

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
VIA CANTERA HOMEOWNER'S ASSOCIATION, INC.
A NON-PROFIT CORPORATION
HIDALGO COUNTY, TEXAS

ADOPTED MAY 20th, 2004

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
VIA CANTERA SUBDIVISION**

THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF HIDALGO §

WHEREAS, SECOND STREET ORANGE GROVE, L.P. (Developer), hereinafter call "Declarant", is the owner in fee simple of certain real property located in Hidalgo County, Texas and more fully described as follows:

All of Via Cantera Subdivision, an addition to the City of McAllen, Hidalgo County, Texas, pursuant to the plat recorded in the Map Records of Hidalgo County, Texas in Volume 45, Page 2 of the Map Records of Hidalgo County, Texas, and as further amended in the Amended Plat recorded in Volume 45, Page 50 of the Map Records of Hidalgo County, Texas.

WHEREAS, Declarant desires to subject all of the above described property to the protective covenants, conditions, restrictions, liens and charges as hereinafter set forth, pursuant to an established general plan for the improvement and development of said property.

NOW, THEREFORE, it is hereby declared that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and shall be binding on all parties having any part thereof, and their heirs, successors and assigns and which easements, restriction, covenants and conditions shall inure to the benefit of each owner thereof.

**ARTICLE I.
DEFINITIONS**

Section 1. "Association" shall mean and refer to VIA CANTERA HOMEOWNERS ASSOCIATION, INC., a non profit corporation, its successors and assigns, which was formed by the Owners for the purpose of enforcing the covenants, restrictions and agreements set forth herein.

Section 2. "Common Area" shall mean and refer to all real property located within the boundaries of the Subdivision which are not otherwise located within or a part of any Lot, as set forth on the plat or map of the Subdivision as recorded in the Map Records of Hidalgo County, Texas, together with any improvements located thereon, including, but not limited to, all streets, alleys, and guardhouse located within the subdivision. Additionally, the "Common Area" shall

extend to and mean all of the lands lying within Hidalgo County Water Control & Improvement District #2 (hereinafter called "District") right-of-way lying directly West and adjacent to this Subdivision, which includes the fences and the two foot (2') fence easement surrounding the entire subdivision on the North, South, East and West of the subdivision.

Section 3. "Declarant" shall mean and refer to in his capacity as the initial developer of the Subdivision, and his successors and/or assigns, provided that in order to be a successor or assignee declarant, the subsequent developer must acquire all of the remaining lots which have not been initially sold by the initial developer.

Section 4. "Lot" shall mean any of the Seventy-one (71) numbered plots of land shown on the recorded subdivision map referred to above with the exception of the common area which includes the permissive use area in the District lands. No "half" or "partial" lots will be sold, and no lot can incorporate a portion of any adjacent lot. In the event that two separate lots, with existing structures are purchased by the same owner, those lots cannot be combined into one lot.

Section 5. "Maintenance" shall mean the exercise of reasonable care to keep buildings, streets, alleys, curbs, fences, sprinklers, fountains, signs, jogging trails, landscaping, lighting, and other related improvements and fixtures, whether enumerated or not, in the common area, in a condition comparable to their original condition, normal wear and tear expected. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weed-free environment for optimum plant growth.

Section 6. "Member" shall mean every person or entity who holds membership in the association.

Section 7. "Mortgage" shall mean a conventional mortgage or a deed of trust.

Section 8. "Mortgagee" shall mean a holder of a conventional mortgage or a beneficiary under or holder of a deed of trust.

Section 9. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the property, and shall include contract sellers, but shall not include those holding title merely as security for performance of an obligation.

Section 10. "Subdivision" shall mean the subdivided real property hereinafter described and such additions thereto as may be brought within the jurisdiction of the association as hereinafter provided.

Section 11. "Committee" shall mean the Architectural Control Committee as the same is set out in Article VIII hereinafter.

Section 12. "Permissive Use" Water District #2 has lands lying in the common area West of the subdivision (save and except the right-of-way for East Duke Avenue, which was purchased from the Water District) which are the subject matter of Minutes of our meeting with the Water District dated _____. Declarant and its successors and assigns cannot construct permanent structures within said area, but will landscape and maintain the area. It is also the agreement with the City of McAllen that the City of McAllen will provide the water for the maintenance of the landscaping of this area.

Article II.

ANNUAL MEMBERSHIP, VOTING RIGHTS AND POWERS

Section 1. Membership. Every owner of a lot shall be a member of the association; membership shall be appurtenant to and may not be separated from ownership of a lot.

Section 2. Voting Rights. The association shall have two (2) classes of voting member as follows:

Class A. Class A members shall be all owners with the exception of Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in a given lot, all persons shall be member and the vote for such lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any lot owned by Class A members.

Class B. Class B members shall be Declarant, who shall be entitled to exercise five (5) votes for each lot owned. The Class B membership shall cease and converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

Section 3. Powers. The Association, in addition to the powers it already possesses in its charter, shall have the power to own real and personal property, to open bank accounts, to enforce this Declaration as herein provided, to obtain a policy or policies of insurance insuring the Association and its members, to make physical improvements to the Common Area as the Association shall deem to be in the best interest of the Subdivision and the owners, to contract for legal, accounting and other professional services, to contract for security, paving, landscaping and/or any other services, to borrow funds, to employ employees directly or through an operator, to bring an action(s) for injunctive relief and/or damages against any Owner for Failure to comply with any Article and/or Section herein, and to otherwise do that which it believes necessary to protect and defend the Common Area and Facilities located therein, the Association and/or any of its properties from loss or damage, by suit or otherwise.

ARTICLE III.
ASSESSMENTS

Section 1. Lien and personal obligation of assessments. Declarant hereby covenants for each lot within the subdivision, and each owner of a lot is hereby deemed to covenant by acceptance of his deed for such lot, whether or not it shall be so expressed in his deed, to pay to the association (1) annual assessments and (2) special assessments for capital improvements,. Such assessments will be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and a continuing lien on each lot against which such an assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person or persons who owned the lot at the time the assessment fell due, but such personal obligation shall not pass to the successors in title of such person or persons unless expressly assumed by them. However, all future transferees of lots shall have the obligation, prior to purchase, to verify with the Association and/or Declarant that such assessments have been paid to date and that the property to be acquired is free and clear of all assessed indebtedness.

Section 2. Purpose of annual assessments

. The annual assessments levied by the association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents in the subdivision, and for the improvements, security, preservation, operation and maintenance of the common area and/or of improvements situated within same or within the control of the association. Annual assessments shall include and the association shall acquire and pay for out of the funds derived from annual assessments, the following:

(a) Maintenance and repair of the common area to the extent not performed by governmental authority or an Owner.

(b) Water, sewer, garbage, electrical, lighting, telephone, gas, ad other necessary utility service for the common area

(c) Acquisition of furnishings and equipment for the common area as may be determined by the association, including without limitation all equipment, furnishings, and personnel necessary or proper for the use of recreational facilities.

(d) Maintenance and repair of all structures in the common area, including but not limited to, alleys, fences, sprinkler systems, jogging trails, storm drains, sanitary sewers, street lighting, traffic markers, signs and private streets within the confines of the subdivision and/or the right of way of the Water District lying West of the subdivision and/or any maintenance and repair required by the City of McAllen,

(e) Fire Insurance covering the full insurable replacement value of the common area with extended coverage.

(f) Liability Insurance insuring the association against any and all liability to the public, to any owner, or to the invitees or tenants of any owner arising out of their occupation and/or use of the common area. The policy limits shall be set by the association, and shall be reviewed at least annually and increased or decreased in the discretion of the association..

(g) Workmen's compensation insurance to the extent necessary to comply with applicable law, and any other insurance deemed necessary by the board of directors of the association.

(h) A standard fidelity bond covering all members of the board of directors of the association and all other employees of the association in an amount to be determined by the board of directors.

(i) Any other materials, supplies, furniture, labor, services maintenance, repairs, structural alterations, insurance, taxes, or assessments which the association is required to secure or pay pursuant to the terms of this declaration or by law, or which shall be necessary or proper in the opinion of the board of directors of the association for the operation of the common areas, for the benefit of lot owners, or for the enforcement of these restrictions.

(j) In addition to the maintenance of the common area, the association shall provide exterior maintenance on each lot as follows. In the event an Owner of any lot, his family, guests, invitees, agents or others using the lot premises, shall fail to maintain the premises and the improvements situated thereon in a neat and orderly manner, the Declarant or the Committee shall have the right, through their agents and employees to enter upon said lot and repair, maintain and restore the lot and exterior of the buildings and any other improvements erected thereon, all at the expense of Owner, and such expense of maintenance or repairs shall be added to and become part of the assessment to which said lot is subject to.

(k) Maintenance and repair of all structures or improvements, formerly within the common area, if any, and which may be situated in an area dedicated and/or transferred to the public use in the future, as set forth in Article IV, Section 1 (b), for which the association reserves the right to continue the operation and concurrently has the obligation to maintain and repair.

Section 3. Fixing of and Maximum Annual Assessments. (a) Until the development of at least twenty-five percent (25%) of the lots in said subdivision, the annual assessment per lot shall be one thousand dollars (\$1,000.00) per lot, prorated monthly subject to Section 6 below.

(b) Commencing with and continuing thereafter, all assessments shall be fixed by the association in advance on January 1st of each calendar year, after giving due consideration to the anticipated cost of all common area maintenance obligations, and other costs of operating the

association. The association shall have the right to collect such assessments in advance on an annual basis. If at any time the association determines that the assessments for that fiscal year are insufficient to discharge all assessments to be incurred or payable during the assessment year by the association, the association may increase the assessments to cover such costs (incurred or to be incurred), and such increase shall become effective at the beginning of the next annual or quarterly assessment period. If required, assessments shall be prorated for the period from the commencement thereof to the end of the then current calendar year of the association.

(c) From and after the maximum annual assessment may be increased each year not more than twenty-five percent (25%) above the maximum assessment for the previous year without a vote of the members.

(d) From and after the maximum annual assessment may be increased above twenty-five percent (25%) by the vote or written assent of a majority of each class of members.

(e) The board of directors of the association may fix the annual assessment at an amount not in excess of the maximum prescribed herein.

Section 4. Special assessments for capital improvement. In addition to the annual assessments authorized above, the association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement (including, but not limited to street, alleys, lighting, utilities and guard house) on the common area, including fixtures and personal property related thereto. Any such assessment must be approved by a majority of each class of members.

Section 5. Notice and quorum for action authorized under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized by Section 3 or 4 shall be sent to all members not less than three (3) nor more than ten (10) days in advance of such meeting. In the event the proposed action is favored by a majority of each class of members, members who were not present in person or by proxy may give their assent in writing within three (3) days after the date of such meeting.

Section 6. Uniform rate of assessment. Both annual and special assessments must be fixed at a uniform rate for all lots, except where additional real estate is added to the initial lot and in such case, that specific assessment shall be increased proportionately to the additional amount of land annexed.

Section 7. Commencement and collection of annual assessments. The annual assessments provided for herein shall commence as to all lots on June 1, 2004. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The board of

directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of the due date thereof and shall fix the dates such amounts become due. Notice of the annual assessments shall be sent to every owner subject thereto. The association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the association, setting forth whether the assessment against a specific lot has been paid, and may, on or before February 15, of each year, cause to be recorded in the office of the County Clerk of Hidalgo County, a list of delinquent assessments as of that date.

Section 8. Effect of non-payment of assessments; remedies of the association. Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall bear interest at the maximum rate permitted by law from the due date until paid. The association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the common area or abandonment of his lot.

Section 9. Subordination of assessment lien to mortgages. The assessment lien provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the assessment lien as to payment which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IV. PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner of a lot shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to such lot, subject to the following rights of the association.

(a) The right to suspend the right of use of recreational facilities and the voting rights of any owner for periods during which assessments against his lot remain unpaid, and the right, after hearing by the board of directors, to suspend such rights for a period not exceeding three hundred sixty-five (365) days for any infraction of the published rules and regulations of the association.

(b) The right to dedicate or transfer all or any part of the common area, including any improvements, to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument executed by two-thirds (2/3) of each class members agreeing to such dedication or transfer has been duly recorded.

Section 2. Delegation of Use. Subject to such limitations as may be imposed by the laws, each owner may delegate his right of enjoyment in and to the common areas and facilities to the members of his family, his guests, tenants, and invitees.

Section 3. Easements of Encroachment. There shall exist reciprocal appurtenant easements as between adjacent lots and between each lot and any portion or portions of the common area adjacent thereto for any encroachment due to the accidental placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction, or alteration is in accordance with the terms of this declaration. Such easement shall exist to a distance of not more than one (1) foot as measured from any point on the common boundary between adjacent lots, and between each lot and any adjacent portion of the common area, along a line perpendicular to such boundary at such point. No easement for encroachment shall exist as to any encroachment occurring due to the willful conduct of an owner.

Section 4. Other Easements.

(a) Easements for installation and maintenance of utilities and drainage facilities are shown on the recorded subdivision map. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with or, or change the direction of flow of drainage facilities in the easements. The easement area of each lot and all improvements therein shall be continuously maintained by the owner of such lot, except for improvements for maintenance of which a public authority or utility company is responsible.

(b) No dwelling unit or other structure of any kind shall be built, erected, or maintained on any such easement, reservation, or right of way, and such easements, reservations, and rights of way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Declarant, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved.

(c) there shall exist appurtenant easements of access to all private streets, alleys and, as necessary, lots, within the subdivision to the City of McAllen, for the use of city personnel and equipments on city business.

Section 5. Right of Entry. The association, through its duly authorized employees, contractors, and delegated agents, shall have the right after reasonable notice to the Owner thereof, to enter any lot at any reasonable hour on any day to perform such maintenance as may be authorized herein, save and except in case of an emergency, which threatens either life or property, in which case advance notice shall not be required.

Section 6. No partition. There shall be no judicial partition of the common area, nor shall Declarant, or any owner or any other person acquiring any interest in the subdivision or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any lot owned in co-tenancy.

**ARTICLE V.
USE RESTRICTIONS**

Section 1. Residential Use. All lots, and each and every one thereof, are for single-family residential purposes only. No building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, rooming house, hospital, sanatorium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted or maintained on such premises, or on any part thereof, save and except the business of the Declarant and the transferees of the Declarant in developing all of the lots are provided in Section 18 below. No improvement or structure whatever, other than a quality private dwelling house, patio walls, swimming pool, garage, carport, or servants' quarters may be erected, altered, placed, maintained or permitted to remain on any lot in the Subdivision.

Section 2. Construction specifications. Any single story residence constructed on said Lots must have a ground floor area of not less than two thousand eight hundred (2,800) square feet, exclusive of open or screened porches, terraces, patios, driveways, carports and garages. The exterior walls of any residence shall consist of not less than eighty percent (80%) masonry or masonry veneer construction, unless the unanimous consent of the Committee is obtained. The roof shall either be flat, or have a pitch of not less than 7/12 meaning that for every 12 inches in from the edge of the roof, there shall be a rise of 7 inches. The roof consist of either a shake, wood shingle, tile or metal roof, with no requirement that wood be used and therefore no exception be made for composition shingles on pitched roofs. Flat roofs can be built up. No evaporative cooler or air conditioner shall be placed, installed, or maintained on the roof or wall of any building or structure. All coolers and air conditioning units shall be concealed from any view from the street.

Section 3. Setbacks. All buildings, structures, fences, hedges, outbuildings and appurtenances are subject to the setback restrictions noted in the Subdivision Plat. If two (2) or more Lots, or fractions thereof, are consolidated into a single building sit in conformity with the provisions of Section 4. Herein, these setback provisions shall be applied to such resultant building site as if it were one original, platted Lot.

Section 4. Consolidation and Partial Lots. None of said Lots shall be re-subdivided in any fashion, except that any person owning two (2) or more adjoining Lots may consolidate such Lots into a single building site, with the privilege of constructing improvements thereon as permitted by Sections 2 and 3 herein. No sale of a portion or fraction of a lot can be approved, nor can any

portion or fraction of a lot be consolidated with an adjoining lot. If there are any relocation or changing of easements or other matters necessary to consolidate lots, those matters shall be the responsibility of the purchaser or multiple lots.

Section 5. Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Subdivision Plat. No utility company, water district, political subdivision, or other authorized entity using the easement herein referred to shall be liable for any damage done by them or their assigns, agents, employees or servants to shrubbery, trees or flowers, or to other property of the Owners situated within any such easements.

Section 6. Noxious or Offensive Activities Prohibited. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, save and except Section 18 below.

Section 7. Occupancy. No private dwelling house erected upon any Lot shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed, except as herein required. Nor shall any residence, when completed, be in any manner occupied until made to comply with committee approved plans, and requirements herein and all other covenants, conditions reservations and restrictions herein set forth. No temporary house, temporary dwelling, temporary garage, temporary outbuilding, trailer home or other temporary structure shall be placed or erected upon any Lot either permanently or temporary unless approved in writing by the Committee. Rental of any servants' quarters is prohibited, the occupancy thereof being limited to either quests or servants of the Owner of said Lot, save and except Section 18 below.

Section 8. Signs. No signs of any character shall be allowed on any Lot except one sign of not more than five (5) square feet, advertising the property for sale or rent; provided, however, that Declarant and any other persons or entity engaged in the construction and sale of a residence within the Subdivision shall be the right, during the construction and sales period, to construct and maintain such facilities as may reasonable necessary for such construction and sales, including signs and storage areas, but not including a temporary residence or office, save and except Section 18 below.

Section 9. Garbage Tanks, Equipments, Etc. No Lot shall be used or maintained as a dumping round for rubbish or trash and no garbage or other waste shall be kept except in sanitary containers. All equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition. No elevated tanks of any kind shall be erected, placed or permitted on any part of such premises. All clotheslines, garbage cans, equipment, coolers wood piles or storage piles shall be walled or fenced in to conceal them from the view of the neighboring Lots, roads or streets. Plans for all enclosures of this nature must be approved by the Committee prior to construction, save and except Section 18 below.

Section 10. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lots, except that no more than two (2) dogs and two (2) cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes.

Section 11. Fences, Walls, Hedges and Utility Meters. No fence, wall, hedge or utility meter shall be placed or permitted to remain on any Lot nearer to the street or streets adjoining such Lot than is permitted for the main residence on such Lots. All fences shall be constructed of western cedar, redwood, masonry, brick or combination of masonry or brick and cedar or redwood, only. There shall be no chain-link or inferior constructed fences whatsoever, unless completely concealed within a fence constructed in accordance with this subparagraph. All cedar or redwood fencing shall be six (6) or eight (8) inch boards with a minimum height of six (6') feet with tops clipped two (2) inches on the top corners. There will be a maximum height of any fence of eight (8') feet, although an eight (8') foot masonry fence can be capped with the proper capping of no more than six (6") inches in height.

Section 12. Trucks, Buses and Trailers. No truck, bus, motor home, trailer, commercial vehicle, boat or other equipment shall be left parked or placed in the street in front of any lot; and such shall not be permitted on any Lot except for construction and repair equipment while the residence or residences are being built or repaired on such Lot; and no truck, bus, boat or trailer shall be parked in the driveway or any portion of the Lot in such manner as to be visible from the street.

Section 13. Prohibited Activities. No professional, business or commercial activity to which the general public is invited shall be conducted on any Lot.

Section 14. Utility Lines and Antennas. All Electrical service and telephone lines shall be placed underground. No exposed or exterior radio or television transmission or receiving antennas shall be erected, placed, or maintained on any of the Lots, but this restriction may be waived by the Committee. Any waiver of these restrictions shall not constitute a waiver as to other Lots, line or antennas.

Section 15. Garage. No garage or other outbuilding for less than two (2) cars shall be placed, erected or maintained upon any part of such premises, except for use in connection with a residence already constructed or under construction at the time that such garage or other outbuilding is placed or erected upon the Lot. Nothing herein shall be construed to prevent the incorporation and construction of a garage as a part of such dwelling house. All garages must be rear entry garages facing the alley to the rear of the house, with the exception of Lots 22 and 23, where those lots will have the option of facing the alley to the rear or the alley that runs East and West between Lots 22 and 23, which allows those two lots only the option of side entry garages. There will be no exception to this requirement, and in the event that any violation is made, this will be deemed to be an immediate violation of these Conditions, Covenants and Restrictions.

Section 16. Driveways. Driveways must be constructed of concrete, brick or other material receiving the approval of the Committee, only.

Section 17. Insurance. Nothing shall be done or kept on a Lot or on the common area which would increase the rate of insurance relating thereto without the prior written consent of the Association, and no Owner shall permit anything to be done or kept on his lot or the common area which would result in the cancellation of insurance on any residence or on any part of the common area, or which would be in violation of any law.

Section 18. Declarant's Special Rights. Declarant or the transferees of Declarant shall undertake the work of developing all lots included within the subdivision. The completion of that work, and the sales, rental, or other disposal of residential units is essential to the establishment and welfare of the subdivision as an ongoing residential community. In order that such work may be completed and the subdivision be established as a fully occupied residential community as soon as possible, nothing in this declaration shall be understood or construed to:

(a) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from doing, on any part or parts of the subdivision owned or controlled by Declarant or Declarant's transferees or their representatives, any act which they determine may be reasonably necessary or advisable in connection with the completion of such work.

(b) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from constructing and maintaining on any part or parts of the subdivision property owned or controlled by Declarant, Declarant's transferees, or their representative, such structures as may be reasonably necessary for the completion of such work, the establishments of the subdivision as a residential community, and the disposition of lots by sales, lease, or otherwise.

(c) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from conducting on any part or parts of the subdivision property owned or controlled by Declarant or Declarant's transferees or their representatives, the business of completing such work, of establishing the subdivision as a residential community, and of disposing of lots by sale, lease, or otherwise; or

(d) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from maintaining such sign or signs on any of the Lots owned or controlled by any of them as may be necessary in connection with the sale lease, or otherwise of subdivision lots.

As used in this section, the words "Its transferees" specifically exclude purchasers of lots improved with completed residences.

**ARTICLE VI.
OWNERS' OBLIGATION TO REPAIR**

Each owner shall, at his sole cost and expense, repair his residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

**ARTICLE VII.
OWNERS' OBLIGATION TO REBUILD**

If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence, to rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within two (2) months after the damage occurs, and shall be completed within six (6) months after the damage occurs, unless prevented by causes beyond the control of the Owner or Owners. All plans for rebuilding must be approved by the Committee.

**ARTICLE VIII.
ARCHITECTURAL CONTROL**

Section 1. Architectural Control Committee. Declarant shall designate and appoint the initial Architectural Control Committee ("Committee") consisting of three (3) adult persons (at the sole discretion of Declarant), which Committee shall serve until eighty percent (80%) of the subdivision has been conveyed from Declarant. If any member becomes unable or unwilling to continue to serve during such term, Declarant, his successor or assigns, shall appoint a successor to finish the respective term. A majority of the committee may designate a representative to act for it. Neither the members of the Committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. After the sale of eighty percent (80%) of the lots by Declarant, the duties, rights, powers and authority of the Committee shall automatically transfer, without any further formality, to the Association. Further, any or all of the duties, rights, powers and decision of the Committee, to the Association. From and after the date of such assignment, the Association shall have full right, authority and power, and shall be obligated to perform the functions of the Committee as provided herein.

Section 2. Function. The Committee shall perform the functions provided for and consistent with the provisions this Declaration.

Section 3. Powers. The Committee shall have and exercise the powers and rights provided for in and consistent with the provisions of this Declaration. Each Committee Member shall one (1) vote. Except in those instances in this Declaration where the unanimous action all Committee Members is required for the Committee to make a decision or take an action, no action shall be taken or any decision made by the Committee except with concurrence of not less than two (2) Committee Members, however, a designated representative approved unanimously by all three (3) Committee Members shall have the sole power to act on behalf of the Committee. The designated representative's power may be revoked by a written communication to all lot owners. Each Committee Member shall be entitled to receive (but may waive) not less than five (5) days written notice of each meeting of the Committee and of each action proposed to take and decision proposed to be made by the Committee (whether or not at a meeting). The Committee may adopt such Bylaws to govern the performance of its functions under this Declaration as the Committee Members may deem appropriate, provided that no provision of such Bylaws shall be contrary to any portion of this Declaration.

Section 4. Approval of Plans and Specifications. No building, fence, wall, road, driveway or other structure shall be commenced erected, altered or maintained upon the Properties, nor shall any exterior addition to, or change or alteration therein, be made except as set forth below, until samples of the brick or exterior paint (if brick is not be used) and roofing materials, and the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall be submitted to, and approved in writing by, the Committee as to the harmony of external design and location of such improvements in relation to the surrounding structures and topography.

Section 5. Failure of Committee to Act. In the event that any plans and specifications are submitted to the Committee as provided herein, and a written receipt of delivery is obtained, and such Committee shall fail either to approve or reject such plans and specifications for a period of thirty (30) days following such submission, approval by the Committee shall have required, and full compliance with the Article shall be deemed to have been had.

Section 6. Failure to Comply. Failure to comply with Section 4 herein shall submit the respective Lot Owner to injunctive relief and/or damages, pursuant to Article II, Section 4. The defendant Lot owner shall pay all costs of court and attorney's fees borne by the Association or other entity bringing such action should the Association or other entity, as the case may be, prevail.

ARTICLE IX.

GENERAL PROVISIONS

Sections 1. Enforcement. Declarant, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this declaration.

Failure by Declarant, the Association, or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendments. Covenants and restrictions of this declaration may be amended by duly recording an instrument executed and acknowledged by not less than three-quarters (3/4) of the lot owners other than Declarant and Declarant, so long as Declarant shall own lots in the subdivision. In other words, the Declarant must consent to any amendment so long as Declarant owns lots in the subdivision; thereafter three-quarters (3/4) of the lot owners may amend these restrictions.

Section 4. Subordination. No breach of any of the conditions herein contained or reentry by reason of such breach shall defeat or render invalid the lien of any mortgage made in good faith and for value as to the subdivision or any lot therein; provided, however, that such conditions shall be bind on any owner whose title is acquired by foreclosure, trustees' sale or otherwise.

Section 5. Duration. The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, Association, or any member thereof for a period of thirty (30) years from the date here of, and thereafter shall continue automatically in effect for additional periods of ten (10) years, unless otherwise agreed to in writing by the then owners of at least three-quarters (3/4) of the subdivision lots.

SIGNED this 20th day of May, 2004.

SECOND STREET ORANGE GROVE, LP
Developer

BY: A.D. & MONTALVO, L.L.C.
GENERAL PARTNER

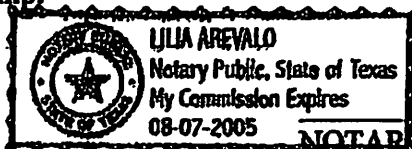
BY: 
ANTUN T. DOMIT, Member

BY: 
JOSE L. MONTALVO, Member

THE STATE OF TEXAS

COUNTY OF HIDALGO

This instrument was acknowledged before me on this the 20th day of May, 2004, by the said ANTUN T. DOMIT, Member of A.D. & MONTALVO, L.L.C., a Texas Limited Liability Company, as General Partner of Second Street Orange Grove, LLP., a Texas Limited Partnership, on behalf of partnership.

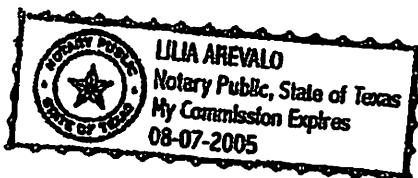


Lilia Arevalo
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS

COUNTY OF HIDALGO

This instrument was acknowledged before me on this the 20th day of May, 2004, by the said JOSE L. MONTALVO, Member of A.D. & MONTALVO, L.L.C., a Texas Limited Liability Company, as General Partner of Second Street Orange Grove, LLP., a Texas Limited Partnership, on behalf of partnership.



Lilia Arevalo
NOTARY PUBLIC, STATE OF TEXAS

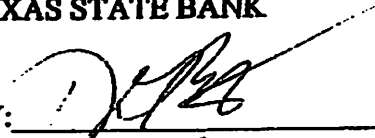
THE STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

RATIFICATION BY LIENHOLDER

Wherein TEXAS STATE BANK is the holder of a lien on the above referenced property and does hereby consent to and approve this Declaration of Covenants, Conditions and Restrictions.

Signed this the 10th day of May, 2004.

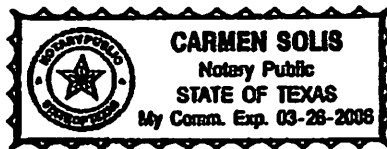
TEXAS STATE BANK

BY: 
Doug Bready

THE STATE OF TEXAS
COUNTY OF HIDALGO

This instrument was acknowledged before me on this the 10th day of May, 2004, by the said DOUG BREADY on behalf of Texas State Bank.


NOTARY PUBLIC, STATE OF TEXAS



Filed for Record in:
Hidalgo County, III
by J. D. Salinas, III
County Clerk
On: May 21, 2004 at 10:07A
As a Recording
Document Numbers: 1337430
Total Fees: 50.00
Receipt Number - 586874
By:
Anna Maria Muniz, Deputy

VIA CANTERA SUBDIVISION - ARCHITECTURAL CONTROL COMMITTEE (ACC)
OWNER & CONTRACTOR AGREEMENT
(Revised 12/21/2020)

The following requirements must be met by all owners and respective contractors building in Via Cantera Subdivision. All owners and respective contractors must follow the Declaration of Covenants, Conditions and Restrictions which have been filed for the Via Cantera Subdivision along with the following additional requirements:

- 1) Contractors must furnish commercial dumpster which shall be enclosed on all four sides and must be emptied on a regular basis, on site at all times during construction.
- 2) No trash shall be placed on any vacant lots, streets or alleys and no parking is allowed on vacant lots. No overnight vehicle parking or trailers unless they are on the lot under construction.
- 3) Construction activity is allowed on Monday through Friday only between the hours of 7:00am to 6:00pm and on Saturday from 8:00am. to 5:00pm. No construction activity is allowed on Sundays, New Year's Day, Good Friday, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas Eve, Christmas, or outside of the stated hours without written authorization from the ACC.
- 4) During the entire construction process the lot owner/contractor is required to have portable toilet facilities on the property and not in the street, alleys, cul de sacs or adjacent lots.
- 5) The contractor is responsible for controlling dust, dirt and mud resulting from construction activities. This includes the removing of dust, dirt and mud from adjacent properties, common areas including streets and alleys as needed or when requested by the ACC.
- 6) The front gate shall not be used for deliveries of material or entry way for subs; all deliveries shall be made through the rear service gate. The rear service gate will be programmed to be open during construction activity hours.
- 7) The use of radios or of other audio equipment must not be audible beyond the property line on any Lot.
- 8) Contractor will be held responsible for any damage done to the common area property and the private property of others by him or any of his subs at all times.
- 9) Owner and contractor understand that permission is granted to the ACC to enter the property at reasonable times to inspect for compliance.
- 10) Compliance with all applicable building codes and approvals is the responsibility of the general contractor and the owner. The owner is responsible for positive drainage during and after the construction of the lot. No water drainage is to be diverted to adjacent lots.
- 11) The consumption of alcohol and or the use of a controlled substance(s) by construction personnel including sub-contractors is strictly prohibited.
- 12) Owner or contractor shall be required to place a security deposit in the amount of \$3,000 prior to the start of construction which will be held by the ACC. This money will be used to repair or restore damages to common space or other resident's property if those repairs or restorations are not completed by owner/general contractor within 15 days of being notified by the ACC. At that time, the HOA will affect repairs and restorations and deduct direct costs from the \$ 3,000 deposit. At the completion of construction and subject to final inspection approval by the ACC, any surplus left over will be returned to the owner/general contractor and any deficit will be owed and payable to the ACC.

Owner's Signature _____ Date: _____

Print Name _____ Lot #: _____

Contractor's Signature _____ Date: _____

Print Name _____ Company _____

**VIA CANTERA SUBDIVISION
ARCHITECTURAL CONTROL COMMITTEE REQUIREMENTS**

We are pleased that you chose to live in the Via Cantera Subdivision. The Architectural Control Committee (ACC) is made up of three members appointed by the Via Cantera Homeowners' Association. The ACC is charged by the restrictions in your "Declaration of Covenants, Conditions and Restrictions" (the Declaration) and the Via Cantera Bylaws to maintain harmony of external design and location of all construction and improvements in relations to the surrounding structures and topography of the Subdivision and adherence to the Declaration and Bylaws. Please review the Declaration and the Bylaws to insure that your planned project meets the requirements of these documents. We look forward to working with you and your builder in the construction of your new home. Our goal is to make the approval process as easy and painless as possible while balancing your goal of constructing a new home with our goal of maintaining an attractive and cohesive neighborhood. Please do not hesitate to contact a member of the Board of Directors or ACC with any questions or concerns.

The ACC will render its decision of approval or disapproval within thirty days of submission of materials, plans and specifications. In the case of disapproval, continuing communications will be maintained until a resolution is obtained. In the case of failure to comply, actions will be initiated consistent with the provisions of the Declaration. The ACC will monitor the adherence of contractors and homeowners to published guidelines, provisions of the Declaration, and take appropriate action for compliance.

It is incumbent upon the lot owner to provide sufficient and accurate information to the ACC for proper consideration. The lot owner and builder are required to obtain all necessary building permits and other approvals. The following items **must** be submitted to the ACC for written approval **before** construction can begin on any lot.

_____ Complete set of plans (to include site plan; floor plan; front, side and rear elevations, property lines)

_____ Signed Contractors Agreement

_____ Contractors Deposit (\$3,000, payable to the Via Cantera Homeowners' Association)

_____ Square footage of residence _____ (Any single story residence must have a ground floor area of not less than 2,800 sq. ft., exclusive of open or screened porches, terraces, patios, driveways, and garages.)

_____ Exterior wall construction _____
(The exterior walls of any residence shall consist of not less than 80% masonry or masonry veneer construction.)

_____ Brick samples, if brick used

_____ Samples of all exterior colors (attach)

_____ Roof type _____ Color _____ (attach)
(The roof shall either be flat, or have a pitch of not less than 7/12 meaning that for every 12 inches in from the edge of the roof, there shall be a raise of 7 inches. The roof can consist of either shake, wood shingle, tile or metal roof, with no requirement that wood be used and

therefore no exception to be made for composition shingles on pitched roofs. Flat roofs can be built up.)

_____ Fence type _____ (All fences shall be constructed of western cedar, redwood, masonry, brick or combination of masonry or brick and cedar or redwood, only. There shall be no chain-link or inferior constructed fences whatsoever.)

_____ Driveway material and color _____ (attach color)
(Must be concrete, brick, or other material approved by the ACC)

_____ Garage with rear entry facing the alley to the rear of the house (with exception of Lots 22 & 23). Number of cars garage _____

_____ Mailbox (Shall be of solid construction and consistent with the materials used on house exterior and be harmonious with home. Mailbox must meet the requirements of postal authorities.)

LOT#: _____

CONTACT INFORMATION:

OWNER(S) _____

MAILING ADDRESS _____

WORK PHONE NUMBER _____ HOME PHONE _____

CELL PHONE(S) _____ FAX _____

E-mail(s) _____

CONTRACTOR/BUILDER _____

NAME OF COMPANY _____

BUSINESS PHONE _____ CELL PHONE _____

E-mail _____ FAX _____

ANTICIPATED START DATE _____

ANTICIPATED DATE OF COMPLETION _____

Please return completed forms to:
Via Cantera Homeowners' Association
c/o Architecture Control Committee
108 E. Cornell Avenue
McAllen, TX 78504

DATE RECEIVED BY ACC _____

Construction on your lot has been:

_____ approved as submitted

_____ approved with conditions (see comments)

_____ not approved (see comments)

by the Architectural Control Committee, contingent that you comply with all Via Cantera Bylaws and the Via Cantera Declaration of Covenants, Conditions and Restrictions.

Comments:

Signature, Architectural Control Committee Member

Date

Signature, Architectural Control Committee Member

Date

Signature, Architectural Control Committee Member

Date

Signature, Lot Owner

Date