

**PROTECTIVE COVENANTS  
FOR VALLEY CREEK UNIT THREE REPLAT  
EL PASO COUNTY, TEXAS**

**UPPER VALLEY CREEK, LP**, a Texas limited partnership (the “Declarant”), the owner Of all lots located in the **Valley Creek Unit Three Replat** an addition to the city of El Paso, El Paso County, Texas as shown and designated on the plat of the subdivision filed in the Office of the Clerk of El Paso County, Texas and recorded under file number \_\_\_\_\_ Real Property Records of El Paso County, Texas does hereby establish restrictive covenants applicable to the Subdivision.

**ARTICLE ONE  
DEFINITIONS**

**1.01 Architectural Review Committee.** The term “Architectural Review Committee” shall mean and refer to the individuals who serve as the Architectural Review Committee as provided in Article Three.

**1.02 City Code.** The term “City Code” shall mean the El Paso Municipal Code as it may be amended from time to time.

**1.03 Covenants.** The term “Covenants” shall mean and refer to the covenants and restrictions created by this document.

**1.04 Declarant.** The term “Declarant” shall mean and refer to Upper Valley Creek, LP, its successors and assigns if such successors or assigns are expressly assigned the rights of Declarant under these Covenants by written assignment filed of record in the Real Property Records of El Paso County, Texas.

**1.05 Lot.** The term “Lot” shall mean and refer to a lot as shown on the plat of the Subdivision as it presently exists or as it may hereafter be amended or replatted.

**1.06 Owner.** The term “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the Subdivision, including any purchaser under Contract of Sale, but excluding those having such interest merely as security for the performance of an obligation.

**1.07 Residential Area.** The Residential Area shall be comprised of all lots in the subdivision as shown on the plat. The Residential Area covenants set forth in Article Two, in their entirety, shall apply to all Lots in the Residential Area. The number of residential Lots in

the Subdivision shall be limited as platted to 64 Lots, unless these Covenants are amended pursuant to the terms hereof.

**1.08 Subdivision.** The term "Subdivision" shall mean and refer to Valley Creek Unit Three Replat an addition to the City of El Paso, El Paso County, Texas.

## **ARTICLE THREE RESIDENTIAL AREA COVENANTS**

**2.01 Land Use, Building Type, and Garages.** No Residential Area lot shall be used except for residential purposes. No structure shall be erected, altered, or placed or be permitted to remain on any of said Lots, or any part thereof, other than one detached single family dwelling, together with a private garage and other customary appurtenances to private dwelling, including gazebos, dog houses, gym sets and storage buildings that are appropriate for the neighborhood and reasonable to the adjoining landowners and no structure shall be occupied or used until the exterior construction thereof is completed. No more than one residential structure shall be erected on any Residential Area Lot or site shown on the plat map of the Subdivision. No Lot shall be used or occupied for any business, or commercial purpose either apart from or in connection with the use thereof as a private residence, whether for profit or not. Each single family residence situated on a Lot shall have an enclosed, attached or detached garage for not less than two (2), nor more than four (4) automobiles. No such detached garage shall have more than one (1) story. NO carport shall be built, placed, constructed or reconstructed on any Lot. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

**2.02 Lot Area and Width.** No dwelling shall be erected or placed on any Lot having an average width of less than 75 feet, nor on a Lot having less than 10,000 square feet, or as platted on the Subdivision Plat Replat filed at the office of the El Paso County Clerk, without prior written approval of the Architectural Review Committee and the City of El Paso.

**2.03 Dwelling Size.** No residential structure erected on any Lot shall have more than two (2) stories, nor exceed thirty (30) feet in height (measured from the highest top of curb elevation adjacent to the Lot to the top of the gable). The ground floor of the main structure, exclusive of one-story open porches and garages, shall not be less than 1,600 square feet for a one-story dwelling, and the combined living area of a 1 ½ or 2 story house shall not be less than 1,600 square feet. However, in no event shall the ground floor of a 1 ½ or 2 story house be less than 900 square feet. The Architectural Review Committee shall be empowered to grant individual waivers of the above minimum area and height requirements, provided that, in the sole discretion of the Architectural Review Committee, the proposed dwelling shall, in general, be harmonious with the existing dwellings in that neighborhood.

**2.04 Building Location.** All building setback lines within the Residential Area shall comply with setback requirements of the more restrictive of the Zoning Ordinance of the City of El Paso and the following:

**a.** On any other Lot, no structure may be located in such a manner that the structure is closer than: (i) than thirty (30) feet from the front Lot line; (ii) thirty (30) feet from the rear Lot line; (iii) five (5) feet from any side Lot line abutting an adjacent Lot; or (iv) ten (10) feet from any side Lot line abutting a street.

**b.** The following will not be considered to be in violation of any setback requirement:

**i.** The protrusion of any porch or patio into the front or rear setback area, provided that the protrusion does not exceed fifteen (15) feet into the setback area; or

**ii.** The protrusion into a setback area by any architectural feature, such as, but not limited to a bay window or pullout, that is not considered as protruding into the setback area under the Zoning Ordinance of the City of El Paso.

**d.** The approval by the Architectural Review Committee of the setbacks of any improvement as shown on any plan will not excuse the Owner from compliance with the setback requirements of the approved subdivision plans or the Zoning Ordinance of the City of El Paso. Each Owner is solely responsible to ensure that its improvements comply with the setback requirements of the approved subdivision plans or the Zoning Ordinance of the City of El Paso.

**2.05 Building Exteriors.** Every residential structure will meet the following requirements:

**a.** All doors that are visible from the street in front of the Lot must be under a porch.

**b.** All wall finishes, accents and special finishes must wrap around a minimum of 2 feet from front of house.

**c.** Each structure (other than detached garages) will have at least two massings, other than porches, that are recessed or protrude at least two (2) feet from the main facade of the structure.

**d.** Any roof or wall mounted mechanical equipment may not be visible from the street and must be painted the color of the roof or wall where it is mounted.

- e.** All structures will have flat roofs or clay/concrete tile roofs. All clay or concrete roof tiles must be neutral colors.
  - f.** All visible flashing/sheet metal and vents must be painted to match the adjacent roof, accent or primary color.
  - g.** Any antennas, solar panels or similar equipment may not be visible from the street. Small (less than 2 feet in diameter) satellite dishes may be visible from the street, but must be placed on the farthest point from the street allowing proper exposure for reception.
  - h.** Each structure may utilize only one color as its primary paint color and accent colors may not exceed more than thirty percent (30%) of painted surface of the structure.
  - i.** No structure may be painted with any color that has not been approved by the Architectural Review Committee. The following colors will be automatically approved by the Architectural Review Committee:
    - 1. Primary finish colors: Sherwin Williams colors SW 6043, 6044, 6045, 6046, 6057, 6058, 6059, 6060, 6064, 6065, 6066, 6067, 6078, 6079, 6080, 6081, 6085, 6086, 6087, 6088, 6092, 6093, 6094, 6095, 6099, 6100, 6101, 6102, 6106, 6107, 6108, 6109, 6141, 6142, 6143, 6144.
    - 2. Accent Colors: Sherwin Williams colors SW 6047, 6061, 6068, 6082, 6089, 6096, 6103, 6110, 6145.
  - k.** All wrought iron must be painted black or brown.
  - l.** Each structure must satisfy any one (1) of the two (2) following characteristics:
    - 1. The structure, exclusive of one-story open porches and garages, shall not be less than 2,000 square feet; or
    - 2. A minimum of five (5) percent of the front facade of all structures must be rock or artificial stone veneers (not including visible rock walls). In determining the square footage of the front facade, the area of any door, window, garage door or any area not visible from the front street will not be included.
- By way of illustration, if a residence is 1,900 square feet, then at least (5) percent of the front facade must be rock or rock veneer. If a residence is

2,000 square feet then no portion of the front facade needs to be rock or rock veneer.

**2.06 Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat or as recorded by separate instrument.

**2.07 Nuisances.** No noxious or offensive activity shall be carried on upon any of the Residential Area Lots, nor shall anything be done thereon which may be, or may become an annoyance or nuisance to the neighborhood.

**2.08 Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any of the Residential Area Lots at any time as a residence, either temporarily or permanently.

**2.09 Fences and Garden Walls.**

**a.** No fence or wall (other than garden walls, fences and hedges between the front building setback line and the street, which are no more than 18 inches in height measured from the finished grade of the highest of the adjoining Lots) shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line, except that on corner lots a fence may be placed or erected along the rear lot line from the interior lot line to the side street lot line, and forward along the side street lot line not farther than within 10 feet of the front of the dwelling. This provision shall not preclude any necessary retaining walls. Masonry fences only shall be permitted across the rear of any Residential Area Lot, the interior lot line of any lot, or along the side yard of a corner lot where such side yards abut on a side street. All side or rear fences and walls (except for the garden walls permitted above) must be a minimum of four (4) feet in height, unless otherwise approved in writing by the Architectural Review Committee. Fence construction must be of ornamental iron, masonry (including concrete), or combination thereof. Chain link fences are not permitted on any of the Residential Area Lots where such fences are visible from a public street.

**b.** Each owner will construct all walls along common boundary lines with adjoining Lots as party walls. The costs of party wall will be shared equally with the respective Owners of the adjoining lots (other than Declarant) provided that the cost does not exceed the prevailing cost at the time the wall is built. The division of costs on party walls will be the responsibility of the Owners of lots and each Owner who erects common walls will make his own arrangements with the other Owner for sharing the costs of party wall. Declarant will not be responsible for the cost of any party walls. Any wall which is not on or adjacent to a common boundary line will be placed inside the property line of the Lots and the entire cost of the wall will be borne by Owner. Each owner will construct the rock walls according to the Subdivision Improvement Plan specifications if those requirements vary from the requirements in this paragraph.

**2.10 Completion of the Structure.** Any residential or accessory structure once commenced shall be completed as to exterior and front yard landscaping (and side yard landscaping facing a public street) in accordance with the provisions of these Covenants in not more than 180 days from the date of commencement.

**2.11 Sight Distance at Intersections.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadway shall be placed or permitted to remain on any corner Residential Area Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Residential Area Lot within 10 feet from the intersection of the street property line with the edge of a driveway or alley pavement and within the sight visibility easements shown on the plat. No trees shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of the sight lines. **The Owner must get the approval of the City of El Paso for any landscaping on the site visibility easements shown on the Subdivision plat for that Lot.**

**2.12 Landscaping.** Each front yard and side yard any rear parkway of each Lot must be landscaped prior to the occupancy of any structure on the Lot. The minimum landscaping requirements are:

a. One (1) 24" box or two (2) 1 gallon single trunk trees will be planted and maintained on the Lot within 7 feet of the front Lot line and either one (1) 24" box tree or (2) 1 gallon trees will be planted on the side of any Lot with a side street. On certain Lots Declarant may plant trees prior to the sale of the Lot. Each Owner of such Lot will be responsible to irrigate and maintain Declarant planted trees after the purchase of the Lot. Any type pine tree, such as Mondel pine or palm tree will not count towards complying with the forgoing minimum number of trees.

b. The front yard of a Lot will consist of shrubs, perennials, rock with permeable underlayment or grass. A minimum of 5 shrubs are required in each front yard.

**2.13 Detached Structures, Exterior Maintenance.** Detached structures will at all times be maintained with a compatible scheme as to exterior treatment as the main structure.

**2.14 Trash Containers and Storage Materials.** All trash, garbage, or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tight-fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view. No Residential Area Lot shall be used for storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected on any Residential Area Lot may be placed upon such Residential Area Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until

completion of the improvements, after which time these materials shall either be removed from the Residential Area Lot or stored in a suitable enclosure on the Residential Area Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Residential Area Lot.

**2.15 Sidewalks.** Each owner of a Residential Lot shall construct at owner's expense, sidewalks along street rights-of-way across the front of each lot, behind the rear wall on double front lots (including behind the rear walls of lots abutting the future extension of Gomez Road), and on the side of each corner lot (including on the side of corner lot(s) abutting the future extension of Gomez Road). All parkways between required sidewalks and curb shall be landscaped and/or xeriscaped.

**2.16 Soils Testing. Declarant has encountered expansive soils in the development of the Subdivision** that require special attention in the design and construction of improvements. The Subdivision was previously used for farming and Declarant has undertaken no efforts to modify the soils conditions under the building pads of the Lots. Prior to construction, each Owner will obtain soil tests on his Lot and any building pad that has been graded by Declarant and will design and construct the slab and improvements in accordance with prudent engineering practices and principles and applicable governmental regulations based upon the soil conditions of the Lot and the building pad. Each Owner has the exclusive duty and responsibility to determine the soil conditions for his Lot. **An Owner's failure to test the soil conditions of his Lot and building pad and to design any improvements, including, but not limited to the building pad, sidewalks, driveway, walls and landscaping, accordingly, may result in loss or damage to the improvements. IT IS EACH OWNER'S DUTY TO DETERMINE THE SOIL CONDITIONS AND COMPACTION FOR HIS LOT AND BUILDING PAD GRADED BY DECLARANT.** In the design of any improvement, an Owner must verify and insure that the building pad meets the minimum elevation required by the on-site ponding requirements of the Subdivision improvements plans on file with the City of El Paso.

**2.17 Driveways.** Any driveway constructed on a Lot, must slope away from the street for a minimum of five (5) feet from the Lot line before sloping upward to any structure.

**2.18 Lot Maintenance.** Each Owner or other occupant of a Lot will keep all grass, weeds, vegetation and other landscaping maintained and trimmed at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from the Lot and must be replaced if necessary to comply with the minimum landscape requirements. Fences and walls must be repaired and maintained. In the event that any Owner or occupant violates this section and the violation continues for more than ten (10) days after written notice, Declarant, its successors and assigns may without liability to the Owner or occupant in trespass or otherwise, enter upon the Lot and cut or trim the landscaping and charge the Owner and/or the occupant for the cost of that work.

**2.19 Intentionally Deleted**

**2.20 Miscellaneous.** The drying of clothes in full public view is prohibited and yard equipment, wood piles or storage areas must be screened from public view. No privy shall be placed upon any of the Residential Lots. No signboard or other visible advertisement larger than one square foot may be placed upon any Residential Area Lot, other than signs pertaining to the sale of Residential Area Lots or the builders' signs which may be placed upon a Residential Area Lot during construction of improvements. Signing shall comply with the Zoning Ordinance of the City of El Paso. No excavation shall be made on any of the Residential Area Lots for the purpose of obtaining sand, rock, clay, dirt, coal or gravel, whether for profit or otherwise. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any of the Residential Area Lots, except that dogs, cats or other household pets (not to exceed three (3) adult animals) may be kept provided that they are not kept, bred, or maintained for any commercial purpose whatever. No window or wall-type air conditioners shall be permitted to be used, placed or maintained on or in any building where visible from the street or from adjacent lots unless otherwise approved by the Architectural Review Committee.

### **ARTICLE THREE ON SITE PONDING COVENANTS**

**3.01 Compliance with City Code.** Each Lot is subject to and must at all times comply with the Residential On Site Ponding requirements of Section 19.16.060 of the City Code. The maximum depth of lot ponding will be one (1) foot based on a one hundred (100) year storm.

**3.02 Elevation Markers.** Each builder who builds on a Lot must place permanent elevation markers on each Lot prior to occupancy of the structure to define the levels to be maintained to ensure the effectiveness of onsite ponding in accordance with the applicable provisions of the City Code. OWNERS ARE PROHIBITED FROM MOVING, COVERING OR ALTERING THE PERMANENT ELEVATION MARKERS. Please take time to locate the markers and protect them.

**3.03 Grading Prohibited.** No Owner may fill or change the grading of a lot or permit a Lot to be filled or changed to an elevation greater than established by the permanent elevation marker(s) for the Lot. Any grading of a Lot related to a new expansion or renovation of a Dwelling must be reviewed and approved by the Building Services Department of the City of El Paso for compliance with the applicable provisions of the City Code

**3.04 Easement to City of El Paso.** Declarant grants to the City of El Paso a perpetual easement for ingress and egress on and across each Lot for the purpose of inspecting and measuring the Lot elevation and the permanent elevation markers.

**3.05 No impairment of On Site Ponding Capacity.** No Owner will impair or permit any person to impair the functionality of the onsite ponding capacity of a Lot. No more than fifty percent (50%) of the area of any Lot may be covered by improvements, either permanent or temporary, which shed storm water onto the Lot, including, but not limited to, buildings,

driveways, patios or landscaping under laid with plastic sheeting or other impermeable material.

**3.06 Maintenance of On Site Ponding Capacity.** In the event that the functionality of the onsite ponding ability or capacity of a Lot becomes impaired, whether by act of man or nature, the Owner of the Lot will perform all corrective actions required to restore the functionality of the onsite ponding ability or capacity of the Lot within a reasonable time after the discovery of the impairment, but not less than forty-five (45) calendar days after receipt of written notice from the City of El Paso or any other Owner.

**3.07 Waiver of Liability.** FAILURE BY OWNER TO MAINTAIN PROPER ON SITE PONDING CAN RESULT IN DAMAGE TO ANY IMPROVEMENTS FROM FLOODING, SETTLING AND/OR EROSION ON THE LOT AND ADJOINING LOTS. Each Owner for himself, his successors and heirs waives any claim against and releases the Declarant, the City of El Paso and their officials, agents and employees from any claim or cause of action against Declarant, the City of El Paso and their officials, agents and employees for any death, injury or property damage resulting from alteration of the ponding capacity of a Lot.

**3.08 Deed Restriction.** Each deed conveying a Lot will disclose in conspicuous language that the Lot is subject to on site ponding requirements, maintenance of elevation markers, standing water on the Lot, ingress and egress for inspection and the other restrictions in this Article.

## **ARTICLE FOUR ARCHITECTURAL REVIEW COMMITTEE**

**4.01 General.** Declarant has imposed these Covenants to promote a cohesive and consistent development of the Subdivision to protect Declarant and Owners against substandard development on a Lot which would tend to diminish the value of the surrounding Lots and the Subdivision in general. Declarant shall have authority, from time to time to amend or supplement the Residential Area Covenants of Article Two to correct inconsistencies or to clarify any ambiguity.

**4.02 Committee Approval of Improvements.** No improvement, including landscaping, shall be commenced, erected, constructed, reconstructed, placed, altered, removed, permitted to remain, or maintained upon any Lot, until the detailed plans and specifications for the improvement have been submitted to and approved in writing as to compliance with these Covenants by the Architectural Review Committee.

The submitted plans and specifications shall specify, in such form as the Architectural Review Committee may reasonably require, including but not limited to engineering, grading, on site ponding compliance, utility, structural, mechanical, electrical, and plumbing detail and the nature, kind, shape, height, exterior color scheme, material to be incorporated into, and

location of the proposed improvements or alterations. In the event the Architectural Review Committee fails to approve or disapprove such plans and specifications with forty-five (45) days after the plans and specifications have been submitted to it, approval will not be required and the provisions of this Section will be deemed to have been fully complied with. However, that the failure of the Architectural Review Committee to approve or disapprove such plans and specifications within the forty-five (45) day period shall not operate to permit any improvements on a Lot to be commenced, erected, placed, constructed, reconstructed or maintained on the Property in a manner inconsistent with any provision of these Covenants. Once the plans and specifications have been approved, the plans and specifications will not be materially altered, changed or revised without the approval of the Architectural Review Committee. The Architectural Review Committee also shall have full power and authority to reject any plans and specifications that do not comply with Covenants. The Architectural Review Committee shall have the authority to issue rules or guidelines setting forth procedures for the submission of plans for approval. Declarant shall not be required to submit to or obtain approval of the Architectural Review Committee with respect to any construction or improvements on Lot or portion of the Subdivision owned by it.

**4.03 Membership.** The initial Architectural Review Committee shall be composed of Russell Hanson and Joe Hanson and the initial Architectural Review Committee's address is 5812 Cromo, El Paso, Texas 79912. In the event of the death or resignation of any member of the Architectural Review Committee, Declarant will appoint a successor. All appointments to the Architectural Review Committee by Declarant shall be by written appointment recorded in the Real Property Records of El Paso County, Texas. All members to the Architectural Review Committee as designated above or appointed by Declarant will be referred to as the "Initial Committee". A majority of the Architectural Review Committee may designate representative to act for it.

**4.04 Members Compensation and Liability.** None of the members of the Architectural Review Committee or its designated representative shall be entitled to any compensation for services performed pursuant to these Covenants. Since architectural review of construction plans, as required in this Article, is subjective in nature, the action or non-action by the members of the Architectural Review Committee shall not subject any member of the Architectural Review Committee to personal liability nor shall the members of the Architectural Review Committee be charged with the responsibility for enforcement of the provisions of these Covenants. The enforcement of the architectural review provisions under the Article by any aggrieved party shall be as provided in Section 5.03, and shall be pursued solely against the person or persons allegedly violating or attempting to violate the provisions and standards specified in these Covenants. The members of the Architectural Review Committee shall not be proper parties to such action.

**4.05 Variances.** In its sole discretion under the circumstances set forth below, the Architectural Review Committee may grant variances from the requirements of Article Two of these Covenants, including, but not limited to the set back requirements of Section 2.04, the percentage color requirement of Section 2.05(j), the color requirement of Section 2.05(k), the

rock facade requirement of Section 2.05(m) and the chimney spout requirement of Section 2.05(n). Any grant of a variance may include any conditions or safeguards which the Architectural Review Committee deems appropriate, such as the building location or landscaping, as restrictions filed of record and legally enforceable. A variances from compliance with these Covenants may also be granted under any one of the following circumstances:

- a. There has been a bonafide mistake or error in construction (whether during construction or after the completion of construction) despite the use of qualified professionals; or
- b. In the sole and final judgment of the Architectural Review Committee, the granting of the variance will not be substantially detrimental to neighboring Lots to have an effect on the value of neighboring Lots; the granting of the variance is reasonable and within the general intent of this Declaration and the requested variance does not violate the City Code.

**4.06 Termination of Initial Architectural Review Committee.** On the earlier to occur of: (i) Declarant's recording in the Real Property Records of El Paso County, Texas of a waiver its right to appoint members to the Architectural Review Committee; or (ii) residential dwellings having been built upon 100% of the lots in the Subdivision, the terms of the Initial Architectural Review Committee members automatically terminate without action or resignation by such members. At any time thereafter, the then record owners of a majority of the Residential Area Lots shall have the power through a duly written recorded instrument to form a Architectural Review Committee of three or more members to govern the Residential Area Lots. Successors to membership in the Architectural Review Committee shall be named in an instrument executed and acknowledged by the then Chairman of the Architectural Review Committee who shall be elected by a majority of its then members. Such instrument shall be recorded in the Real Property Records of El Paso County, Texas.

**4.07 No waiver of Future Approvals.** The approval of the Architectural Review Committee of any proposal, plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Review Committee, shall not deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposal, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

**4.08 On Site Ponding Requirements.** The Architectural Review Committee does not review plan for compliance with the Onsite Ponding Covenants in Article 3. Each Owner and its design profession are responsible for compliance with the Onsite Ponding Covenants.

## **ARTICLE FIVE GENERAL PROVISIONS**

**5.01 Term.** Except for the On Site Ponding Covenants in Article Three, these Covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of forty (40) years from the date these Covenants are recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the owners of the then current majority of the Lots has been recorded agreeing to terminate these Covenants. The On Site Ponding Covenants in Article Three will run with the Property in perpetuity.

**5.02 Amendment.** The Declarant expressly reserves the right to amend these restrictions (i) at any time as to any remaining land owned by it at such time, and such amendment shall in no way serve to release, modify or affect these Covenants as to any land theretofore conveyed, (ii) with ten (10) years from the dates these Covenants are recorded in the Real Property Records of El Paso County, Texas, for any purpose deemed necessary by Declarant, and (iii) at any time in response to any governmental or quasi-governmental suggestion, guideline, checklist, requisite or requirement, particularly with respect to those entities or agencies directly or indirectly involved in, or having an impact on, mortgage financing, mortgage insurance and/or reinsurance. In addition to the right of the Declarant to amend these Covenants, a majority of the owners of the Lots may change these Covenants in whole or in part after five (5) years following the date these Covenants are recorded in the Real Property Records of El Paso County, Texas. It is expressly agreed and understood, however, that the conditions and restrictions contained herein, pertaining to residential density, may only be amended, released, revised or modified with the prior consent of, and coordination with, the City of El Paso.

**5.03 Enforcement.** Owners of Lots shall comply with the standards and provisions of these Covenants. Declarant, any Owner, holder of a first lien mortgage on any Lot or the City of El Paso will have the right to enforce these Covenants by a proceeding at law or in equity or seek recovery of damages from any person or persons violating or attempting to violate these Covenants. In the event any party seeking to enforce these Covenants applies for injunctive relief no bond or other security will be required. Any person who prevails in obtaining injunctive relief against or recovers damages from any person or persons violating or attempting to violate these Covenants will be entitled to recover his reasonable attorneys' fees, expert fees and court costs. The failure to take any action upon any breach or default of these Covenants or any delay in taking action to enforce these Covenants shall not be deemed a waiver of the right to take enforcement action for that breach or default or the right to take enforcement action for any similar subsequent breach or default. The City of El Paso will not be deemed to have an obligation to enforce these Covenants.

**5.04 Severability.** The invalidity of any one or more of the covenants, restrictions, conditions, or provisions contained in this Declaration, shall in no manner affect any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

**5.05 Encroachments.** It shall not be a violation of these Covenants for a Lot owner to acquire or own a portion of an adjoining Lot in order to comply with the building setback requirements or to resolve problems resulting from encroachment of buildings, rock walls, or other permanent improvements.

**5.06 Interpretation.** If this Declaration or any work, clause, sentence, paragraph, or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of the Declaration shall govern.

**5.07 Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

**5.08 Zoning.** Nothing contained in these Covenants shall supersede the applicable zoning laws of the City of El Paso.

**5.09 Development of Adjacent Land.** Declarant owns land that is adjacent to the Subdivision. Declarant makes no representation to any Owner of when or if the adjacent land will be developed or the nature or character of the development on the adjacent land.

**5.10 Irrigation Rights.** Declarant will lease to the Public Service Board of the City of El Paso all rights to Rio Grande surface water allotted to the Subdivision from the El Paso County Water Improvement District No. 1. No Lot will have the right to irrigate with Rio Grande waters until any such lease has expired. Each Owner, by the acceptance of the deed of his Lot, will be deemed to have irrevocably consented and agreed to the following:

- a.** Declarant may lease all right to Rio Grande surface water allotted to the Lot from El Paso County Water Improvement District No. 1 and will be entitled to receive and retain all compensation paid for the lease of rights.
- b.** Owner agrees to cooperate with Declarant in the lease of all rights to Rio Grande surface water allotted to the Lot from El Paso County Water Improvement District No. 1, including, but not limited to, executing any document required by the Public Service Board of the City of El Paso, El Paso County Water Improvement District No. 1 and Declarant for such lease and the payment of any compensation to Declarant.
- c.** For the purpose of the Section, each owner appoints Declarant as his attorney-in-fact to execute any and all documents necessary to lease all rights to Rio Grande surface water allotted to the Lot from El Paso County Water Improvement District No. 1 to the Public Service Board of the City of El Paso and to pay all lease compensation to Declarant. This power of attorney shall not be affected by the disability or

incompetence of the Owner. This appointment of Declarant as attorney in fact is coupled with an interest and is irrevocable.

EXECUTED this \_\_\_\_ day of Decemeber, 2012.

**UPPER VALLEY CREEK, LP**, a Texas  
Limited Partnership

By: HAM Management, LLC, a Texas  
Limited Liability Company, its General  
Partner

By: \_\_\_\_\_  
Russell Hanson, Manager

**STATE OF TEXAS     }**  
                                  }  
**COUNTY OF EL PASO }**

This instrument was acknowledged before me on this \_\_\_\_ day of December, 2012 by Russell Hanson, Manager of HAM Management, LLC, as General Partner of Upper Valley Creek, LP on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas