051293

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MOUNTAIN VIEW SUBDIVISION

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GILLESPIE

THAT, TRIPLE OAKS PARTNERS, LTD., a Texas Limited Partnership ("Declarant"), being the owner of that certain subdivision known as MOUNTAIN VIEW SUBDIVISION (hereinafter referred to as the "Subdivision"), according to the plat of said subdivision as recorded in Volume 3, Page 149, of the Plat Records of Gillespie County, Texas, and, as such, desiring to create and carry out a uniform plan for the improvement, development, and sale of the subdivided lots situated within the Subdivision, does hereby adopt and establish the following easements, restrictions, covenants and conditions ("Protective Covenants") to run with the land and to apply in the use, occupancy, and conveyance of the aforesaid described subdivided lots therein, which easements, restrictions, covenants and conditions shall be binding on all parties having a right, title or interest in or to the above described Subdivision or any part thereof, and their heirs, successors and assigns, and which easements, restrictions, covenants and conditions shall inure to the benefit of each owner thereof; and each contract or deed which may be executed with regard to any of such property shall be conclusively held to have been executed, delivered and accepted, subject to the following restrictions and covenants:

ARTICLE I.

DEFINITIONS

"Association" shall mean and refer to MVP Owners' Association, Inc. (a Texas non-profit corporation), its successors and assigns.

"ARC" shall mean the Architectural Review Committee as referred to in Article IX, hereof.

"Common Area" shall mean all real property (including the Improvements thereto) leased, owned or maintained by the Association for the common use and enjoyment of the Owners. By way of illustration, Common Area may include, but not necessarily be limited to, the following: private streets, signs, street medians, entry gates, landscaping, lighting, entrance signs, walls, bridges, and other similar or appurtenant improvements.

"Declarant" shall mean and refer to TRIPLE OAKS PARTNERS, LTD., its successors and assigns, if such successors or assigns should acquire all of the undeveloped and unsold lots or acreage from the Declarant for the purpose of development.

"Declaration" shall mean this instrument as it may be amended from time to time.

"Dwelling" shall mean and refer to any building or portion of a building situated upon the Property which is designed and intended for use and occupancy as a residence.

"Improvement" or "Improvements" shall mean or refer to all structures or other improvements to any portion of the Property, whether above or below grade, including, but not limited to, buildings, barns, carports, fences, pens, well houses, entryways, gates, exterior lighting, mailboxes, flag poles, recreation areas, utility installations (including, without limitation, water, telephone, electric, satellite, propane gas tanks and systems, and septic tanks and systems), driveways, and any exterior additions, including any changes or alterations thereto. The term "Improvement" shall also mean all exterior sculptures and other artwork to the extent the ARC determines, in its sole discretion, that such items are visible and notable features of a Tract.

"Member" shall mean and refer to an Owner who is a member of the Association as provided for below.

"Owner" shall mean and refer to the record owner (including Declarant), whether one or more persons or entities, of a fee simple title to any Tract, including contract Sellers, but excluding those having such interest merely as security for the performance of an obligation.

"Plat" shall mean and refer to the map or plat of the Subdivision recorded in Volume 3, Page 149, of the Plat Records of Gillespie County, Texas, as such plat may be modified and amended from time to time.

"Property" or "Subdivision" shall mean and refer to that certain real property hereinbefore described as the "Subdivision" and more particularly described as Mountain View Subdivision, according to the Plat, and any additional property that may be made subject to this Declaration pursuant to Article II hereof.

"Tract" shall mean and refer to any plot of land shown upon the Plat, with the exception of any plot designated on the Plat as a Common Area.

ARTICLE II

ADDITION OF LAND

Declarant hereby reserves to itself and shall hereafter have the right, but not the obligation at any time and from time to time, in its sole and absolute discretion, and without notice to or the approval of any party or person whomsoever or whatsoever, to impose this Declaration or a substantially similar Declaration upon additional property adjacent, contiguous or nearby to the Property. Declarant may, at any time and from time to time, add any other lands to the Property, and upon such addition, this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall apply to the added land, and the rights, privileges, duties and liabilities of the persons subject to the Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration, unless such supplemental Declaration shall provide for changes to the Declaration to deal with the unique character of Declarant's overall development plans for the added property. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Official Public Records of Gillespie County, Texas, a notice of addition of land (in the form of a Supplemental Declaration) containing the following provisions:

(a) A reference to this Declaration, which reference shall state the book and page numbers of the Official Public Records wherein this Declaration is recorded;

(b) A statement that the provisions of this Declaration shall apply to the added land;

(c) A legal description of the added land; and

(d) Any covenants, conditions, or restrictions that are different or unique to the added land.

ARTICLE III.

DEDICATION OF ROADWAY/RESERVATION OF RIGHTS

Section 1. Dedication of Roadways. Declarant hereby dedicates the roadways ("Roadways") being sixty (60) feet in width the centerlines of which are described by metes and bounds on Exhibit A attached hereto and fully incorporated herein by reference, for the common use of all Owners (such Roadways being generally depicted on the diagram attached hereto as Exhibit B and fully incorporated herein by reference), and does hereby grant to all such Owners, their heirs, successors and assigns, and their agents, licensees, guests, tenants, invitees and permittees, the free nonexclusive and uninterrupted use, liberty, privilege and easement of passage in and along the Roadways, together with free ingress, egress and regress, over and across the same, at all times and seasons forever, in, along, upon and out of said way (the "Roadway Easement"). The right to use and enjoy the Roadway Easement shall exist in favor of and shall inure to the benefit of the Owners, and each of them, and each of their respective heirs, successors and assigns, and their respective agents, licensees, tenants, guests, invitees and permittees

in common with each other, the Declarant, the Declarant's successors and assigns, and their respective agents, licensees, tenants, guests, invitees and permittees. The Roadway Easement shall further be deemed an easement appurtenant to the Property, and each and every portion thereof. The right of ingress and egress provided by the Roadway Easement may be exercised by any reasonable means, whether now in existence or known or whether by a means which may come into existence in the future, and regardless of any increased burden which may result from such use.

Section 2. Reservation of Right to Construct Improvements. Until Turnover (as hereinafter defined), Declarant, and Declarant's successors and assigns, shall have the exclusive right to construct Improvements in the Common Areas, including, without limitation, the right to construct roads along the Roadways. From and after Turnover, the Association, and the Association's successors and assigns, shall have the exclusive right to construct Improvements in the Common Areas.

Section 3. Maintenance of Common Areas. The Association shall have the exclusive right to repair, replace and maintain the Common Areas, including, without limitation, the Roadways.

NOTICE: ALL STREETS AND ROADWAYS OF THE SUBDIVISION SHALL BE PRIVATELY MAINTAINED BY THE ASSOCIATION. GILLESPIE COUNTY, TEXAS SHALL NOT BE RESPONSIBLE FOR THE MAINTENANCE AND REPAIR OF THE STREETS AND ROADWAYS. BY ACCEPTANCE OF A DEED TO A TRACT WITHIN THE SUBDIVISION, EACH OWNER COVENANTS AND AGREES TO WAIVE ANY RIGHT SUCH OWNER MAY HAVE TO DEMAND OR COMPEL THE MAINTENANCE OR REPAIR OF THE STREETS AND ROADWAYS OF THE SUBDIVISION BY GILLESPIE COUNTY, TEXAS AND IS ESTOPPED FROM DOING SO.

ARTICLE IV.

EASEMENTS

Section 1. Reservation of Utility Easements. Declarant reserves unto Declarant and Declarant's successor and/or assigns, perpetual easements (the "Utility Easements") for the installation and maintenance of utilities and all necessary appurtenances thereto, whether installed in the air, upon the surface or underground, along and within (i) ten (10) feet of the rear, front and side boundary lines of all Tracts, (ii) all Roadways, (iii) ten (10) feet along and outside of all boundaries of the Roadways, and (iv) twenty (20) feet along the entire perimeter boundary of the Subdivision; with the authority to place, construct, operate, maintain, relocate and replace utility lines, systems and equipment thereon. The Utility Easements include the right of anchoring any support cables or other devices outside such easement areas when deemed necessary to support equipment. Nothing shall be placed or permitted to remain within the easement areas which may

damage or interfere with the installation and maintenance of utilities. The easement areas within each Tract and all Improvements within it shall be maintained by the Owner of the Tract, except as otherwise provided in this Declaration and except for those Improvements for which an authority or utility provider is responsible. Utility providers shall have all of the rights and benefits necessary and convenient for the full enjoyment of the rights herein granted, including, but not limited to the free right to ingress to, and egress from, easement areas, and the right from time to time to cut and trim all trees, undergrowth and other obstructions that may injure, endanger or interfere with the installation, operation or maintenance of utilities. Declarant shall have the right, without the necessity of joinder by the Association or any Owner, to execute and deliver any and all instruments that may be required by any provider of such utilities in order to grant or assign such provider the right to utilize the easement reserved hereby to provide such utilities.

Section 2. Easements Shown on Plat. All dedications, limitations, restrictions and reservations shown on the Plat, and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property.

Section 3. Drainage Easements, Drainage Channels and Water Retention Berms. Easements for drainage (the Drainage Easements") throughout the Subdivision are reserved as shown on the Plat, and are hereby reserved along and within the Roadways. The Drainage Easements are reserved by Declarant, for Declarant and Declarant's successors and assigns. Declarant reserves the right: (i) to construct drainage channels and install culverts along and within the Drainage Easements, and (ii) to construct water retention berms (the "Water Retention Berms") to be situated approximately within the areas generally depicted on the diagram attached as Exhibit C hereto and fully incorporated herein by reference. Declarant shall have all of the rights and benefits necessary and convenient for the full enjoyment of the rights herein granted, including, but not limited to the free right of entry onto all Tracts for the purpose of construction and installation of any drainage channels, culverts and Water Retention Berms, and the right to cut and trim all trees, undergrowth and other obstructions that may interfere with the construction or installation of any drainage channels, culverts and Water Retention Berms. No Owner may perform or cause to be performed any act which would alter, or change the course of, any Drainage Easement, drainage channel, culvert or Water Retention Berm, in a manner that would divert, increase accelerate or impede the natural flow of water over and across such areas. More specifically, and without limitation, no Owner may:

(a) alter, change or modify the existing natural vegetation in a manner that changes the character of the original environment of such areas:

(b) alter, change or modify the existing configuration of such areas, or fill, excavate or terrace such areas or remove trees or other vegetation therefrom without the prior written approval of the Association;

(c) construct, erect or install a fence or other Improvement of any type or nature within or upon such areas which will impede the natural flow of water over and across such areas;

(d) permit storage, either temporary or permanent, of any type upon or within such areas; or

(e) place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon such areas, either on a temporary or permanent basis.

After the initial construction of any drainage channels, culverts and Water Retention Berms by Declarant, the Association shall have the right to, and shall be responsible for, the maintenance and repair of such drainage channels, culverts and Water Retention Berms to the extent required in order to cause them to adequately perform the drainage and water retention function for which they were initially constructed; provided that the Owner of a Tract on which a Drainage Easement, drainage channel, culvert and/or Water Retention Berm is situated shall be responsible for the normal, day-to-day maintenance of such areas on such Owner's Tract (including, without limitation, mowing such areas, and keeping such areas free from trash, garbage, leaves, limbs and other debris), and for any maintenance or repairs caused by any violation by such Owner of the restrictions provided for in these Declarations. The failure of any Owner to comply with the provisions of this Section 3 shall in no event be deemed or construed to impose liability of any nature on the Declarant, the Association, or the ARC. Neither the Declarant, the Association, nor the ARC, shall be charged with any affirmative duty to police, control or enforce such provisions. The easements, rights and restrictions provided for in this Section 3 shall in no way affect any other recorded easement in the Subdivision.

Section 4. Access Easements. Declarant hereby reserves for itself and its successors and assigns, and the Association is hereby granted, a non-exclusive right of access to and easement across all Tracts for purposes of exercising their respective rights or performing their respective duties under these Declarations (including, without limitation, any rights or duties of maintenance or repair).

Section 5. Changes, Additions, and Reservations. Declarant reserves the right to make changes in and additions to the easements described in this Article IV for the purpose of more efficiently and economically installing any Improvements. Further, Declarant reserves the right, without the necessity of the joinder of the Association or any Owner or other person or entity, (i) to grant, dedicate, reserve or otherwise create easements for utility purposes, (including, without limitation, water, sewer, gas,

electricity, telephone, cable television, and drainage) in favor of any person or entity furnishing or to furnish utility services to the Properties, but only to the extent reasonably necessary and appropriate, and (ii) to execute and deliver any and all instruments and documents in connection therewith, including, without limitation, any and all instruments and documents that may be required by any provider of such utilities.

ARTICLE V.

COMMON AREAS

Other than the Roadways and the entry to the Subdivision, and any Improvements in connection therewith, there are no Common Areas planned to be developed within the Subdivision.

ARTICLE VI.

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Roadways and any other Common Areas, which shall be appurtenant to and shall pass with the title to every Tract, subject to the following provisions:

(a) the right of the Association to charge fees for the repair and maintenance of the Roadways and any Common Areas, collect all dues, fines, assessments, reimbursements, and/or other fees or charges of any sort provided for in this Declaration, and enforce collection of any such dues, fines, assessments, reimbursements, and/or other fees or charges in the accordance with any and all terms, conditions or rights set forth in this Declaration;

(b) the right of the Association to suspend the voting rights of an Owner for any period of time during which any assessment against his Tract remains unpaid, or for any period of time during which such Owner is delinquent in the payment of any dues, fines, assessments, reimbursements, and/or other fees or charges due the Association hereunder;

(c) the right of the Association to suspend the voting rights of any Owner during any period of time in which an infraction of any of the rules and regulations set forth in this Declaration, or adopted by the Association, has taken place, and to uphold such suspension for up to 60 days after said Owner's cure;

(d) the right of the Association to enforce any and all rules and regulations which are a part of this Declaration and to make and adopt rules and regulations regarding the use of the Roadways and any other Common Areas; and

(e) the right of the ARC to make and adopt rules and regulations related to its purpose.

ARTICLE VII.

PROPERTY OWNER'S ASSOCIATION AND COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Membership and Voting. Declarant shall take all steps necessary to create the Association, to which Association the Declarant may assign or delegate on a permanent or temporary basis one or more of the rights, powers, obligations and duties of the Declarant under this Declaration. Every Owner of a Tract within the Property shall be a member of the Association.

The Association shall have two classes of voting membership.

Class A: Class A Members shall be all Owners of Tracts, with the exception of the Declarant, and shall be entitled to one (1) vote for each Tract owned. When more than one person owns an interest in any Tract, all such persons shall be members. The vote for such Tract shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any one Tract hereunder.

Class B: Class B Members shall be the Declarant. Declarant shall be entitled to three (3) votes for each Tract owned. Once a Tract is sold to a person or persons who would be classified as Class A Members, the three (3) votes attached to that Tract shall be extinguished.

When more than one person owns an interest in any Tract, in order for the vote attributable to such Tract to be valid, the Owners of such Tract (or their representatives) shall deliver to the Board of Directors such instruments and documents (including, without limitation, resolutions, authorizations, approvals, and certifications) as the Board of the Directors may reasonably request to confirm that such vote was authorized; such instruments and documents to be delivered prior to the taking of the vote of the members. If such instruments and documents are not delivered, or if the Board of Directors determines, in its sole discretion, that such vote was not properly authorized, the vote submitted for such Tract shall be deemed to be an abstention.

Section 2. Turnover.

(a) At any time after commencement of operations of the Association, at Declarant's sole discretion, the Owners may be required to take over the management of the Association and relieve Declarant of all duties associated therewith (for purposes of this Declaration, the transfer of management of the Association by Declarant to the Owners is hereinafter referred to as "Turnover"). Upon such Turnover by the Declarant, the Owners will be required to choose their own Board of Directors to represent them and to manage the Association in accordance with the terms and conditions of this Declaration and to establish any and all bylaws, procedures and other management devices by which the Association shall operate. Prior to the date such Turnover occurs, a Director need not be a member of the Association. From and after such date, a Director shall be a member of the Association.

(b) Notwithstanding anything to the contrary, until such Turnover has taken place, the management of the Association shall be by Declarant and its staff, and any expenses incurred in such management shall be reimbursed to Declarant by the Association. Said reimbursable expenses shall include the cost of Declarant's staff for the time spent in the management of the Association.

(c) Declarant shall give the Owners written notice of the Turnover (the "Turnover Notice") at least thirty (30) days prior to the effective date of such Turnover. The Turnover Notice shall state the effective date of the Turnover (the "Turnover Date"). In addition, the Turnover Notice shall state the place, date and hour of a special meeting of the Owners called for the purpose of the election of a new Board of Directors as of the Turnover Date, and shall constitute a call and notice of such special meeting. In the event the Owners fail to elect a new Board of Directors by the Turnover Date, the Declarant may (but shall not be obligated to) appoint three (3) or more Owners to serve as an interim Board of Directors until such time as the Owners elect a new Board of Directors. Turnover of the Association shall occur on the Turnover Date specified in the Turnover Notice, whether or not a new Board of Directors is elected by the Owners by the Turnover Date, and whether or not an interim Board of Directors is appointed by the Declarant.

(d) The Association shall at all times from and after Turnover indemnify and hold Declarant, its officers and partners, harmless from and against any and all liability, claims or damages of every kind, arising out of the operation of the Association (whether before or after such Turnover), or the development and operation of the Subdivision (whether before or after such Turnover), including, without limitation, the Roadways and any other Common Areas. Additionally, Declarant, its officers and partners, shall not be held liable in any way in its role in enforcing or failing to enforce any of the covenants, conditions, restrictions and other terms of this Declaration, in protecting its rights or in carrying out any of its duties or obligations. The indemnification by the Association of the Declarant shall include the Association's payment of any and all expenses incurred by Declarant's,

its officers or partners, including the payment of any and all legal expenses, court costs, and all other costs associated with the protection and/or defense of Declarant, its officers and partners, in any legal actions or proceedings or any other action of any kind.

(e) Upon written request made by Declarant to the Association, which request may be made at any time after the date hereof, the Association shall obtain and maintain in effect at all times, at the Association's expense, Commercial General Liability Insurance with limits of liability reasonably acceptable to Declarant, but not less than $1,000,000.00 per occurrence and $2,000,000.00 aggregate single limit; such insurance (i) to include coverage insuring against liability arising out of or related to the operation of the Association, and the development, operation and maintenance of the Subdivision, including, without limitation, the Roadways and any other Common Areas, (ii) to name Declarant as an additional insured, and (iii) to be issued by an insurance company reasonably acceptable to Declarant. The Association shall, not later than ten (10) days after the date of Declarant's request for such liability coverage, provide Declarant with a certificate of insurance providing for the insurance coverage required hereby. The Association shall not cancel any insurance policy obtained in accordance herewith without giving Declarant at least thirty (30) days prior written notice. The Association shall maintain such liability insurance until the later of (a) the date all of the Common Areas are turned over to the Association, (b) the date management of the Association has been turned over to the Owners, or (c) the date Declarant no longer owns any interest in any part of the Subdivision.

Section 3. Personal Obligation and Lien Rights Associated with Collection of Dues and Assessments.

(a) Each Owner, by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to agree to pay to the Association regular annual assessments and all other Association dues, fees, fines, assessments or charges of any kind, including special assessments, which may be established and collected as hereinafter provided.

(b) The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time the assessment fell due. The personal obligation for delinquent assessments shall pass to any successors or assigns in title.

Section 4. Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents and/or Owners of the Property, for the improvement and maintenance of the Common Areas (including the Roadways), for the improvement and maintenance of all other roadways

and easements used by or benefiting the Subdivision (whether or not such roadways or easements are located within or outside of the Subdivision), for the maintenance and repair of drainage channels, culverts, and Water Retention Berms, and for the general and administrative expenses of the Association. These expenses may include, but shall not necessarily be limited to, payment of taxes and insurance, construction, repair or replacement of streets, security gates and entryways, and other improvements, cost of trash and debris clean-up, street and lot cleaning, clearing areas contained within the Drainage Easements, repairing drainage channels, culvert and Water Retention Berms, cost of professional or other outside services, and labor, equipment, materials, outside management and supervision necessary to carry out its authorized functions. Additionally, any other expenses which, in Declarant's sole discretion, are deemed necessary to uphold the Subdivision's property values and/or are for the overall betterment of the Subdivision and its appearance, shall be the responsibility of the Association and shall be paid out of assessments including, but not necessarily limited to, cost of security, lot cleaning, general maintenance and road cleaning.

Section 5. Initial Annual Assessment. Until adjusted in accordance herewith, the maximum annual assessments shall be as follows:

* Class A Members: $250.00 per individual Tract owned; and

* Class B Members: $ 10.00 per individual Tract owned.

(a) From and after January 1 of the calendar year immediately following the first conveyance of a Tract to an Owner, the maximum Class A annual assessment (a) may be increased each year by the Board of Directors not more than 15% above the maximum assessment for the previous year without a vote of membership; and (b) may be increased each year by more than 15% above the maximum assessment for the previous year if such increase is approved by the Board of Directors and by a vote of more than two thirds (2/3) of the votes that may be cast by the members represented in person or by proxy at a meeting duly called for such purpose.

(b) The Board of Directors may fix the Class A annual assessment at an amount not in excess of the maximum Class A annual assessment, as such maximum Class A annual assessment may be increased from time to time as provided for above.

(c) In no event will the maximum Class B annual assessments stated above be altered or adjusted.

Section 6. Special Assessments. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy special assessments from time to time for the purpose of defraying the cost of any construction, reconstruction, repair or replacement of any capital improvements upon or which are a part of the Common Areas

(including the Roadways), the cost of any construction, reconstruction, repair or replacement of any roadways and easements used by or benefiting the Subdivision (whether or not such roadways or easements are located within or outside of the Subdivision), the cost of acquisition, repair or replacement of any fixtures and personal property used by or benefiting the Association or the Subdivision, the cost of repair or replacement of any drainage channels, culverts and Water Retention Berms, and/or for carrying out any other purposes of the Association as stated herein or in the Association's organizational documents, as they may be amended from time to time. In order for the Board of Directors of the Association to levy a special assessment in accordance herewith, such special assessment must be approved by a vote of more than two thirds (2/3) of the votes that may be cast by the members represented in person or by proxy at a meeting duly called for such purpose.

Section 7. Notice and Quorum for any Action Authorized Under Sections 5 and 6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5 or 6 above shall be sent to all members not less than 20 days nor more than 90 days in advance of any meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes of the membership of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called by the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 90 days following the preceding meeting.

Section 8. Uniform Rate of Assessment. Any and all dues of the Association or special assessments must be fixed at a uniform rate for all Tracts owned by Class A Members, and a uniform rate for all Tracts owned by Class B Members, and may be collected on a monthly or quarterly basis in lieu of annually. This decision may be made by Declarant until "Turnover" occurs, and thereafter may be made by the Board of Directors.

Section 9. Date of Commencement of Annual Assessments. The annual assessment period shall be a calendar year. Annual assessments shall not commence until January 1, 2005 (the "Assessment Commencement Date"). With respect to the initial sale of a Tract occurring after the Assessment Commencement Date, the buyer may be assessed at the closing of such sale for a prorated amount of the annual assessment attributable to such Tract as if such Tract had been assessed at the Class A annual assessment rate at all times during such annual assessment period, such prorated amount to be determined based upon the number of days remaining in such annual assessment period after such closing. The Board of Directors shall fix the amount of the annual assessment against each Tract at least ten (10) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto.

Section 10. Assessment Due Date. All assessments (whether annual or special) shall be due and payable in advance upon receipt of the bill for such assessment sent by the Association.

Section 11. Certification Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Tract have been paid. A properly executed certificate of the Association as to the status of assessments on a Tract is binding upon the Association as of the date of its issuance.

Section 12. Reimbursement of Declarant. Notwithstanding any other terms or conditions set forth in this Declaration, any expenses which are incurred by Declarant prior to the establishment of the Association, or prior to sufficient income being received from assessment billings, and which would normally be the responsibility of the Association, shall be reimbursed to Declarant from proceeds of the Association as funds become available from dues and assessments, but in any case not later than one (1) year after the date the expense was incurred.

Section 13. Effect of Nonpayment of Assessments: Remedies of the Association. The Association may charge a one time late fee of $50.00 if any assessment is not paid within thirty (30) days after the date it is due. In addition, any assessment not paid within thirty (30) days after the date it is due shall bear interest from the due date at a rate equal to the lesser of (a) twelve percent (12%) per annum, or (b) the highest legal rate permitted by law to be charged the non-paying Owner. The Association may bring an action at law against the Owner personally obligated to pay the same, may foreclose the Association's lien again such Owners' Tract, and/or exercise any and all other rights and remedies it may have hereunder, or under Texas law, to enforce an Owner's obligations hereunder. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Tract.

Section 14. Subordination of the Lien to Mortgage. The Association's lien to secure payment of the assessments provided for herein shall be subordinate to mortgage, deed of trust, or home equity liens of record. The sale or transfer of any Tract shall not affect the assessment lien. No sale or transfer shall relieve such Tract from liability for any assessments thereafter becoming due or from the lien thereof.

Section 15. Exempt Property. All Common Areas and other portions of the Property, if any, which are dedicated to public authorities, shall be exempt from assessment.

Section 16. No Assessments for Initial Construction. Assessments shall not be levied for the initial construction of Great View Drive, West Distant View Drive and East Distant View Drive as shown on the current plat of the Subdivision, the initial construction and installation of the main electric and telephone lines and facilities serving

the Subdivision along Great View Drive, West Distant View Drive and East Distant View Drive, the initial construction of the entry gate to the Subdivision, or the initial construction of any drainage channels, culverts or Water Retention Berms to be constructed with respect to the initial development of the Subdivision.

ARTICLE VIII.

RESTRICTIVE COVENANTS

The Declarant hereby declares that the Property shall henceforth be owned, held, transferred, sold and conveyed subject to the following covenants, conditions and restrictions which are intended for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on Declarant and all Owners, and their respective heirs, successors and assigns, and which shall inure to the benefit of Declarant and each Owner of any part of the Property, and their respective heirs, successors and assigns. THE FOLLOWING RESTRICTIVE COVENANTS SHALL APPLY TO ALL TRACTS UNLESS EXPRESSLY PROVIDED OTHERWISE IN A PARTICULAR RESTRICTIVE COVENANT.

Section 1. Building Restrictions

(1) Not more than one single-family dwelling may be erected on any Tract. Servant's quarters, one (1) guest house, and related outbuildings may be constructed after the completion of construction of the principal dwelling, but not before. Barns and stables will be permitted on a Tract only if approved by the ARC.

(2) Pens, fences and other similar improvements may be made or erected on a Tract prior to construction of the principal dwelling. Barns and stables, where permitted, may be made or erected on a Tract prior to construction of the principal dwelling.

(3) Single-family dwellings shall contain a minimum of 2000 square feet of living area. For purposes of this restriction the term "living area" shall mean that area of a dwelling which is heated and cooled, exclusive of porches, breezeways, carports, garages or basements.

(4) The exterior of the dwelling, barns, stables, carports, garages, recreational vehicle enclosures, servant's quarters, guesthouse and other buildings shall be constructed of wood, Masonite or comparable material, rock, stone, brick, stucco, masonry and certain metal products (if such metal products are approved by the ARC). Metal products may be used on the exterior of any dwelling, barns, stables, carports, garages, recreational vehicle enclosures, servant's quarters, guesthouse and other buildings only if such use is approved by the ARC in accordance with the procedures set forth in Article IX below.

(5) The exterior of any building shall be completed not later than twenty four (24) months after the issuance of the building permit for such building by the ARC.

(6) All dwellings shall be newly constructed and erected on site. No dwelling shall be moved on to a Tract. An Owner shall be entitled, however, to incorporate historical and other previously used building materials and fixtures into a newly constructed dwelling.

(7) A dwelling shall not be occupied until the exterior thereof shall be completely finished and plumbing is connected to a septic system or other waste water disposal system which has been approved by all local, state and federal departments, agencies or authorities the approvals of which are required in order to install and use such systems.

(8) Recreational vehicles, travel trailers, buses, mobile homes, modular homes, pre-manufactured homes and/or industrial-built homes shall not be permitted on any Tract; except that recreational vehicles, travel trailers, and buses shall be permitted on Tracts 8, 9, 10, 11, 12, 15, 16, 17, 19, and 21, provided they are not used as a dwelling and are kept in an enclosed structure approved by the ARC and in a location approved by the ARC. All boats, tractors, golf carts, ATV's, motorcycles, "pop up" campers, and other similar types of vehicles and equipment shall be stored in a garage or other enclosed structure out of view.

(9) All fences erected on any Tract shall be of new material and erected in accordance with professional fence building standards regarding quality and appearance.

(10) No building, structure or other Improvement shall be constructed, erected or placed upon any Tract unless it is in accordance with a development and design plan approved by the ARC pursuant to Article IX hereof, nor shall any external lighting be installed on any Tract unless it is in accordance with an external lighting plan approved by the ARC pursuant to Article IX hereof. No building, structure or other Improvement, and no external lighting, shall be remodeled, renovated, relocated, or otherwise modified unless such remodeling, renovation, relocation, or modification is made in accordance with a development and design plan approved by the ARC.

(11) No Improvement of more than two and one-half (2.5) stories in height or exceeding a maximum height of thirty-five (35) feet shall be erected on any portion of a Tract.

(12) Roofs of all Improvements shall be constructed of wood shakes or shingles (fire retardant), metal, flat concrete or ceramic tiles; and with permission of the ARC, quality composition shingles may be used and/or built-up roofs may be used on flat roofs where necessary to the design integrity.

(13) All solar panels or other solar collection devices and water collection devices must be constructed as an integral part of the architectural design of a building. Alternatively, such devices shall be screened from the view of all streets and other Tracts.

(14) No external antenna, satellite receiving dish greater than thirty (30) inches in diameter, or other telecommunication device or equipment shall be permitted on any Tract unless totally screened from the view of streets and other Tracts.

(15) All swimming pools shall be constructed substantially at grade. No elevated swimming pools are allowed.

(16) No telephone, electric, water, septic, satellite or cable television, or other utility or service lines, wires or equipment shall be erected, placed or maintained anywhere in or upon any portion of the Subdivision, unless the same shall be contained in conduit or cables installed and maintained underground, or concealed in, under or on buildings or other Improvements; provided, however, that no provision hereof shall be deemed to prohibit:

a. the erection of temporary power or telephone structures incident to the construction of buildings or other Improvements,

b. the placement of any such utility or service lines above ground, if underground placement is prohibited by law or would prevent such lines from being functional, or

c. the erection, placement and maintenance of above ground service pedestals, switch cabinets and transformers where required by the provider of the utility or service.

(17) The walls or sides of any carport, garage, barn, stable, recreational vehicle enclosure, or other storage building, visible from any streets that abut a Tract shall be permanently enclosed to prevent viewing of the interior of such building from the street or streets. For purposes of this restriction, "permanently enclosed" shall require the absence of any garage doors or other openings, unless otherwise approved by the ARC.

(18) No signage indicating a Tract is used for any commercial purpose shall be allowed on any Tract. In addition, no sign of any kind shall be displayed for public view on any Tract, except:

(a) One (1) temporary sign of not more than five square feet may be placed on a Tract for the following purposes:

a. to advertise a Tract for sale or rent, or

b. to identify the architect or builder of Improvements on a Tract during the construction period of such Improvements.

(b) The Declarant may erect signs of any size in order to advertise the Subdivision and the availability of Tracts for sale in the Subdivision, as long as the Declarant owns any Tracts.

All permitted signs shall be professional in appearance. The ARC shall have the authority to require the immediate removal of any sign that the ARC determines, in its sole and absolute discretion, does not comply with the requirements of this Declaration.

(19) No Improvements shall be constructed in the Common Areas by any Owner (other than Declarant) without the prior written approval of the ARC and the Association. Without limiting the generality of the foregoing, no fences, cattle guards, archways or gates shall be installed or placed across any of the Roadways by any Owner (other than Declarant) without the prior written approval of the Association.

(20) No Owner shall alter the natural drainage of surface water over and across the Tracts, except as approved by, and with such limitations as may be prescribed by the ARC.

Section 2. Setback Requirements

(1) Except for entrance and other gates, wells and related well house, septic systems, fences and utility lines, nothing shall be stored, installed, or erected on any Tract within the building setbacks shown on Exhibit D attached hereto.

Section 3. Use Restrictions

(1) Except as set forth below, all Tracts constituting the Property shall be used for single-family residential purposes only, and no Tract shall be used for any commercial purpose. Notwithstanding the above and as exceptions thereto:

(a) a Tract may be used for growing and processing of various agricultural products and commodities for commercial purposes, including, by way of illustration (but not limitation), vineyards, orchards (including, fruits and nuts), farming operations (including vegetable farming), and cropland operations (including, small grain crops, sorghum hay, improved pasture hay, and row crop); provided that, (i) such use does not significantly increase traffic flow to and from any Tract, and (ii) no Tract shall be open to the public for the harvesting and/or purchasing of any such agricultural products and commodities;

(b) a Tract may be used for the raising of livestock, poultry or other animals, except swine;

(c) a bed and breakfast may be operated on a Tract after an Owner's principal dwelling has been completed. For purposes of these restrictions, the term "bed and breakfast" shall mean a lodging service within rooms of the principal dwelling or in a separate guest house. Only one (1) bed and breakfast unit within the principal dwelling or in a separate guest house shall be permitted.

(2) Swine shall not be kept on any Tract.

(3) All livestock, pets and poultry shall be provided shelter and shall be kept under fence within the boundaries of a Tract (or within the boundaries of several adjoining Tracts by agreement of the Owners of such Tracts). This restriction shall not apply to unsold Tracts owned by Declarant. Furthermore, Declarant and the Association (and/or their tenants or assignees) shall have the right to graze cattle or livestock on an Owner's Tract until such time as such Owner has fenced such Owner's Tract; and each Owner and their respective heirs, successors and assigns, by acceptance of title to an interest in a Tract, hereby agree to indemnify and hold harmless Declarant and the Association (and their respective tenants or assignees), from and against, and hereby waive and release any claims or causes of action such Owner may have with respect to, any injuries to any persons or any damages to any properties that may be caused by livestock on an Owner's Tract, or that may otherwise arise out of, or be suffered or incurred in connection with, the exercise by Declarant or the Association (or their tenants or assignees) of the right to graze livestock on an Owner's Tract, and/or the presence of livestock on an Owner's Tract.

(4) There shall be no commercial feeding operation or commercial breeding of animals or fowl on any Tract. Animals used for grazing a tract while simultaneously raising young (e.g., a cow/calf operation) shall not be considered commercial breeding of animals. One (1) male animal (for example, one bull or one ram) shall be permitted on a Tract. Cattle and horses shall be limited to one (1) head for every two (2) acres. Small animals, such as sheep or goats, shall be limited to two (2) heads per acre. Lamas, emus, ostriches or other exotic animals shall be limited to one (1) head for every two (2) acres.

(5) A church shall not be located on any Tract.

(6) Prior to the construction of the principal dwelling, an Owner shall be permitted to camp on such Owner's Tract, for a period not to exceed ten (10) consecutive calendar days, and not more than forty (40) total calendar days in any one calendar year.

(7) Abandoned or inoperative equipment, vehicles or junk shall not be permitted on any Tract. Owners are to keep each Tract clean and neat in appearance and free of litter at all times. Garbage or refuse or any hazardous material, as defined by any state or federal

law, rule or regulation, shall not be buried or disposed of on any Tract. Noxious or offensive activity shall not be permitted on any Tract, nor any activity which would be considered an annoyance or nuisance to other Owners.

(8) Trash cans, garbage cans and other trash receptacles may be temporarily placed in front of a Tract for pick up and disposal by a waste disposal service; however, such items shall not be placed in front of a Tract more than 24 hours prior to the scheduled pickup time of such waste disposal service, and shall be removed within 24 hours after the scheduled pickup time, whether or not the trash was picked up.

(9) Mineral exploration of any type which will damage the surface shall not be permitted on any Tract.

(10) No hunting shall be allowed on any Tract. No discharge of firearms (other than shotguns) shall be allowed on any Tract. No prolonged or consistent discharge of permitted firearms (such as skeet or trap shooting) shall be permitted.

(11) No trapping of animals will be allowed, except animals can be trapped when they have become a nuisance and the trapping is for animal control purposes.

Section 4. Restriction Against Subdivision

(1) No re-subdivision of any Tracts into smaller tracts shall be permitted; provided that Declarant shall have the right to re-subdivide any Tracts owned by Declarant without restriction.

ARTICLE IX.

ARCHITECTURAL REVIEW COMMITTEE

Section 1. Development Objectives. The aesthetic and ecological quality of the Property requires that all Improvements be compatible with other improvements, and be in harmony with the natural surroundings (including, without limitation, natural vegetation and topography), and be compatible with the goal of reducing the impact the Improvements may have on ability of all Owners to enjoy and experience the serenity and natural beauty of the Texas Hill Country. To these ends, an Architectural Review Committee (the "ARC") has been created as described in this Article IX. The ARC has the responsibility to carry out the goals and functions that have been adopted, and are described below, and which may be amended from time to time.

Section 2. Architectural Review Committee. The ARC shall be composed of three (3) persons selected and appointed by (i) the Declarant, as long as the Declarant owns any interest in any of the Tracts (unless Declarant's expressly relinquishes such right of

appointment sooner), and (ii) after the Declarant no longer owns any interest in any of the Tracts (or after Declarant expressly relinquishes such right of appointment), by the Board of Directors of the Association.

Section 3. Goal of ARC. The goal of the ARC is to encourage the construction of Improvements of good architectural design, aesthetic quality, location on the site, and proper size compatible and in harmony with other Improvements and the natural surroundings (including, without limitation, natural vegetation and topography), and compatible with the goal of reducing the impact the Improvements may have on ability of all Owners to enjoy and experience the serenity and natural beauty of the Texas Hill Country. Improvements should be planned and designed with particular attention to site location, size, scale, building density, design and aesthetic appearance, and the use of such materials as will, in the judgment of the ARC, create an attractive and harmonious blend with existing Improvements and the natural surroundings (including, without limitation, natural vegetation and topography), and be compatible with the goal of reducing the impact the Improvements may have on ability of all Owners to enjoy and experience the serenity and natural beauty of the Texas Hill Country. The ARC may disapprove the construction or design of an Improvement, or the location of an Improvement, on purely aesthetic grounds where, in its judgment, such disapproval is required to protect the continuity of design or values of the Subdivision and of other Owners, or to preserve the serenity and natural beauty of any surroundings. Prior judgments regarding such matters of site location, design or aesthetics shall not be deemed binding upon the ARC if the ARC feels that the repetition of such matters will have an adverse effect on the Subdivision.

Section 4. ARC Approval Required. No Improvement shall be erected, constructed, placed, altered (either by addition or deletion), maintained or permitted to remain on any Tract until plans and specifications (including a site plan), in such form and detail as the ARC may deem necessary, shall have been submitted to and approved in writing by the ARC. Without limiting the general application of the preceding sentence to all Improvements (including exterior lighting), no external lighting shall be placed, altered (either by addition or deletion), installed, maintained or permitted to remain on a Tract until the type, location and other elements and characteristics of such lighting has been approved in writing by the ARC. The ARC shall have the power to employ professional consultants to assist it in discharging its duties, with the costs and fees of such professional consultants to be paid by the Association. The decision of the ARC shall be final, conclusive, and binding upon the applicant.

Section 5. Procedures. The ARC may, but is not obligated to, establish and publish from time to time reasonable administrative procedures and separate building guidelines covering Improvements.

Section 6. Design Submittal. The Owner must submit design plans, which must adequately reflect to the ARC the true design quality of the proposed work and the location of the Improvement on such Owner's Tract. Final design plans and specifications shall be

submitted in complete form in duplicate and shall include (i) all elevations of any proposed structure(s) (including walls, signs, pools, pool buildings, barns, pens, etc.), roof height, exterior lighting plans, specification of materials, colors, textures and shapes, and (ii) a site plan showing the general location of all proposed and existing Improvements, the dimensions and shapes of all proposed and existing Improvements, and identifying any trees to be cut in connection with the proposed work. All exterior measurements and dimensions must be shown (1/4" = 1' minimum). Description of materials and finishes must be clearly indicated. Plans and specifications for the interior of any Improvement need not be submitted and shall not be the basis for any decision by the ARC.

Section 7. Basis of Approval. Approval of preliminary design plans and final plans and specifications shall be based upon the following:

(a) The architectural design.

(b) The location of the Improvement on the site (including, without limitation, the location of the Improvement in relation to (i) the natural surroundings (including, without limitation, natural vegetation and topography), (ii) other Improvements on the Tract, and (iii) other Improvements on adjoining Tracts and elsewhere in the Subdivision).

(c) Harmony and conformity of the design with the surroundings both natural and built (including, without limitation, natural vegetation and topography).

(d) Adequacy of the design to conditions of the site.

(e) Compatibility with the goal of reducing the impact the Improvements may have on ability of all Owners to enjoy and experience the serenity and natural beauty of the Texas Hill Country.

(f) Conformity to specific and general intent of the restrictive covenants set forth in this Declaration.

Section 8. Variances. Upon submission of a written request for same, the ARC may, from time to time, in its sole discretion, permit Owners to construct, erect, or install Improvements which are in variance from the covenants, restrictions, or architectural standards which are provided in this Declaration or those which may be promulgated in the future. In any case, however, such variances must, in the ARC's sole discretion, blend effectively with the general architectural style and design of the Subdivision and must not detrimentally affect the integrity of the Subdivision, nor harmony with the natural surroundings; and must be consistent with the goal of reducing the impact the Improvements may have on ability of all Owners to enjoy and experience the serenity and natural beauty of the Texas Hill Country. Neither the Declarant, nor the Association, nor the ARC, nor any member of the Board of Directors or of the ARC or of the Association, shall be liable to any Owner for claims, causes of action or damages arising out of the grant of any variance to an

Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the ARC's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder, against any other Owner.

Section 9. Issuance of Building Permit. Upon approval of final submittals, a building permit will be issued and construction may begin. All such permits must be prominently displayed at the job site.

Section 10. Failure of ARC to Act. If the ARC fails to approve or to disapprove the final plans and specifications or to reject them as being inadequate within thirty (30) days after submittal thereof, it shall be conclusively presumed that such ARC has approved such final plans and specifications. If final plans and specifications are not sufficiently complete or are otherwise inadequate, the ARC may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.

Section 11. Limitation of Liability. Neither the Declarant, nor the ARC , nor any of the members of the ARC, nor the Association, nor the Board of Directors, nor the members of the Association, shall be liable in damages or otherwise to anyone submitting plans and specifications for approval, to any Owner or to any other person or entity, by reason of the exercise of or the failure of the ARC to exercise any of its rights and powers hereunder, including without limitation: (i) the approval or disapproval of any plans and specifications, (ii) the approval or disapproval of any variances, (iii) the failure to take action with respect to any plans and specifications or the construction of any Improvements on any Tract, or (iv) the construction or performance of any work on any Tract, whether or not pursuant to any approved plans or specifications. Review and approvals by the ARC are for the purposes of the protection and maintenance of the aesthetic and ecological quality of the Property, and not for the purposes of determining the adequacy of the engineering, structural integrity, quality of construction, soundness of construction, safety of plans or construction, code compliance, compliance with any other laws, rules or regulations applicable to the Improvements or the construction, or any other matters involving the plans, specifications or construction of the Improvements ("Construction Matters"). Consequently, and without limiting the generality of the foregoing provisions of this section, neither the Declarant, nor the ARC, nor any of the members of the ARC, nor the Association, nor the Board of Directors, nor the members of the Association, shall be liable in damages or otherwise to anyone for any causes of action, claims, debts, demands, losses, costs, damages, expenses, obligations or other liabilities arising out of or in any way related to any Construction Matters.

ARTICLE X.

TERM

The covenants and restrictions set forth in this Declaration are made and adopted to run with the land and shall be binding upon the undersigned and all parties and persons claiming through and under them until January 1, 2035, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless and until an instrument executed by Owners of at least two thirds (2/3rds) of the Tracts has been recorded agreeing to terminate said covenants and restrictions in whole or in part; provided that, if Declarant owns any interest in the Property at the time, the covenants and restrictions may only be terminated if the Declarant joins in executing such instrument.

ARTICLE XI.

ENFORCEMENT

Section 1. Right of Enforcement. Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner, shall have the right to enforce, by proceedings at law or in equity, the terms, provisions, covenants, conditions, and restrictions of this Declaration. Failure of Declarant or the Association to take any action upon any breach or default shall not be deemed a waiver of their right to take action upon any subsequent breach or default. Declarant, for itself, its successors or assigns, reserves the right to enforce this Declaration, though it may have previously sold and conveyed all Tracts controlled hereby. The reservation by Declarant or the Association of this right of enforcement shall not create a duty or obligation of any kind to enforce same, and neither Declarant nor the Association shall be subjected to any claim, demand, or cause of action from any Owner by virtue of not enforcing any term, provision, covenant, condition or restrictions herein contained.

Section 2. Declarant and Association Right to Self Help.

(a) The Declarant and Association shall have the authority to employ self-help to enforce compliance with any provision of this Declaration. Upon the occurrence of a default or other violation of this Declaration, the Declarant or the Association may provide notice to the defaulting Owner of the matter of noncompliance, the action necessary to cure the noncompliance, and a date by which the noncompliance shall be cured; such notice to be sent in accordance with subparagraph (b) below. In the event the Owner fails to cure the matter of noncompliance within the required time, the Association may take action to cure the matter of noncompliance.

(b) Notice of default or other violation of this Declaration and of the Declarant's or Association's intent to act pursuant to this provision shall be in the form and in the manner as required by Article XVII. In the event of continuing noncompliance, a second notice, at least ten (10) days subsequent to the date of the mailing of the first notice, shall be sent to the noncomplying Owner. Not sooner than thirty (30) days after date of the mailing of the first notice, the Association or the Declarant may send a third notice (the "Notice of Intent to Remedy") to the noncomplying Owner of the Association's or the Declarant's intent to

remedy the noncomplying condition. The Notice of Intent to Remedy shall be sent by United States Certified Mail, return receipt requested, and shall otherwise conform to Article XVII. In the event the noncomplying condition is not cured within ten (10) days after the date of the Notice of Intent to Remedy, the Declarant or the Association may commence actions to remedy the noncomplying condition at the sole expense of the noncomplying Owner.

(c) In the event that Declarant or the Association acts to remedy a noncomplying condition in accordance herewith, all sums incurred by the Declarant or the Association in connection therewith, including any attorneys' fees, shall be charged against the Owner, and shall be payable by the Owner upon demand. If such sums are not paid within three (3) days after demand for payment is made therefor, such sums shall bear interest at at a rate equal to the lesser of (a) twelve percent (12%) per annum, or (b) the highest legal rate permitted by law to be charged the Owner and, unless otherwise provided herein, shall be secured by the assessment lien provided for herein against all Tracts owned by such Owner. In addition, the Declarant or the Association may exercise any and all other rights and remedies that may be available hereunder, or under Texas law, to enforce an Owner's obligations hereunder.

ARTICLE XII.

ASSESSMENT LIEN/NONJUDICIAL FORECLOSURE

Section 1. Special Deed of Trust. To secure the payment of assessments, reimbursements, and the other amounts owed to the Association by an Owner hereunder, and to ensure compliance with the applicable covenants, conditions, restrictions and easements set forth herein, each Owner, upon acceptance of his or her deed to a Tract governed by this Declaration conveys the Tract to the Trustee hereinafter named, in trust, for so long as these covenants, conditions, restrictions and easements shall remain in effect, such conveyance operating as a Special Deed of Trust. If an Owner fails to tender payment of any assessments, reimbursements, or other amounts owed to the Association when due, or if an Owner fails to perform any of the obligations under or maintain any condition required by this Declaration, the Association, in accordance with Article XI above, may perform those obligations, advance whatever funds may be required, and then be reimbursed by the Owner on demand for any sums so advanced, including attorney's fees, plus interest on those sums from the dates of payment at a rate equal to the lesser of (a) twelve percent (12%) per annum, or (b) the highest legal rate permitted by law for the Owner. The sum to be reimbursed shall be secured by this Special Deed of Trust.

Section 2. Failure to Pay. If the Owner fails on pay the Association for any assessments, reimbursements or other amounts owed by such Owner to the Association, and such failure continues after the Association gives the Owner notice of the failure and the time within which it must be cured, as may be required by law, then the Association, as the Beneficiary of this Special Deed of Trust, may:

(a) Request the Trustee appointed herein, or such Trustee's successor, to foreclose the liens created herein, in which case the Association shall give notice of the foreclosure sale as provided by Section 51.002 et. seq. of the Texas Property Code then in effect or any successor statute thereto; and

(b) Purchase the Tract at any foreclosure sale by offering the highest bid and then have the bid credited to the amounts owed to the Association.

Section 3. Foreclosure. If requested by the Association to foreclose this lien, the Trustee shall:

(a) Either personally or by agent give notice of the foreclosure sale as required by, Section 51.002 et. seq. of the Texas Property Code then in effect or any successor statute thereto;

(b) Sell and convey the Tract to the highest bidder for cash with a general warranty binding the Owner, subject to prior liens and to other exceptions to conveyance and warranty; and

(c) From the proceeds of the sale, pay, in this order:

(1) expenses of foreclosure, including a commission to Trustee of five percent (5%) of the successful bid;

(2) to the Association, the full amount owed, attorney's fees, and other charges due and unpaid;

(3) any amounts required by law to be paid before payment to the Owner; and

(4) to the Owner, any remaining balance.

Section 4. Appointment of Trustee. Mark H. Beall is appointed Trustee for the purpose of this Article XII. The Association, as Beneficiary, may appoint a substitute or successor trustee, succeeding to all rights and responsibilities of the Trustee appointed herein, by filing an appropriate designation of substitute trustee among the Real Property Records of Gillespie County, Texas.

Section 5. Tenancy-At-Sufferance. From and after any foreclosure under this Article XII, the occupants of such Tract shall be required to pay a reasonable rent for the use of such Tract and such occupancy shall constitute a tenancy-at-sufferance. The purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Tract by forcible detainer without

further notice.

Section 6. Compliance with Property Code. It is the intent of the provisions of this Section to comply with the provisions of the Texas Property Code (including, without limitation, Section 51.002), as such provisions may be amended from time to time. The President of the Association, acting without joinder of any Owner or mortgagee of any Owner, may, by amendment to this Declaration filed in the office of the County Clerk of Gillespie County, Texas, amend the provisions hereof so as to comply with Section 51.002.

Section 7. Priority of Lien. Any liens created by this Declaration, shall be superior to all other liens and charges against any Tract covered hereby, except only for tax liens, and mortgage, deed of trust, or home equity liens of record.

ARTICLE XIII.

PARTIAL INVALIDITY

The invalidation of any of the terms, provisions, covenants, conditions or restrictions contained in this Declaration, by judgment, court order, operation of law or otherwise, shall in no way affect the validity any of the other terms, provisions, covenants, conditions or restrictions hereof, which shall remain in full force and effect.

ARTICLE XIV.

AMENDMENT

(a) Except as otherwise provided herein, as long as Declarant owns any interest in the Property, the Declarant and the Owners (but expressly excluding their respective mortgagee's, if any) of at least two thirds (2/3rds) of the Tracts may amend this Declaration, by executing and filing an instrument containing such amendment, in the office of the County Clerk of Gillespie County, Texas. Except as otherwise provided herein, from and after the date that Declarant no longer owns any interest in the Property, the Owners (but expressly excluding their respective mortgagee's, if any) of at least two thirds (2/3rds) of the Tracts may amend this Declaration (except for the terms and conditions of any loan or assessments due to Declarant by the Association) by executing and filing an instrument containing such amendment, in the office of the County Clerk of Gillespie County, Texas.

(b) Notwithstanding anything to the contrary, Declarant shall have the right at any time, at its sole discretion and without any joinder or consent of any other party, to amend this Declaration for the purposes of correcting any error, ambiguity or inconsistency appearing herein or for any reason whatsoever deemed necessary for the benefit of the overall development as determined by Declarant, in its sole discretion. Said amendment shall be effective upon filing of the instrument containing such amendment in the office of

the County Clerk of Gillespie County, Texas.

(c) Notwithstanding the above, the covenants, conditions and restrictions contained in Article VIII above shall not be modified or amended in such a way that would cause a significant adverse affect on an Owner's then existing use of such Owner's Tract, without such Owner's consent.

ARTICLE XV.

WAIVER AND LACHES

The obligation to abide by the provisions contained in this Declaration shall be deemed to be of a continuing and continual basis. Each and every day an Owner allows a condition to exist on such Owner's Tract which is not in compliance with the requirements contained herein shall constitute a separate and individual violation hereof, and shall give rise to a new cause of action for such breach. The intended effect and express purpose of this provision shall be that every Owner, by accepting title to a Tract, hereby waives the affirmative defenses of the statute of limitations, waiver and laches with respect to covenant violations. Noncompliant conditions shall be allowed to exist on a Tract only upon the Owner obtaining a written variance in accordance with the applicable provisions herein. Failure of Declarant, the Association, the ARC, or of any Owner to enforce the terms of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XVI.

ASSESSMENTS BY AWARD OR JUDICIAL DECREE

In the event arbitration or litigation is necessary to enforce any provision contained within this Declaration, any and all awards granted by the arbitrator, or damages, penalties, fees, costs, and/or any other charges awarded in the decree shall also constitute an assessment, which shall likewise run with the land, and which shall be secured by the lien created in Article XII herein.

ARTICLE XVII.

NOTICE

Whenever written notice or demand to an Owner is permitted or required hereunder, such notice shall be given by the mailing of such notice to such Owner at the address of such Owner appearing on the records of the Association, unless such Owner has given written notice to the Association of a different address, in which event such notice shall be sent to the Owner at the address so designated. Notice shall conclusively be deemed to have been given by the Association on the date such notice is deposited in the United States Mail, properly

addressed, whether received by the addressee or not.

ARTICLE XVIII

HEADINGS

The headings contained herein are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Declaration.

EXECUTED by said Declarant, this 2nd day of March, 2005.

TRIPLE OAKS PARTNERS, LTD.,
acting by and through its General Partner,
Triple Oaks, L.C.

By: _____
Andrew Z. Smith, President

THE STATE OF TEXAS §

COUNTY OF GILLESPIE §

This instrument was acknowledged before me on this the 2nd day of March, 2005, by ANDREW Z. SMITH, President of Triple Oaks, L.C., the General Partner of Triple Oaks Partners, Ltd., a Texas limited partnership, for and on behalf of such limited partnership.

Denese Holler
Notary Public in and for
The State of Texas

DENESE HOLLER
Notary Public
STATE OF TEXAS
My Comm Exp. 01/31/06

David R. Johnson, Jr. and Stacy M. Johnson, the owners and holders of a lien against the Property, such lien being evidenced by a vendor's lien retained in Deed dated September 23, 2004, from JCJDS Partnership, Ltd. to Triple Oaks Partners, Ltd., filed of record in Volume 569, Pages 926 - 933, Official Public Records of Gillespie County, Texas, as well as a Deed of Trust dated September 23, 2004 to Gordon E. Sauer, Trustee, filed of record in Volume 569, Pages 934 - 944, Official Public Records of Gillespie County, Texas, do hereby consent to and confirm the subdivision of the Property pursuant to the plat of the subdivision recorded in Volume 3, Page 149, of the Plat Records of Gillespie County, Texas, and do hereby subordinate their liens and interests in all things in the Property to such plat and this Declaration of Covenants, Conditions and Restrictions; further, they hereby confirm that they are the present owners of the above described liens and have not assigned the same not any part thereof.

David R. Johnson, Jr.

Stacy M Johnson

STATE OF TEXAS §

COUNTY OF GILLESPIE §

This instrument was acknowledged before me on the 3rd day of March, 2005, by David R. Johnson, Jr. and Stacy M. Johnson.

KELLY NEEL
Notary Public
STATE OF TEXAS
My Commission
Expires 06/25/2008

Notary Public in and for
The State of Texas

EXHIBIT A

Centerline Description of Roadways