association or its designee will issue a "Transfer Certificate". Until changed by the Board, the Transfer Assessment is \$50.00. The buyer of a Lot must furnish the Association with the owner information required in Section 5.7.

3.6 Annual Membership Dues. Until changed by the Board, "Annual Membership Dues" will be \$36.50. When a Lot is purchased from Developer, the Annual Membership Dues will be prorated and collected as of the date of the sale for the remainder of the calendar year. Thereafter, Annual Membership Dues will be due and payable as provided in Section 3.8. If a Member owns a Lot plus a portion of an adjacent Lot, the Member will owe the full amount of the Annual Membership Dues on the whole Lot and the prorated portion of the Annual Membership Dues on the partial Lot as determined by the Board.

3.7 City PID Assessments. Each Owner must pay or cause to be paid to the City, its successors and assigns, all Assessments pursuant to Chapter 372 of the Texas Local Government Code as then in effect (the "City PID Assessments").

3.8 Due Date of Assessments. Regular Assessments and Annual Membership Dues are payable within 30 days after an invoice is mailed to an Owner. The due date of Special Group Assessments or Special Owner Assessments will be fixed in the written notice levying such

Assessment, but such due date will not be earlier than 15 days after the date of such notice. A Transfer Assessment is due before the deed conveying the Lot is filed in the Official Public Records of Randall County, Texas. City PID Assessments are due on or before December 31 of each year. Each Owner, if requested by the holder of a first lien on the Lot owned by such Owner, must pay the Assessments to such lienholder as a part of the escrow amounts included in monthly mortgage payments. The lienholder will be obligated to pay the Assessments to the extent it has funds in escrow for such purpose.

3.9 Personal Obligation for Payment of Assessments. The Assessments are personal obligations of the Owner of each Lot. No Owner may exempt himself from liability for Assessments. If an Owner does not pay an Assessment in full when due, such Owner must pay interest on the unpaid Assessment from the due date until paid at the Default Rate of Interest together with all costs and expenses of collection incurred by the Association, including but not limited to reasonable attorney's fees. A service charge in an amount established by the Board may be charged for each check for an Assessment which is returned unpaid. The Board may reject any partial payment and demand full payment, or the Board may accept partial payment without waiving any rights to the remaining balance. The obligation of an Owner to pay Assessments remains the personal obligation of the Owner, and such obligation will not pass to transferees from such Owner unless expressly assumed by the transferees; but the lien securing the Assessments provided for below will be unaffected by the transfer of any ownership interest in a Lot. In the event of any transfer of any ownership interest in a Lot, it will be the obligation of the transferring Owner to disclose the existence of all sums due and owing the Association to the transferee, the title company designated to handle such transaction, the financing entity, and any other party involved in the transaction. Such disclosure must be given before the date on which the transaction is to be consummated. A copy of the disclosure must also be sent to the Association or its designee at the same time.

3.10 Assessment Lien. All future Assessments and all unpaid Assessments, together with interest from the due date until paid at the Default Rate of Interest and together with the costs and expenses of collection incurred by the Association, including but not limited to reasonable attorney's fees and court costs, are secured by a continuing contractual lien (the "Assessment Lien") against the affected Lot. The Assessment Lien encumbers each Lot and is binding on the Owner thereof and the Owner's heirs, successors, devisees, personal representatives, and assigns. The Assessment Lien attaches to each Lot as of the date of this Master Declaration and on Lots included in future Plats as of the date future Plats are recorded in the Official Public Records of Randall County, Texas, and is superior to all liens other than:

- (a) a deed of trust or mortgage lien against the Lot;
- (b) any sale and leaseback agreement or lease and subleaseback agreement whereby an Owner transfers a Lot and simultaneously acquires a possessory interest under a lease or other agreement with the transferee;
- (c) the lien securing real estate taxes; and,
- (d) the lien securing assessments to pay costs and expenses of the PID;

but the liens described in (a) and (b) above will be inferior and subordinate to the lien provided for in this Section 3.10 to the extent of any unpaid Assessments described in a Notice of Unpaid Assessments recorded in the Official Public Records of Randall County, Texas, before the date the liens described in (a) or (b) above are recorded.

3.11 Disclosure. ALL LOTS ARE CONVEYED AND ACCEPTED BY THE OWNER THEREOF SUBJECT TO THE ASSESSMENT LIEN. THE ASSESSMENT LIEN ATTACHES TO ALL LOTS AND IS SUPERIOR TO ANY HOMESTEAD RIGHTS THAT MAY BE ASSERTED BY THE PURCHASERS OF LOTS.

3.12 Unpaid Assessments. To evidence unpaid Assessments, the Association may prepare a written notice of unpaid Assessments ("Notice of Unpaid Assessments") setting forth:

- (a) the amount of the unpaid Assessments;
- (b) the amount of interest owed thereon computed at the Default Rate of Interest from the due date;
- (c) the amount of costs and expenses of collection incurred by the Association, including but not limited to reasonable attorney's fees;
- (d) the name of the Owner of the affected Lot; and,
- (e) a description of the affected Lot.

Such notice must be sent to the Owner of the affected Lot and recorded in the Official Public Records of Randall County, Texas. The Association must record—at the affected Owner's expense—a release of any recorded Notice of Unpaid Assessments when the Assessments, interest, and all collection costs, including reasonable attorney's fees, have been paid in full.

3.13 Certificate of Assessment. Upon request by an Owner, the Association must furnish a certificate setting forth any unpaid Assessments owed by an Owner.

3.14 Enforcement. The Assessment Lien may be enforced by judicial foreclosure or by non-judicial foreclosure through a public sale according to Section 51.002, Texas Property Code, as then amended. In addition, the Association may institute suit against the Owner of the affected Lot to obtain a judgment for all sums due and owing to the Association. The Association may purchase any Lot at foreclosure and may acquire, hold, lease, mortgage, convey, or otherwise deal with such Lot. For value received and to secure payment of the Assessments, Developer conveys the Lots to Garland D. Sell, Trustee, whose address is 504 South Polk, Suite 101, Amarillo, TX 79101-2318, and to his successors ("Trustee"), in trust. Developer warrants and agrees to defend title to the Lots by, through, and under Developer, but not otherwise. If a Notice of Unpaid Assessments is filed and the Owner of the affected Lot pays the delinquent Assessments according to the terms hereof, the Notice of Unpaid Assessments will have no further effect.

3.15 Enforcement Rights. The Association has the following rights to enforce payment of Assessments non-judicially:

- (a) The Association may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.

(b) If an Owner defaults in payment of an Assessment and the default continues after the Association gives the Owner notice of the default and the time within which it must be cured, as may be required by law or by written agreement, then the Association may:

- (1) request Trustee to foreclose the lien, in which case, the Association or the Association's agent will give notice of the foreclosure sale as provided by the Texas Property Code, as then amended; and,
- (2) purchase the Lot at any foreclosure sale by offering the highest bid and then have the bid credited on the Assessments.

3.16 Trustee's Duties. If requested by the Association to foreclose a lien, Trustee will:

- (a) either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code, as then amended;
- (b) sell and convey the Lot to the highest bidder for cash with a general warranty binding the Owner, subject to prior liens and to other exceptions to conveyance and warranty; and,
- (c) from the proceeds of the sale, pay, in this order:
  - (1) expenses of foreclosure, including a reasonable commission to Trustee;
  - (2) to the Association, the full amount of the Assessments, interest, attorney's fees, and other charges due and unpaid;
  - (3) any amounts required by law to be paid before payment to Owner; and,
  - (4) to the Owner, any balance.

3.17 General Foreclosure Provisions.

- (a) If a Lot is sold under this Master Declaration, the Owner must immediately surrender possession to the purchaser. If the Owner fails to do so, the Owner will become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
- (b) Recitals in any Trustee's deed conveying the Lot will be presumed to be true.
- (c) Proceedings under this Master Declaration, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

Article 4Association Board of Directors

4.1 Creation of Board. The Association will be governed by the Board elected by a Majority Vote of the Members. The size and composition of the Board, its method of election, and its duties and authorities will be as provided herein and in the Association Documents. The Board will exist and function solely for the benefit of the Property, the Association, and the Members.

4.2 Use of Assessment Funds. The Board will be responsible for setting, collecting, and disbursing Assessments except City PID Assessments. The Board has the authority to spend funds from Assessments for:

- (a) the payment of Common Expenses;
- (b) the employment of personnel, accountants, consultants, managers, or contractors to manage and operate the Association; but the directors of the Association will not receive any compensation for serving in such capacity;
- (c) the purchase of a policy or policies of insurance insuring the Association and its directors, officers, employees, and representatives against any liability incident to the management and operation of the Association;
- (d) the purchase of fidelity bonds as provided in Section 4.6(c);
- (e) the payment of general and administrative costs necessary for the management and operation of the Association or for the enforcement of the Association Documents;
- (f) the payment of costs incurred in the exercise and performance of the rights and obligations of the Association by its directors, officers, employees, and representatives;
- (g) the payment of attorney's fees and other costs for the enforcement of the terms hereof and the Restrictions; and,
- (h) the payment of other reasonable expenses.

4.3 Additional Authorities and Duties of the Board. The Board has the following additional authorities and duties, including the right to spend funds from Assessments to pay the costs thereof:

- (a) to enter into agreements or contracts on behalf of the Association;
- (b) to borrow funds, secured by an assignment or pledge of Assessments if required, necessary for the management and operation of the Association;
- (c) to maintain one or more bank accounts in the name of the Association;
- (d) to sue or to defend in any court on behalf of the Association;

- (e) to make, or cause to be made, any tax returns, reports, or other filings on behalf of the Association;
- (f) to adjust the amount of, collect, and use insurance proceeds for the purposes for which they were intended and, if the insurance proceeds are insufficient, to provide full reimbursement through the imposition of Special Group Assessments or Special Owner Assessments, whichever is applicable;
- (g) to change the amount of the Transfer Assessment;
- (h) to change the amount of the Annual Membership Dues;
- (i) to enforce the Association Documents;
- (j) to maintain books and records with respect to the business of the Association and with respect to the levy, collection, receipt, administration, expenditure, and disposition of Assessments and other funds of the Association according to sound accounting practices, and to permit any Owner to inspect and copy the same upon reasonable notice during normal business hours at an office of the Association or Developer; and,
- (k) to perform such other duties and functions as are necessary to carry out the rights, duties, and obligations of the Association.

4.4 Affiliated Contracts. The Association may contract with any Owner, including without limitation Developer or an Affiliate, for performance of services which the Association is obligated or authorized to perform. All such contracts must be at competitive rates then prevailing for such services and upon other terms and conditions and for the consideration as the Board considers advisable and in the best interest of the Association provided the level of service received is consistent with that available from unrelated third parties.

4.5 Liability Limitations. No Owner or director, officer, employee, or representative of the Association will be personally liable for the debts, obligations, or liabilities of the Association, regardless of how the debts, obligations, or liabilities are evidenced. The directors, officers, employees, and representatives of the Association will not be liable for any act or omission (*even if such act or omission constitutes negligence*) unless the act or omission constitutes willful misconduct or bad faith and, to the extent not covered by insurance, the Association must indemnify such directors, officers, employees, and representatives from and against all cost, expense, loss, or liability, including but not limited to reasonable attorney's fees suffered or incurred by such persons as a direct or indirect result of their having served the Association in their respective capacities. The cost of the indemnity set forth above may be allocated among the Owners as Special Group Assessments or Special Owner Assessments, whichever is applicable. The right to indemnification set forth above will not be exclusive of any other rights to which a director, officer, employee, or representative may be entitled at law or in equity.

4.6 Insurance. The Association may obtain and maintain:

- (a) liability insurance covering directors, officers, employees, and representatives of the Association and the Enhanced Public Improvements

in such coverages, amounts, and with such endorsements as the Board considers to be necessary and reasonable;

- (b) errors and omissions insurance for directors, officers, employees, and representatives of the Association;
- (c) fidelity bonds for directors, officers, employees, and representatives of the Association; and,
- (d) casualty insurance on Enhanced Public Improvements.

All insurance policies must be issued by financially sound companies licensed to do business in Texas. The Association must use net insurance proceeds for the purpose the insurance was obtained, and any proceeds still remaining must be deposited by the Association in its reserve fund. Should insurance proceeds be insufficient to fully satisfy any loss or damage, the Association may levy Special Group Assessments or Special Owner Assessments, whichever is applicable, to cover such deficiency.

## Article 5

### General Provisions

5.1 Binding Effect and Duration. The provisions hereof run with title to all Lots, bind all Owners and occupants of all Lots, and inure to the benefit of and are enforceable by Developer, any Affiliate, the Association, and any Owner, and their respective heirs, executors, legal representatives, successors and assigns, and will be effective for a period of 60 years from the date this Master Declaration is recorded in the Official Public Records of Randall County, Texas. This Master Declaration will thereafter extend automatically for successive periods of 10 years unless amended as provided in Section 5.3.

5.2 Interpretation. The provisions hereof must be liberally interpreted and, if necessary, be extended or enlarged by implication to make them fully effective. The Board has the right to resolve all questions arising under or in connection with the Association Documents and the right to construe and interpret their provisions. Any determination, construction, or interpretation made by the Board, in the absence of an adjudication by a court of competent jurisdiction that such action was an abuse of discretion, will be binding on the Owners. The provisions hereof must be given full force and effect notwithstanding the existence of any zoning ordinance, building codes, or other applicable regulations which are less restrictive. The effective date of this Master Declaration will be the date it is recorded in the Official Public Records of Randall County, Texas. The captions of each Article and Section hereof are inserted only for convenience and are not intended to be used to define, limit, extend, or otherwise modify the Article or Section to which they refer. This Master Declaration is construed under and according to the laws of the State of Texas.

5.3 Amendments. This Master Declaration may be amended or terminated, in whole or in part, by a Majority Vote of the Members; but:

- (a) until the Conversion Date, no amendment or termination will be effective without the written approval of Developer; and,

- (b) until Plats on all of the Property have been recorded in the Official Public Records of Randall County, Texas, no amendment or termination will be effective without the written approval of the Land Owners.

Notwithstanding the foregoing, Declarant, without the joinder of any other party, may make minor changes or amendments to this Master Declaration to correct or clarify errors, omissions, mistakes, or ambiguities contained herein or to make changes required by any governmental agency. No amendment or termination will be effective until a written instrument setting forth the terms thereof has been executed by the parties whose approval is required as set forth above and has been recorded in the Official Public Records of Randall County, Texas.

5.4 Enforcement. Developer, any Affiliate, the Association, and any Owner have the right, but not the obligation, to enforce the provisions hereof. Enforcement may be made by proceedings at law or in equity. The rights, powers, and remedies provided herein are cumulative, and the exercise by any party of any particular right, power, or remedy will not be deemed an election of remedies and will not preclude such party from resorting to other rights, powers, or remedies. With respect to any litigation hereunder or under the Association Documents, the prevailing party will be entitled to recover reasonable attorney's fees and court costs from the non-prevailing party.

5.5 No Waiver or Obligation to Enforce. No delay or failure by an aggrieved party to invoke any right, power, or remedy available to it for a breach of the Association Documents or the Restrictions will be considered a waiver by that party of such right, power, or remedy upon the recurrence or continuance of the breach or the occurrence of a different breach. Neither Developer nor an Affiliate nor the Association nor their respective officers, directors, employees, or representatives will be obligated to take any action to enforce the Association Documents or the Restrictions.

5.6 Severability. If any condition, covenant, or provision 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 provision, each of which will remain in full force and effect.

5.7 Owner Information. Except for those Owners who purchase Lots from Developer, any Person, on becoming an Owner of a Lot, must furnish to the Association or its designee a true and correct copy of the original of the recorded instrument vesting that Person with an interest or ownership in the Lot. A Person will not be deemed to be a Member in Good Standing or be entitled to vote at any annual or special meeting of Members unless this requirement is first met. Each Owner must furnish to the Association written notice of an address for receiving notices pursuant to the Association Documents. Each Owner must notify the Association in writing of the name and address of all Persons occupying any Lot in which the Owner has an interest. It is the responsibility of the Owner and any occupant of a Lot to keep the required information current and to advise the Association of any changes. Absent any other written notice, notices to an Owner may be sent to the street address of the Lot owned by such Owner.

5.8 Additional Property. The Land Owners may in the future, without the joinder of any other Person, subject additional tracts of land to this Master Declaration by recording in the Official Public Records of Randall County, Texas, supplements to this Master Declaration containing the descriptions of the additional tracts of land.

5.9 Notices. Any notice required in the Association Documents to be given will be deemed to have been given when hand delivered with written evidence of receipt or when deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed:

- (a) for notice to an Owner, to the address of the Owner as shown on the records of the Association at the time of the mailing; and,
- (b) for notice to Developer or the Association: 3905 Bell St., Amarillo, TX 79109, or to such other address specified by Developer or the Association in a document recorded for such purpose in the Official Public Records of Randall County, Texas.

5.10 Mortgagees. The holder of a mortgage affecting a Lot will, upon written request to the Association, be notified in writing by the Association of any default under the Association Documents by the Owner of the mortgaged Lot, and the mortgage holder has the right to cure the default within the times herein provided for cure by the Owner.

5.11 Actions of Declarant, Developer, Board, and Association. Wherever the phrases "Declarant may", "Developer may", "the Board may", or "the Association may" appear in the Association Documents, such phrases mean, respectively; "Declarant will have the right and authority, in its sole discretion", "Developer will have the right and authority, in its sole discretion", "the Board will have the right and authority, in its sole discretion", and "the Association will have the right and authority, in its sole discretion". Wherever the Association Documents provide for a determination, decision, consideration, opinion, belief, judgment, declaration, or other similar action to be given or rendered by Declarant, Developer, an Affiliate, the Board, or the Association, such determinations, decisions, considerations, opinions, beliefs, judgments, declarations, or other actions will be given or rendered in the sole discretion of Declarant, Developer, the Affiliate, the Board, or the Association, as the case may be, unless the Association Documents specifically provide to the contrary.

5.12 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 28<sup>th</sup> day of August, 2001.

DECLARANT:

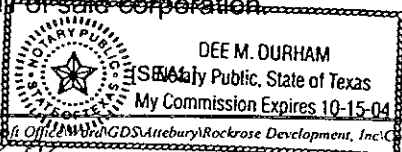
Rockrose Development, Inc.,  
a Texas corporation

By: [Signature]  
Matt Griffith, Vice President

THE STATE OF TEXAS  
COUNTY OF RANDALL

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This instrument was acknowledged before me on this the 28 day of August, 2001, by Matt Griffith, Vice President of Rockrose Development, Inc., a Texas corporation, on behalf of said corporation.



[Signature]  
Notary Public