

RIO DIABLO DEVELOPMENT CO.,  
LTD., ET AL

RESTRICTIVE  
COVENANTS

THE PUBLIC

DECLARATIONS AND PROTECTIVE COVENANTS AND RESTRICTIONS

STATE OF TEXAS            )  
COUNTY OF VAL VERDE )

KNOW ALL MEN BY THESE PRESENTS:

THAT Rio Diablo Investment Co., Ltd., a Texas Limited Partnership, hereinafter referred to as "Rio Diablo" and Corporate Services, Inc., a Washington corporation, desiring as owners of that certain Subdivision situated in Val Verde County, Texas, and known as Diablo Heights as shown on a plat recorded in Volume 5, page 23-24, of the Map Records of Val Verde County, Texas, to adopt a uniform plan for the orderly development and improvement of Diablo Heights, do hereby impose upon all the property included with the plat of Diablo Heights the following Protective Covenants, Restrictions and Reservation of Easements which shall be binding upon any purchaser, grantee, owner or lessee of any land or building in Diablo Heights and upon the respective heirs, executors, administrators, devisees, successors and assigns of such purchaser, grantee, owner or lessee.

ARTICLE I

Definitions

In construing these declarations, protective covenants, and restrictions, the following words shall have the following meanings:

Section 1. "Association" shall mean and refer to a non-stock, non-profit, Texas membership corporation which Corporate Services, Inc., expects to organize for the purpose of enforcing these protective covenants and restrictions, maintenance of common areas and maintenance of roads within the plat until the roads are accepted by Val Verde County.

Section 2. "Plat" shall mean the plat of Diablo Heights.

Section 3. "Owner" shall mean and refer to the person or persons, entity or entities, who own of record fee simple title to any portion of the land within the Plat or who have entered into a land sale contract to purchase any of said property.

Section 4. "Family" is defined as one or more persons related by blood, marriage or adoption living and cooking together as a single housekeeping unit or a number of persons but not exceeding two living and cooking together as a single housekeeping unit not related by blood, adoption or marriage.

## ARTICLE II

### Association

Section 1. At such time as the Association is incorporated and authorized to do business, its purpose will include the providing of maintenance of the road within the Plat until such time as maintained by Val Verde County, to own and provide for maintenance of common areas designated within the Plat, and to enforce the covenants, conditions and restrictions of the Plat.

Section 2. The Association may assess from time to time as it may deem fit for the purposes of maintaining the common areas, roads, and for such other purposes as may be necessary for the enjoyment of all tract owners within the Plat. Said assessment charge may be levied by the Association by written notice to be filed in the Deed Records of Val Verde County, Texas; and at the time of said assessment and notification being filed in said Deed Records, said notification shall operate as the retention of a vendor's lien in favor of the Association to secure the payment of any such assessment made. Said vendor's lien is expressly made subject to and subordinate to the creation of purchase money security interests for purchasing said property or mechanic's and materialman's liens given for the purpose of improving said property. In the event of a foreclosure of a purchase money security interest or mechanic's and materialman's liens as described above, said foreclosure will extinguish all past-due charges for the Association, but will not prevent the accrual of said charges subsequent to the foreclosure.

Section 3. All owners of the tracts within the Plat are members of the Association and agree to remain members in good standing of the Association. The owner and his property shall be subject to the provisions and the bylaws of the Association, including the obligation imposed for dues.

Section 4. There is hereby established an Architectural Control Committee, hereinafter referred to as the "Committee". The Committee shall approve the location, design, plans, and specifications of any building, structure or other improvement before being placed, altered or constructed upon the property, so that the appearance, design and quality of workmanship and materials are in harmony with the proposed scheme and plan of the development consistent with these covenants and restrictions, as such Committee shall establish.

Section 5. The Committee is authorized to enforce the covenants and restrictions and to establish additional rules and regulations, not inconsistent with the provisions hereof, for all tracts of Diablo Heights and any activities conducted thereon, and the same shall be enforced in the same manner as provided herein.

Section 6. The Architectural Control Committee shall be comprised of not less than two (2) members, which shall be appointed by Corporate Services, Inc., its successor and assigns, until such time as Corporate Services, Inc., elects to form the Association. From, and after date of the incorporation of the Association, the Committee shall be comprised of such members as determined by its bylaws. No such Committee or any of its members shall be entitled to the payment of compensation for services performed by such Committee, or members thereof, pursuant to this paragraph.

Section 7. The Committee may approve any variance from any provision or terms hereof upon written application for same. The decision of the Committee shall be binding upon the owners and the applicants for variance. Any action taken by the Committee as required herein shall be presented in writing within fourteen (14) days of the receipt of plans and specifications, application for variance, or other requests for action.

Section 8. In the event the Committee fails to act and advise in writing as required above, its written approval shall not be required, whereupon the Restrictive Covenants herein will be presumed to have been fully complied with in respect to the action requested. Plans



and Specifications or other requests for action shall be deemed to have been properly submitted, if delivered to the Committee in person, or forwarded by Certified Mail--Return Receipt Requested, addressed to the Committee at the following address: Corporate Services, Inc., c/o Robert C. Kusenberger, 306 Del Rio National Bank Building, Del Rio, Texas, 78840, until such time as the Association is authorized to do business, then to the registered office of the Association.

### ARTICLE III

#### Property Restrictions

Section 1. Except as herein noted, none of the tracts within the Plat or the improvements thereon shall be used for anything other than private residential purposes and shall not be used for any commercial purpose, except that nothing herein shall be construed to prevent an owner from rendering professional services of a purely personal nature so long as such services do not attribute to the property any appearance of a commercial use.

Section 2. Any dwelling or structure erected shall be of new construction materials, and shall be complete as to exterior structure and appearance, including exterior finished painting within six (6) months of the date of commencement of construction.

Section 3. In addition to the restrictions set forth herein, the uses permitted for the Plat are limited under the Land Use Order for the Amistad Zoned Area of Val Verde County and the regulation incorporated therein so long as the Plat, or portion thereof, is classified as Use District R-3.

Section 4. No residence for each family erected on any of the land within the Plat shall have a finished living area of less than 720 square feet, exclusive of porches, garages, or other appendages per family.

Section 5. No building erected on the lands within the Plat shall be erected nearer than twenty-five (25) feet to any boundary along a street, or nearer than ten (10) feet to any of the other boundary lines of said tract.

Section 6. No fences of any kind shall be built upon any land

within the Plat without the written consent of the Committee. No fence, hedge or wall shall be created or maintained on any tract, which shall unreasonably restrict or block the view from an adjoining tract.

Section 7. No sign of any kind shall be displayed to the public view on any tract except for residence identification of not more than four (4) square feet or for advertising the property for sale of not more than five (5) square feet. This restriction shall not apply to signs of the Declarant or its agents used as sales aids, directions or the like in connection with the marketing and developing of the platted subdivision.

Section 8. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any tract at any time as a residence either temporarily or permanently, except recreational vehicles and travel trailers containing living quarters may be used as temporary living quarters for not more than one hundred twenty (120) days at any one time, or during the construction of a residential dwelling structure. Any determination of the Committee as to compliance with this paragraph shall be final and binding upon all parties.

Section 9. Not more than two (2) horses, no more than a total of two (2) other animals, such as cattle, goats, sheep, and other similar kinds of animals excluding swine, and no more than twelve (12) fowl enclosed in poultry-proof fencing may be maintained on any one tract. Proper fencing, to contain the type of animal on the property, must be installed and maintained by the tract owner.

Section 10. No premises or any part thereof shall be used for illegal purposes. Nothing shall be done on any tract that may be or become obnoxious or an annoyance to the occupants or owners of other tracts by reason of smoke, odor, noise, fumes, vapors, glare, radiation, vibration or unsightliness or other offensive activity.

Section 11. Trash, garbage, and unsightly objects: No trash, garbage, unlicensed or inoperative vehicles, construction debris, or other refuse may be dumped or disposed of or allowed to remain on any tract in the Plat, vacant or otherwise. No building materials of any kind or character shall be placed or stored on any tract until the owner is ready to commence making improvements, and then such materials shall be placed within the property lines of such tract. No condition, use or thing determined by the Committee to be noxious or undesirable, shall be permitted on any tract. Any such determination by the Committee shall be final and binding upon all parties.

Section 12. Hunting or the use or discharge of pistols, rifles, shot guns, or any other firearms is expressly prohibited.

Section 13. The natural soil or grasses shall not be disturbed unless the owner immediately thereafter constructs on, paves, gravels, or replants such disturbed areas with ground cover approved by the Committee.

Section 14. Subject to any outstanding mineral and/or royalty interest, relative to any tract, Rio Diablo reserves on behalf of itself, or its successors and assigns unto itself, all minerals owned in and under the Plat, but waives any and all rights of ingress and egress upon the surface of the Plat for any purpose having to do with said minerals, including without limitation, exploring, mining or otherwise.

Section 15. All zoning and other laws, rules and regulations of any government under whose jurisdiction said land lies are considered to be a part hereof and enforceable hereunder and all owners of said lands shall be bound by such laws, rules and regulations.

Section 16. The Committee and every owner of any tract in the Plat shall have the right to prevent violation of any of the provisions hereof by injunction or any other lawful procedure and to recover any damage resulting from such violations. Damages for the purposes of this paragraph shall include court costs and attorney's fees.

Section 17. Violation of any restrictions or breach of any covenants herein contained shall give the Committee or its respective agents, in addition to all other remedies, the right to enter onto the land and to abate and remove the violation at the expense of the offending owner or person or persons who shall have contracted to purchase a tract or tracts, and the Committee or its respective agents shall not hereby be deemed guilty of any conversion of any manner of trespass for such entry, abatement or removal.

Section 18. Should an owner breach any of the covenants and agreements herein mentioned, the Committee may give written notice of the breach to the owner by certified mail. At the expiration of thirty (30) days, the terms of the covenants not having been complied with the Committee or its agents will have the right to correct the breach and the owner shall be liable for the cost of any work. If the owner fails to reimburse the Committee within thirty (30) days after being billed therefor, then said cost shall be a debt of such owner payable to the Committee, and shall be a vendor's lien against any such owner's property.

Section 19. Cars, trucks, trailers, recreational vehicles, and the like shall not be parked on the streets, rights-of-way or in the common areas in such manner as to obstruct the free flow of traffic. The parking of cars, trucks, trailers and the like shall at all times be subject to the control of the Association, who shall from time to time publish rules and regulations controlling the use of the property within the platted subdivision, whether private or common, for the parking of cars, trucks, trailers, and the like.

Section 20. Except for Tract 3, no tract shall be further subdivided until a replat is filed as provided for under the Land Use Order for the Amistad Zoned Area of Val Verde County.

Section 21. All owners of tracts in the Plat are responsible for the installation, connection, maintenance and expense of all utilities, including without limitation domestic water, electricity, sewerage, and telephone.



Section 22. The use of easements as shown on the recorded plat is granted to utility companies as set forth on said plat for the purposes of drainage, water, cable television, electrical and telephone lines and conduits, and the maintenance thereof, and, in the event that no easements are shown on the recorded plat, then ten (10) feet across the front of each and every tract is reserved and hereby dedicated to utility purposes, including water, cable television, electrical and telephone utilities. Within those 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 obstruct or retard the flow of water through drainage channels in the easements. The easement area of each tract and all improvements in it shall be maintained continuously by the owner of the tract, except for the improvements for which a public authority is responsible.

Section 23. The right is expressly reserved by the Committee and its successors and assigns to interpret any and all conditions and restrictions contained in these restrictions, but such right shall be without prejudice to the right of the enforcement described above.

#### ARTICLE IV

##### Covenants and Restrictions to Run with Land

Section 1. The covenants, restrictions and agreements set forth in this Statement and Declaration shall be covenants running with the land, shall be binding upon all owners of the tracts shown on the subdivision Plat, shall inure to the benefit of each tract owner and shall be enforceable through due process of law by the Committee, and its assigns, and each tract owner. Such covenants, restrictions and agreements, shall continue for ten (10) years from the date hereof and shall automatically renew thereafter for successive periods of ten (10) years each unless amended or abolished by a written agreement signed by the owners of 51 percent of the tracts shown on the subdivision Plat.



Section 2. Invalidation of any one or more of the foregoing protective covenants, restrictions, or conditions, by judgment or court order shall not affect the validity of other such covenants, restrictions or conditions.

EXECUTED this 10<sup>th</sup> day of July, 1977.

RIO DIABLO DEVELOPMENT CO., LTD.

By: Robert C. Kusenberger

CORPORATE SERVICES, INC.

By: Francis Conklin

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STATE OF TEXAS       )  
                                  ss.  
COUNTY OF VAL VERDE )

BEFORE ME, the undersigned authority, on this day personally appeared ROBERT C. KUSENBERGER, a member of the partnership of RIO DIABLO DEVELOPMENT CO., LTD., a Texas Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of said RIO DIABLO DEVELOPMENT CO., LTD., and that he executed the same as its General Partner and as the act of such partnership for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10<sup>th</sup> day of July, 1977.



Jay M. Lamb  
NOTARY PUBLIC in and for Val Verde  
County, Texas

STATE OF WASHINGTON )  
                                  ss.  
COUNTY OF SPOKANE    )

BEFORE ME, the undersigned authority, on this day personally appeared FRANCIS J. CONKLIN, the President of CORPORATE SERVICES, INC., a Washington corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged

to me that the same was the act of said CORPORATE SERVICES, INC.,  
and that he executed the same as its President and as the act of  
such corporation for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6th day of  
July, 1977.



Richard F. Sperry  
NOTARY PUBLIC in and for the State  
of Washington, residing at Spokane

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FILED FOR RECORD THE 4th DAY OF January, A.D. 1978 AT 1:40 O'CLOCK P. M.  
AND DULY RECORDED THE 5th DAY OF January, A.D. 1978 AT 8:40 O'CLOCK A. M.

Alicemae Fitzpatrick  
ALICEMAE FITZPATRICK COUNTY CLERK  
VAL VERDE COUNTY, TEXAS.

INSTRUMENT NO. 70575