

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

**DECLARATION OF RESTRICTIONS
OF EL MONTECITO ESTATES**

This Declaration of Restrictions is made this ____ day of _____, _____, by FELIX QUIROZ JR., (in this Declaration being called "Developer") executing this document in order to subject property owned by it to these restrictions and in order to set out enforcement of these restrictions.

Developer is the owner of certain real property located in MIDLAND county, Texas which is more particularly described on Exhibit "A" which will be referred to as the "Development", and who desires to maintain a certain character of the property by restricting and regulating certain activities and development on the various tracts which are to be sold, and which are for the benefit of Developer and the purchasers from Developer of property out of the Development.

Developer believes that it is in the best interest of future owners of Tracts within the Development that these restrictions be placed on the Properties. Developer will place in each conveyance a summary of these restrictions; however Developer believes it to be advantageous that these restrictions be further set out in this Declaration of Restrictions to be filed in the real property records of Midland County, Texas.

Developer retains the right to amend, alter and change these restrictions without the permission or vote of the individual owners until such time as 50% of the lots making up the Development have been sold.

1. Definitions

- a. "Properties" means all property and improvements described on Exhibit "A" which are subject to this Declaration or any Supplemental Declaration.
- b. "Tract" means any portion of the Properties which is sold by Developer.
- c. "Owner" means the record Owner whether one or more, individual or corporate, of the fee simple title to any Tract which has been sold out of the Properties. Owner does not include the owner of any right pursuant to any easement, right of way, deed of trust or mortgage, or oil and gas lease or similar property right which is less than fee simple title.
- d. "Architectural Control Committee" a committee composed of three property owners as appointed by Developer prior to Substantial Completion by the Developer.

e. "Substantial Completion by the Developer" the sale by Developer of 90% of the Lots in the Development.

2. Restrictions

- a. Usage.** The Property shall be used and occupied primarily for single family residential purposes. The Homeowner shall not use or occupy the property or permit the same or any part thereof to be used or occupied for any purpose other than as a private single family residence for the Homeowner or such Homeowner's tenant and their families. As used herein, the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of the property for duplexes or apartments, provided however that garage apartments which are used by the Homeowner's family are permitted provided that Homeowner shall not lease such apartments. Except as provided above, no lot shall be used or occupied for any business, commercial, trade or professional purpose, including, but not limited to, the storage of equipment or other personal property used primarily for any business, commercial, trade or professional purpose; however, this prohibition shall not include hobbies, art and crafts businesses and other commercial activities of a similar nature which can be operated and maintained while at the same time maintaining the property primarily as a single family residence. Notwithstanding the foregoing, a Homeowner may use a portion of a single family dwelling for private office use; provided, however, that such private office may not be used for the purpose of receiving customers, clients, vendors, or other similar persons and no signs or advertisements of any kind may be erected or displayed which is visible from the exterior of the dwelling.
- b. Access Easements.** All Access Easements must remain open and unobstructed and must be maintained by the Homeowner whose property abuts the alley. For example, weeds, grass etc. must be cut and cleaned. Homeowners must not block Access Easements. Access Easements are to be used for loading and unloading only. All trash containers must be placed on property in alley way or if lot is corner, on side of to Access Easement not on or in Access Easement. Each owner is responsible for maintaining that portion of the alleyway abutting their property in good condition. Neither the City of Midland or Midland County or Developer shall be held responsible for maintenance of Access Easements.
- c. Building Location and Setback lines.** All lots will have front setback lines as depicted on the plat attached hereto as Exhibit "A", unless otherwise provided for on the plat the front setback will be a minimum of sixty (60) feet and a maximum of 25% of the total depth of the Lot. Side setbacks shall be twenty (20) feet. Eaves, steps and open porches shall not be considered part of the building for setback purposes.
- d. Driveways.** All driveways must be black top, concrete, brick or substantially the same type of hard finished surface. No caliche or dirt driveways are allowed.

- e. **Fences.** No fence, wall or hedge shall be erected on any Lot nearer to the street than the surveyed property line. All fences must be constructed of ornamental iron, wood, brick or masonry. All fences shall be maintained at the individual Lot owner's expense in an attractive well-kept condition and shall be no more than 10 feet in height in back yard and 4 feet at street frontage with a transition to a maximum of 6 feet at the front setback line.
- f. **Containers and Tanks.** Any tank or storage container used in connection with any residential structure or outbuildings shall be buried in the ground or if located above ground, shall be completely enclosed or permanently screened from view of any street adjacent to the Lot by way of a solid fence.
- g. **Building Structures.** No buildings other than single family dwellings and outbuildings used in connection therewith shall be erected, placed or permitted to remain on the Property. Only one single family dwelling together with outbuildings used in connection therewith shall be erected on a single Lot. The term "outbuildings" shall include only garages, carports, and similar storage buildings for motor vehicles and boats, pump houses, stables and other buildings for domestic animals permitted hereunder and pets, pool houses, guest and servants' quarters, barns, stables and structures of a similar nature for the convenience and pleasure of the occupants of the main dwelling, and which are not incident to any commercial enterprise, business or profession. Outbuildings shall not in the aggregate constitute more than 50% of the square footage of the residence.
- h. **Temporary and Other Structures.** Except as hereinabove provided, no structure of a temporary character, including, but not limited to, mobile homes, tents, portable buildings, manufactured buildings, pre-fabricated house or any other temporary or movable structures or buildings shall be placed on the property either temporarily or permanently, and no residential building, garage, outbuilding or other structure shall be moved upon the Property from another location. Except however that Developer and builders shall be exempt from this restriction for a period to end 1 year after said developer or builder's last residence is substantially completed, and shall be permitted to erect temporary buildings and or trailers or toilets, incident to construction or sales of homes in the Development.
- i. **Animals.** No animals, livestock poultry or fowl of any kind, except as approved in writing by the Building committee shall be raised, bred or kept on any Lot; provided however that dogs, cats, or other household pets and horses may be kept, but they shall not be bred or kept for commercial purposes. Livestock other than those permitted herein may be kept on a Lot only under a Student 4-H or similar program and the terms and conditions for allowing such animals on a Lot shall be established by the Building Committee. All horses and livestock permitted by the Declaration shall be kept in a fenced enclosure behind the front setback of the residence. All animals permitted by the Declaration must be kept on the Owner's Lot; provided, however, that household pets on a leash an accompanied by an Owner or other person are permitted off the Owner's Lot. No animals shall be kept on Lot until the construction of a single family residence meeting all the requirements herein has been completed on such Lot.

- j. Trash and trash burning.** No burning of any material whatsoever, including, but not limited to trash, leaves, or debris, shall be permitted on any Lot or anywhere in the subdivision. Trash containers/dumpsters shall be kept in the alley way behind residence.
- k. Building Plan Approval.** Until such time as Developer has completed all building activities in the Development including any additional phases, no building, structure, fence, wall or other improvements shall be commenced, erected, constructed, placed or maintained upon the Property or any Lot nor shall any exterior addition to or change or alteration to a completed residence be made without the prior written approval of Developer. Once Developer has completed the last residence or has filed in the real property records of Midland County a statement that Developer no longer is acting in the capacity of Developer in the subdivision, the approval of any such building or remodeling activities shall be in accordance with the architectural control committee.
- l. Construction Requirements.** Only new construction materials shall be utilized (except that used brick may also be utilized) in constructing any structures situated on the Property, and all residential structures shall have not less than seventy-five percent (75%) masonry construction, or its equivalent, on exterior wall areas, except that detached outbuildings may have exterior siding of a type, design and materials that correspond to the architectural style and construction of the main residence, and shall be expressly approved by the architectural control committee or Developer as applicable. No sheet metal, aluminum, or any other type of metal structure shall be constructed. The square footage of all outbuildings on a Lot shall be equal or less than 50% of the square footage of the main residential building.
- m. Minimum Construction Standards.** In addition to the requirements herein as to approval of construction, all construction must comply with the International Building Code of 2003 as amended or adopted by the City of Midland Texas, (the "Code"). Any Code violation shall be considered a violation of these Restrictions and shall continue until remedied. All such Code violations in addition to any enforcement by public officials shall also be enforceable as a violation of these restrictions. Prior to commencement of construction on any Lot the owner of said Lot shall submit plans, pay a fee to the Developer or Architectural Control Committee as applicable of \$300.00 for the cost of inspections and approval. This fee may be adjusted by the Architectural Control Committee from time to time as the need arises.
- n. Size and Type of Residence.** No residential structure erected on the shall have less than two thousand two hundred (2200) square feet of livable floor space, exclusive of the area of attached garages, porches, detached guest or servants' quarters or other appurtenances or appendages. In addition, all residential structures shall be conventional in architectural design and construction and shall not exceed two stories in height and shall have a minimum of fifteen hundred (1500) square feet of heated livable floor space on the ground floor.

- o. Aggregate square footage.** The aggregate square footage of the main residence and all outbuildings combined shall not exceed 60% of the square footage of the Lot.
- p. Removal of construction trash and debris.** Removal and disposal of all construction debris is the responsibility of the Lot owner. Developer or Architectural Control Committee as applicable may require Owner to maintain a construction dumpster during construction and upon commencement of construction may require a deposit not to exceed \$500.00 to secure the removal of all construction debris. Said deposit to be returned upon completion of construction and removal of all debris.
- q. Antennae and satellite dishes.** All antennae of any type radio television or other type of frequency shall be placed to the rear of the centerline of the roof of the main residence, or in the rear yard, but in no event shall they rise or exceed to more than six (6) feet above the roof line.
- r. Water Wells.** In addition to complying with all other state and local rules and regulations, no individual water well shall be drilled nearer than five (5) feet from the boundary line of any Lot and all water wells shall be cased from the surface to the water formation. Individuals may not remove or sell water from their Lot to another Lot unless both of said areas or Lots are owned by the same individual.
- s. Construction time requirements.** In partial consideration for the Property being purchased by Buyer from Seller, Buyer agrees that the construction of a residence on the Property will be commenced in good faith within six (6) months following the closing of the purchase of the Property hereunder. Completion of construction will be within twelve (12) months following the closing of the purchase of the Property hereunder. If Buyer fails to commence construction of a residence on the Property within six (6) months following the closing of such purchase, Seller shall have the continuing right, but not the obligation, to repurchase such property at any time prior to the commencement of construction for an amount equal to the original purchase price paid by the Buyer to Seller for the Property. Buyer further agrees, as a part of the consideration for the Contract, that until Buyer commences the construction of a one family residence on the Property, Buyer will not resell or trade the Property purchased hereunder, or mortgage or encumber any lot purchased hereunder for an amount greater than the purchase price of such Property. Buyer acknowledges that the Property purchased hereunder will be used only by the Buyer in building a single family residential dwelling.

3. Covenants to run with the land

These restrictions are valid and enforceable and are to be considered restrictions running with the land. These restrictions will remain in force and effect until September 20, 2024 after which time they will be automatically extended for successive periods of ten years each unless an

instrument, signed by all of the record owners located within the Development has been recorded, modifying or terminating these restrictions. For the purposes of determining ownership acres for modification or termination, the records of the Midland County Appraisal District will be deemed an accurate record of acreage ownership.

4. Separate Provisions

Each restriction or limitation imposed or contained in these Restrictions, whether separately numbered or not, is deemed to be a distinct, separate and severable restriction and may be enforced regardless of whether any other provision has been declared unenforceable or has not been enforced. The failure to enforce a particular restriction will not be considered a waiver of said restriction or operate to bar the enforceability of that restriction or any other restriction contained in this document.

5. ENFORCEABILITY

These restrictions are enforceable by an action brought in the District Court of Midland County, Texas by any record owner of any Tract located within the Development.

Executed effective the ___ th day of _____, _____

“Owner”

By: _____

Felix Quiroz Jr.

STATE OF TEXAS

COUNTY OF MIDLAND

This instrument acknowledged before me this ___ day of _____, _____
by Felix Quiroz Jr.

(Seal)

NOTARY PUBLIC
STATE OF TEXAS

HOLD HARMLESS AGREEMENT

SELLER: **Felix Quiroz, Jr.**

BUYER:

PROPERTY:

PROPOSED LOT ____, BLOCK ____, EL MONTECITO ESTATES A PROPOSED SUBDIVISION PLAT OF MIDLAND COUNTY, TEXAS SAID LOT BEING DESCRIBED BY METES AND BOUNDS ON EXHIBIT "A"

AGENT: **Ernesto G Calderon**

Whereas, Seller owns the above described Property which Seller has or is in the process of being under contract for sale to Buyer; and

Whereas, Buyer has been advised and informed that the Subdivision Plat for El Montecito Estates is currently pending before the City but has not yet been approved; and

Whereas, Seller has been advised and informed that until such time as the Subdivision Plat is approved that Buyer will not be able to obtain a septic permit for construction on the lot; and

Whereas, Seller has been advised and informed that they will be required to sign the plat once approved prior to being recorded in the Plat Records.

NOW THEREFORE, in consideration of the above Buyer acknowledges and agrees as follows:

Buyer acknowledges the above, and agrees to cooperate fully with the platting process and agrees to sign the subdivision plat when presented.

Buyer hereby releases and holds harmless Seller, Agent and Stewart Title Company from any and all liability, or responsibility for any damages arising out of or related in any way to the Buyer's inability to obtain a permit or from any other consequence or delay as a result of the failure to obtain or delay in obtaining final Subdivision Plat Approval for El Montecito Estates.

Dated: _____, _____

"Buyer"

"Seller"

Felix Quiroz, Jr.