

THE STATE OF TEXAS
COUNTY OF TOM GREEN

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DECLARATION

OF

COVENANTS AND RESTRICTIONS

This declaration is made this the 1st day of February, 1979, by Dove Creek Development Company, a partnership with its principal office in San Angelo, Texas, hereinafter called Developer:

WITNESSETH:

Whereas Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon a residential and recreational community with permanent parks, playgrounds, open spaces, and other common facilities for the benefit of the said community;

Whereas Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces and other common facilities, and, to this end, desires to subject the real property described in Article II, together with such additions that may hereafter be made thereto as provided in Article II, to the covenants, restrictions, easements, charges and liens, hereinafter set forth, all of which are for the benefit of said property and each owner thereof;

Whereas Developer believes that it is desirable for the efficient preservation of the values and amenities in said community to create an agency that would have the powers of maintaining, administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created;

Whereas Developer has incorporated under the laws of the State of Texas a non-profit corporation by the name of Dove Creek Subdivision Owners Association, hereinafter referred to as the Association, to serve as such agency;

Whereas the real property described in Article II hereinbelow shall be referred to as the Dove Creek Subdivision;

Whereas Developer contemplates formally dedicating the roads or streets of said subdivision to Tom Green County, Texas, and filing of record a plat or survey reflecting the property therein situated as tracts, blocks and sections; and

Whereas there are certain limitations to title which are common to the tracts, or common to some of the tracts, that Developer contemplates selling to third parties and which, for the sake of notice, clarity and consistency, are set forth in Article III hereinbelow and filed of record;

Now, therefore, Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, limitations, charges and liens, sometimes hereinafter referred to as "covenants and restrictions", hereinafter set forth.

ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration, unless the context shall prohibit it, shall have the following meanings:

- (a) "Association" shall mean and refer to the Dove Creek Subdivision Owners Association, a non-profit corporation duly organized in the State of Texas.

(b) "Properties" shall mean and refer to all such existing properties, and additions thereto, that are subject to this Declaration or any Supplemental Declaration to be made under the provisions of Article II hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of the Properties and intended to be devoted to the common use and enjoyment of the owners of the Properties.

(d) "Tract" shall mean and refer to any plot of land shown on the map or plat of the Properties prepared for Developer by Wilson, Williams, Langohr and Associates, Surveyors, and located in the office of said Surveyors in San Angelo, Texas, or shown by the map or plat of the Properties filed of record in Tom Green County, Texas, with the exception of Common Properties as heretofore defined. Reference to said map or plat in said office or of record is hereby made for all purposes.

(e) "Owner" shall mean and refer to the contractual purchaser or the record owner, whether one or more persons or entities, of the fee simple title to any Tract situated upon the Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. At such time as Developer has executed and delivered a Contract for Deed to sell a Tract to a buyer, the buyer thereof shall be deemed to be the Owner of such Tract, as opposed to the Developer who has retained title thereto, provided, however, that the Developer shall become the Owner of such Tract in the event the buyer should default and the Developer should cancel the buyer's rights under the Contract for Deed as provided therein.

(f) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article VI, Section 1, hereinbelow.

ARTICLE II

Property Subject to this Declaration and Additions Thereto

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Tom Green County, Texas, and is more particularly described in Exhibit A attached, reference to which is hereby made for all purposes.

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Addition in accordance with a General Plan of Development. Developer, its successors and assigns, shall have the right to bring within the provisions of this Declaration additional properties in future stages of the development provided that such additions are in accord with the General Plan of Development prepared prior to the sale of any Tract from such additional properties and made known to every purchaser thereof, which may be done by written notice delivered personally to each purchaser or by recording thereof, prior to or at the time of such sale.

Such General Plan of Development shall show the proposed additions to the Existing Property and contain:

(1) a general indication of size and location of additional development stages and proposed land uses in each;

(2) the approximate size and location of common properties proposed for each stage;

(3) the general nature of proposed common facilities and improvements;

(4) a statement that the proposed additions, if made, will become subject to assessment for their just share of Association expenses; and

(5) a schedule for termination of the Developer's right under the provisions of this sub-section to bring additional development stages within the scheme. Unless otherwise stated therein, such General Plan shall not bind the Developer, its successors and assigns, to make the proposed additions or to adhere to the Plan in any subsequent development of the land shown thereon and the General Plan shall contain a conspicuous statement to this effect.

The additions authorized under this and the succeeding sub-section shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property.

Such Supplemental Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration as applied to the Existing Property.

(b) Other Additions. Upon approval in writing of the Association by an instrument to be duly recorded pursuant to the unanimous vote of its board of directors, the owner of any other property who desires to add it to the scheme of

this Declaration and to subject it to the jurisdiction of the Association may file of record a Supplementary Declaration of Covenants and Restrictions as described in subsection (a) hereof subject, however, to such terms and conditions as the Association shall require.

(c) Mergers. Upon a merger or consolidation of the Association with another association of similar nature, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to such merger or consolidation. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration with respect to the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration with respect to the Existing Property except as hereinafter provided.

ARTICLE III

Limitations to Title

All Properties shall be subject to the following limitations, exceptions and conditions, or pertinent part thereof:

Section 1. Title is subject to all easements, rights-of-way, restrictions and covenants of record in Tom Green County, Texas, prior to the recording hereof or apparent from an examination of the land.

Section 2. Title is subject to the United States Government flood easement as described in that one certain Easement Agreement dated January 22, 1979, and duly recorded in Volume 686, Page 345-352, of the Deed Records of Tom Green County, Texas, reference to which Easement Agreement and its record is hereby made for all purposes to the extent, and only to the extent, that such flood easement does, in fact, extend to or cover the Properties. Whether said flood easement covers a particular Tract in whole or in part is reflected by the map or plat of the Properties and supporting exhibits or field notes in the office of Wilson, Williams, Langohr and Associates, Surveyors, in San Angelo, Texas, or by the map or plat and related field notes of the Properties filed of record in Tom Green County, Texas. Reference to said map or plat and supporting exhibits or field notes in said office or reference to said map or plat and field notes of record is hereby made for all purposes. It is expressly stipulated that the acreage of the Properties which is subject to such flood easement, although most acreage of the Properties is not subject to such flood easement, may not be used for human habitation. Said flood easement is based on the elevation equal to or below 1969.1 feet above mean sea level as determined by United States Geological Survey bench marks. Said map or plat, and supporting exhibits or field notes, have been developed by aerial photography and not by a survey on the ground insofar as the location of the said 1969.1 foot elevation only is concerned, and they shall describe or depict the location of said flood easement at its points of intersection with the boundaries of the Tracts and the location of said flood easement line on or across the Tracts; but no warranty, expressed or implied, is made as to the correctness of such

location either as to its points of intersection with such boundaries or as to the location of said flood easement line on or across the Tracts.

Section 3. Title is subject to oil, gas and other minerals, all of which are outstanding and none of which are vested in Developer, and any leasehold estates heretofore granted or which may hereafter be granted in connection therewith, including the right of ingress and egress and the reasonable use of the surface for exploring, developing and producing any and all such oil, gas and other minerals. Developer hereby waives in favor of Owner, and hereby grants to Owner, all of Developer's right, title and interest in and to all surface damages resulting therefrom which may occur on or to Owner's Tract, if any.

Section 4. No Tract on or adjacent to Spring Creek below the confluence of the said Spring Creek and Dove Creek shall be entitled to the riparian water rights or any related right, title or interest in or to the pump and pipeline easement or the stock watering easement from the Twin Buttes Reservoir more specially described in paragraphs 1(a) and (b), respectively, in that one certain Deed from Kenneth W. Brown et al. to the United States of America dated April 21, 1961, duly recorded in Volume 424, Page 650, of the Deed Records of Tom Green County, Texas, reference to which Deed and its record is hereby made for all purposes. All such rights therein which Developer may acquire shall, however, be held for the benefit of the Common Properties and for the use and disposition, to the extent permitted by law, of the Association provided, however, that nothing herein shall preclude the Association, by and through a majority vote of its Board of Directors, from selling, trading, exchanging or otherwise disposing of, or using, such rights.

ARTICLE IV

Covenants and Restrictions

In addition to all other covenants and restrictions provided in or by this Declaration, the Properties shall be, unless otherwise expressly exempt therefrom in this Declaration, subject to the following covenants and restrictions running with the land which shall be binding on all parties having any right, title or interest in the Properties, or any part thereof, their heirs, representatives, successors or assigns, to-wit:

Section 1. No mobile home or house trailer shall be placed or maintained on the Properties following the expiration of twelve (12) months after the date of purchase by Owner of Owner's Tract except that any mobile home or house trailer owned by the contractor may be maintained on any Tract by such contractor only during the period of construction. Ready-built or modular homes or similar prefabricated structures may be placed on or maintained on the Properties for permanent or temporary use only if they meet the approval of the Architectural Control Committee in the manner provided in Section 3 hereinbelow. The foregoing restrictions shall not prevent the use or storage of a trailer-camper, pick-up camper, or other recreational vehicle with interior sleeping accommodations, or tents, on a temporary basis provided, however, the location of any such permissible campers or recreational vehicles, when not in actual use, may be determined by the Architectural Control Committee in the event such Committee should determine that the location of such campers and recreational vehicles for storage purposes is inconsistent with the general requirements set forth in, or to be determined for, Section 3 below. Any dispute or question as to what constitutes a mobile home,

house trailer, ready-built home, modular home, recreational vehicle, tent, or structures similar thereto, shall be resolved conclusively by the determination of such Committee. Nothing herein, however, shall constitute a waiver of the restriction described in Article III, Section 2, above concerning the U. S. Government's flood easement and limitations thereof.

Section 2. All buildings and structures of whatever nature, except for fences, must be set back at least thirty (30) feet from all roads or streets and at least thirty (30) feet from any Tract owned by another Owner provided, however, that an Owner may build or locate a building or structure less than thirty (30) feet from any Tract owned by another Owner if the Owner secures the prior written consent of the Architectural Control Committee.

Section 3. No buildings or improvements, including, but not limited to, residential buildings, garages, carports, barns, sheds, patios, sleeping porches, fences or walls, bar-b-que pits, pump or other storage houses, boating or swimming docks, swimming pools, or other facilities of whatever nature, whether permanent or temporary, shall be constructed or moved on until the construction plans and specifications, including exterior color or material, and a plat showing the location of the proposed structure have been approved by the architectural control committee, as hereinafter designated, as to quality of workmanship and materials, harmony of external design with existing structures on the property and with the natural surroundings, and as to location with respect to the topography, the finish grade of elevation, and the preservation or enhancement of the river banks, channels and natural shade trees.

Section 4. No noxious or offensive activity shall be conducted upon the Properties, nor shall anything be done thereon which may become an annoyance or nuisance to any Owner.

Section 5. All electrical wiring and all plumbing installations in any building or structure shall be installed in a good and workmanlike manner and in compliance with all applicable rules and regulations of the Texas Department of Health or other regulatory authority.

Section 6. All residences shall be connected to either a city sewer system, if available, or a permanent septic tank system for sewage disposal. Each septic tank system shall comply with the minimum standards required or recommended by the State of Texas or Tom Green County, or any regulatory authority of either the state or the county, whichever standards are the more stringent.

Section 7. No abandoned or inoperative motor vehicle or other machinery shall be placed, or permitted to remain, on the Properties. No part of the Properties shall be used, or maintained as a dumping or storage ground for junk, rubbish, trash, garbage or other waste material, and no such items or material shall be kept or permitted on the Properties except temporarily in containers adequate for that purpose. All such containers or receptacles shall be placed either indoors or in an area screened by natural vegetation or terrain or artificial structure so that it is not visible from the roads or streets or from the neighboring Tracts. Every Owner shall be responsible for keeping his Tract in a reasonably clean condition.

Section 8. No use shall be made at any time of any boat propelled or driven by a gasoline motor on Dove Creek at or upstream from the first dam located on Dove Creek

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upstream from the conservation pool of the Twin Buttes Reservoir. For this purpose, it is expressly agreed and understood that Owner will not use or permit the use of any such boat propelled or driven by a gasoline motor on the waters at and upstream from said dam by means of ingress or egress to or from Owner's Tract to or from such water notwithstanding that such water may by law be a public or navigable stream and therefore available for public use.

Section 9. No Tract shall be subdivided in tracts of less than five (5) acres.

Section 10. No multiple-family dwelling shall be constructed on any Tract. Single-family dwellings only may be constructed on a Tract, but not more than one single-family dwelling may be constructed on a Tract or a subdivided Tract.

Section 11. No quarrying or mining operations of any kind or character shall be conducted on or under any Tract subsequent to the sale of any such Tract from the Developer to a buyer either by Contract for Deed, deed, or otherwise. Likewise, the Owner shall not grant an easement for, nor permit the use of his Tract for, the ingress and egress for any such quarrying or mining whether conducted on or off such Owner's tract and whether with or without a valuable consideration therefor provided, however, that nothing herein shall be construed to refute the oil, gas and other mineral interest and related rights described in Article III, Section 3, above. The Developer, however, may make reasonable use of any Tract prior to sale thereof for purposes of furnishing caliche, rock or similar building material for the construction of roads, docks and other improvements for the general benefit of the Properties.

Section 12. All Tracts must be used only for residential or recreational purposes except as explicitly described in Section 14 below.

Section 13. No Tract shall be used for any kind or character of business or commercial purpose except as explicitly described in Section 14 below.

Section 14. No swine shall be permitted on the Properties. Household pets and domestic animals or livestock may be permitted on the Properties provided, however, that nothing herein shall be construed to permit the business or commercial use thereof other than explicitly stated hereinbelow or to permit an annoyance or nuisance to any Owner. Any and all such pets or domestic animals or livestock must be confined at all times to the Tract of Owner by fence or otherwise. As an exception to Sections 12 and 13 above, however, the following uses of the Properties shall be permitted:

(a) Owner may have and use on the Tract domestic livestock not to exceed the stocking rate of one head of livestock per two and one-half (2 1/2) acres regardless of the size of such livestock. Acreage of less than two and one-half (2 1/2) acres shall not in any event be counted in determining the amount of livestock permitted. Colts, calves, lambs, kids and the young of any other domestic livestock of less than one year of age born and raised on the Tract shall not be included in determining the foregoing limitation. Under no circumstance shall a buffalo, or any animal with buffalo blood, be considered a domestic animal. Any Owner may sell, trade or otherwise dispose of such livestock, whether mature or young, provided that Owner does not regularly engage in the trading of such livestock located on the Tract. As an exception to the foregoing, a stallion shall not be permitted on the Tract.

(b) Owner may conduct on the Tract the planting, growing, cultivating and harvesting of any agricultural crop

grown or produced from the soil, whether on the ground or enclosed, provided, however, that no operational activities in connection therewith shall be conducted during darkness, no aerial application shall be conducted thereon, no retail sales shall be conducted thereon, and no operation shall be conducted thereon under conditions of wind and dryness that would cause dust to be carried to any adjoining Tract.

(c) Owner may conduct on the Tract any work of art, crafts, journalism, or other personal fabrication, design or construction provided that no third-party employees are required on the Tract in connection with such work and no retail sales are conducted on the Tract.

(d) The Association or Developer may make such commercial use of the Common Properties, and the Owners may make such use of the Tracts adjoining the San Angelo to Knickerbocker and the Tankersley to Knickerbocker Highways, as the Architectural Control Committee shall determine from time to time.

Section 15. These covenants and restrictions shall be effective for a term of thirty years from date of recording during which time they may be amended, altered or revised by an instrument signed by Owners of not less than eighty per cent (80%) of the Tracts and duly recorded. Following such thirty year period, all such covenants and restrictions shall be automatically extended for successive periods of ten years unless otherwise amended, altered or revised by an instrument signed by Owners of not less than seventy-five percent (75%) of the Tracts and duly recorded.

ARTICLE V

Architectural Control Committee

The Association shall permanently maintain an Architectural Control Committee, hereinafter referred to as the

Committee, which shall be governed by the following rules and regulations.

Section 1. Committee Members. The Committee shall consist of five members. Each member shall serve for life unless he resigns or is removed as hereinafter provided. The initial members of the Committee shall be Ted B. Brown, C. S. Conrad, Jr., Travis Perry, Jack Albert and Phillip F. Templeton. At the death, resignation or removal of any member, a majority of the other members shall select his successor. The designation of new members shall be in writing and shall be duly recorded in the Deed Records of Tom Green County, Texas.

Section 2. Committeemen. Any member may resign by filing with the Committee a ten day written notice thereof. Any member may be removed for good cause by a majority vote of all other members. If a member delivers to the Committee a written request for a hearing within ten days after receiving written notice of his removal, he shall be given a hearing before the Committee to reconsider whether good cause exists. If the Committee determines after hearing that no good cause exists, then the member shall be reinstated.

Section 3. Failure to Act. In the event the Committee fails to perform its responsibilities as generally provided herein as determined by a vote of at least 75% of the directors of the board of the Association, then such board of directors may replace some or all of the members of the Committee with new members selected by a majority vote of the board who shall likewise serve for life subject to the rules and procedures herein stated. The designation of such new members shall be in writing, duly signed by an authorized officer of the Association, and duly recorded, and same shall be conclusive as to the membership of the Committee.

Section 4. Responsibilities. It shall be the responsibility of the Committee to preserve the value of the Properties and to encourage its prudent and proper development. It shall review the construction plans and specifications and proposed location of improvements as required in Article IV, Section 3, above and shall make prompt rulings thereon. All rulings or recommendations shall be in writing with a copy to be delivered to the Owner or his agent and a copy to be retained for the permanent records of the Committee.

Section 5. Timeliness. In the event the Committee should fail to issue its written ruling in response to the Owner's request therefor within thirty (30) days from receipt of such request properly supported with adequate plans and specifications and location data, then it shall be presumed that the Committee has approved such request.

Section 6. Failure of Owner to Submit Request. In the event an Owner fails to submit a request properly accompanied with construction plans and specifications and location data but proceeds with the construction thereof, or in the event an Owner proceeds with construction following the disapproval of the Committee, or proceeds with construction that is inconsistent with the plans and specifications or location that have been approved by the Committee, the Committee shall have the right, at its election, to secure injunctive relief against such construction, including judicial relief requiring the removal of such construction, by bringing suit thereon prior to the expiration of sixty days following completion of the construction thereof.

Section 7. Policies and Guidelines. The Committee shall, by a majority vote, determine such policies and guidelines as it shall deem to be feasible in assisting Owners in planning the construction of their improvements.

Nothing herein, however, shall be construed as an estoppel of the Committee in adopting new policies and guidelines when prior rulings or policies and guidelines have, in the opinion of the Committee, proven to be detrimental to the purposes and responsibilities of the Committee.

Section 8. Delegation. The Committee may, at its discretion and from time to time, delegate its duties of review and approval and rulings thereon to one or more of its members. Any ruling by either the Committee or any delegate thereof shall be final and conclusive unless, upon receipt of written request for review from the Owner within ten days from a ruling rendered only by any delegate, the Committee should determine to grant a review of the ruling. If such request for review is denied by the Committee, the matter shall be final. If such request is granted, the Committee shall set a time and place for a full Committee review, the decision of which by a majority of its members shall then be final.

Section 9. Fees and Compensation. Members of the Committee shall serve without remuneration for their personal services except that they shall be reimbursed for all reasonable expenses, including automobile mileage, incurred by them in the performance of their duties and further except that the Committee shall remunerate any delegate for his reviewing and issuing a ruling on the plans and specifications and location data, including an inspection of the site of the proposed improvement. The Committee may, at its discretion, charge an Owner a fee not to exceed \$50.00 for each separate item to be constructed to defray its expenses. Any additional financial needs of the Committee shall be funded by the Association upon the presentation of requests by the Committee and approval thereof by the board of directors of the Association.

Section 10. Enforcement. It shall be the primary responsibility, but not the duty, of the Committee to enforce strict compliance by Owners with the covenants and restrictions provided in Article IV above. As an exception to the funding provisions of Section 9 above, the Association shall fund all reasonable and necessary legal expense of the Committee in pursuing such enforcement. Said covenants and restrictions may be enforced by proceedings at law or in equity, including injunctive relief to prevent construction, to remove improvements, or otherwise to compel compliance, or by any other legal remedy. Owner waives notice of non-compliance. If, however, the Committee should notify Owner in writing of non-compliance of any covenant and restriction and Owner fails to cure same within ten days from delivery thereof, the Committee, or its agent, shall be authorized to enter upon Owner's Tract to correct such non-compliance at the expense and cost of Owner which shall become due and payable on demand, shall bear interest at the rate of ten percent (10%) per annum, and shall become a lien against the Tract. Owner further shall become liable for the Committee's reasonable attorney's fees and court costs incurred in enforcement which shall likewise become payable upon demand, bear interest at the rate of ten percent (10%) per annum, and become a lien against the Tract. Failure of the Committee to enforce any covenant or restriction shall not be deemed a waiver of any prior or subsequent violation of any such covenant or restriction. Violation of any covenant or restriction shall not, however, bring about a forfeiture of title to any such Tract under violation. Enforcement of the strict compliance with the covenants and restrictions may also be pursued by the board of directors of the Association at the cost and expense of the Association or by any Owner also at the cost and expense of the Association provided, however, that the Owner is successful in obtaining judicial relief thereon.

ARTICLE VI

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is an owner of a fee or undivided fee by Contract of Sale or by deed in, or who has entered in a Contract for Deed for the purchase of, any Tract which is subject to assessment by the Association shall be a member of the Association provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those owners as defined in Section 1 with the exception of the Developer. Class A members shall be entitled to one vote for each Tract in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Tract, all such persons shall be members, and the vote for such Tract shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Tract.

Class B. Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Tract in which it holds the interest required for membership by Section 1 until such Tract is sold or contracted provided that the Class B membership shall cease and become converted to Class A Membership on the happening of any of the following events, whichever first occurs:

(a) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or

(b) on February 1, 1982.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Tract in which it holds the interests required for membership under Section 1.

ARTICLE VII

Property Rights in the Common Properties

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Tract.

Section 2. Title to Common Properties. The Developer may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provision herein, the Developer hereby covenants for itself, its successors and assigns that it shall convey the Common Properties to the Association not later than February 1, 1982.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association, as provided in its Articles or Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations provided, however, that the Association, by and through its Board of Directors, may terminate all rights of any Member in and to the Common Properties upon the commitment

of the fourth infraction of its published rules and regulations by the Member or any member of the Member's family or guest thereof; and

(b) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and

(c) the right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

ARTICLE VIII

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Developer for each Tract owned by him within the Properties hereby covenants and each Owner of any Tract by acceptance of a Contract for Deed or Deed therefor, whether or not it shall be so expressed in any such Contract for Deed, Deed or other conveyance, be deemed to covenant and agree to pay to the Association:

- (1) annual assessments or charges for maintenance;
- (2) special assessments for capital improvements;
- (3) All such assessments, whether annual or special, to be fixed, established, and collected from time to time as hereinafter provided. The annual and special

assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, 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 such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners in the Properties and in particular for the improvements and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and for the enforcement of strict compliance with all the covenants and restrictions set forth in this Declaration including, but not limited to, the payment of the capital and operational needs of roads, a water system, garbage disposal, a sewage system or other utilities, taxes and insurance and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3. Basis and Maximum of Annual Assessments. Until February 1, 1982, the annual assessments shall be Twenty-Five Dollars (\$25.00) per Tract or subdivided Tract. From and after February 1, 1982, the annual assessment may be increased or decreased by vote of the Board of Directors after consideration of current maintenance costs and future needs of the Association, for the next succeeding year and at the end of each such year for each succeeding year.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties or for the general benefit of Owners, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3 hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2, hereof.

Section 6. Quorum for Any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) per cent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 4 and 5, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on the 1st day of February, 1980, and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of February of said year.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment. In addition to regular and special assessments, Developer shall further have the authority to assess at time either of entering a Contract for Deed or of granting deed an initiating fee of Twenty-Five Dollars (\$25.00) which shall be transferred to the account of the Association for the initial capital and operational needs of the Association.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Tract for each assessment period at least thirty (30) days

in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of an assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of Association. If the assessments are not paid on the date when due, being the dates specified in Section 7 hereof, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and

there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any prior mortgage or mortgages now and hereafter placed upon the properties subject to assessment provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein;

(a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) all Common Properties as defined in Article I, Section 1 hereof;

(c) all properties exempted from taxation by the laws of the State of Texas, upon the terms and to the extent of such legal exemption.

ARTICLE IX

General Provisions

Section 1. Notices. All notices required herein shall be deemed effective if delivered personally or if sent by

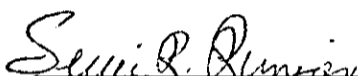
United States Mail with adequate postage paid addressed to the sendee at his last known address.

Section 2. Severability. Invalidation of any one of the provisions, covenants, restrictions or conditions of this Declaration by judgment of a court of competent jurisdiction shall in no wise affect any other provision, covenant, restriction or condition which shall remain in full force and effect.

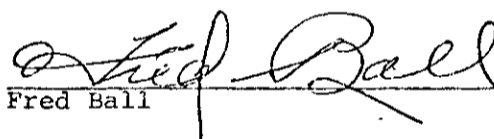
Dated this 1st day of February, 1979.

DEVELOPER

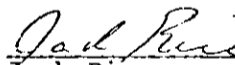
DOVE CREEK DEVELOPMENT COMPANY,
a partnership located in San Angelo, Texas,
by its executive committeemen:




Lewis R. Runion



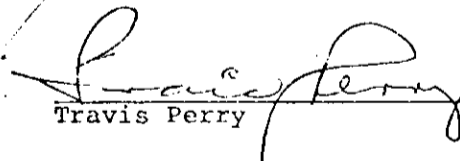
Fred Ball



Jack Rice



Jack Goss



Travis Perry

Section 3. Joinder. The foregoing Declaration is hereby joined, consented to, ratified and affirmed by the undersigned parties who have sold, transferred and delivered the Properties to Developer by Contract of Sale of even date

herewith, not joined herein by our wives inasmuch as no part of the Properties constitute a part of our homesteads.

Lewis R. Runion
Lewis R. Runion

Fred Ball
Fred Ball

Stanley R. Frank
Stanley R. Frank

Pat Hall
Pat Hall

THE STATE OF TEXAS X
COUNTY OF TOM GREEN X

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Lewis R. Runion, Fred Ball, Jack Rice, Jack Goss and Travis Perry, Executive Committeemen of Dove Creek Development Company, a partnership, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this the 16th day of February, 1979.



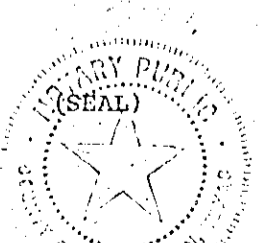
James Green
NOTARY PUBLIC
TOM GREEN COUNTY, TEXAS
My Commission Expires 3-31-79.

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THE STATE OF TEXAS X
COUNTY OF TOM GREEN X

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared Lewis R. Runion, Fred Ball, Stanley R. Frank and Pat Hall, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 16th day of February, 1979.



James Green
NOTARY PUBLIC
TOM GREEN COUNTY, TEXAS
My Commission Expires 3-31-79

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EXHIBIT A

The surface estate only in and to 4,234.998 acres of land, more or less, situated in Tom Green County, Texas, said 4,234.998 acres comprising all of the land conveyed to Lewis R. Runion, Fred Ball, Stanley R. Frank and Pat Hall by deed dated January 2, 1979, recorded in Volume 685, Page 381, Deed Records of Tom Green County, Texas, which lies North and Northwest of the San Angelo-Knickerbocker Road, and described more fully in 19 tracts as follows:

TRACT NO. 1: All of Conrad Schobel Survey 757, Abstract 1884; J. C. Helbe Survey 758, Abstract 361; and Anton Leitenberg Survey 759, Abstract 1623, all in Tom Green County, Texas.

TRACT NO. 2: All of Conrad Schobel Survey 756, Abstract 1885, Tom Green County, Texas, SAVE AND EXCEPT the Northwest 3.42 acres heretofore conveyed to Tom Green County, Texas, by deed dated May 31, 1934, recorded in Volume 178, Page 281, Deed Records of Tom Green County, Texas, reference to which is hereby made for a more particular description of said 3.42 acre tract.

TRACT NO. 3: All that certain 54.20 acre tract out of the East part of R. F. Tankersley Survey 1146 1/2, Abstract 7914, Tom Green County, Texas, described more fully by metes and bounds in a deed dated January 15, 1934, recorded in Volume 173, Page 572, Deed Records of Tom Green County, Texas.

TRACT NO. 4: All that certain 131.70 acre tract out of the North part of H. J. Bearfield Survey 6, Abstract 4379, Tom Green County, Texas, described more fully by metes and bounds in a deed dated January 15, 1934, recorded in Volume 173, Page 572, Deed Records of Tom Green County, Texas.

TRACT NO. 5: All that certain 49.10 acre tract out of the North part of J. C. Helbe Survey 760, Abstract 360, Tom Green County, Texas, described more fully by metes and bounds in a deed dated January 15, 1934, recorded in Volume 173, Page 572, Deed Records of Tom Green County, Texas.

TRACT NO. 6: 112.80 acres out of the North part of Joseph Tweedy Survey 806 1/2, Abstract 5210, Tom Green County, Texas, described in two tracts as follows:

First Tract: All that certain 60.00 acre tract out of the North part of Joseph Tweedy Survey 806 1/2, Abstract 5210, Tom Green County, Texas, described more fully by metes and bounds in a deed dated March 1, 1940, recorded in Volume 204, Page 347, Deed Records of Tom Green County, Texas.

Second Tract: All that certain 52.8 acre tract out of the North part of Joseph Tweedy Survey 806 1/2, Abstract 5210, Tom Green County, Texas, described more fully by metes and bounds in a deed dated January 15, 1934, recorded in Volume 173, Page 572, Deed Records of Tom Green County, Texas.

TRACT NO. 7: 153.50 acres out of the Northwest part of M. J. Fernandez Survey 100, Abstract 180, Tom Green County, Texas, described in two tracts as follows:

First Tract: All that certain 147.70 acre tract out of the Northwest part of M. J. Fernandez Survey 100, Abstract 180, Tom Green County, Texas, described more fully by metes and bounds in a deed dated March 1, 1940, recorded in Volume 204, Page 347, Deed Records of Tom Green County, Texas.

Second Tract: All that certain 5.80 acre tract out of the Northwest part of M. J. Fernandez Survey 100, Abstract 180, Tom Green County, Texas, described more fully by metes and bounds in a deed dated January 15, 1934, recorded in Volume 173, Page 572, Deed Records of Tom Green County, Texas.

TRACT NO. 8: 91.8 acres out of German Emigration Survey 805, Abstract 288; 84.2 acres out of German Emigration Survey 806, Abstract 289; 46.54 acres out of German Emigration Survey 807, Abstract 290; and 3.14 acres out of German Emigration Survey 808, Abstract 291, all in Tom Green County, Texas, and described more fully by metes and bounds in field notes prepared by James K. Avera, state licensed land surveyor, on November 2, 1944, recorded in Volume 230, Page 631, Deed Records of Tom Green County, Texas, and being the same lands conveyed by F. H. Gohlke and Callie L. Gohlke to Edward H. Jones, by deed dated November 1, 1944, recorded in Volume 230, Page 573 of the Deed Records of said County and State.

TRACT NO. 9: All that certain 99.60 acre tract out of the North part of German Emigration Survey 805, Abstract 288, Tom Green County, Texas, described more fully by metes and bounds in a deed dated January 15, 1934, recorded in Volume 173, Page 572, Deed Records of Tom Green County, Texas.

TRACT NO. 10: All that certain 191.90 acre tract out of the North part of German Emigration Survey 806, Abstract 289, Tom Green County, Texas, described more fully by metes and bounds in a deed dated January 15, 1934, recorded in Volume 173, Page 572, Deed Records of Tom Green County, Texas.

TRACT NO. 11: All that certain 227.80 acre tract out of the North part of German Emigration Survey 807, Abstract 290, Tom Green County, Texas, described more fully by metes and bounds in a deed dated January 15, 1934, recorded in Volume 173, Page 572, Deed Records of Tom Green County, Texas.

TRACT NO. 12: All that certain 243.40 acre tract out of the North part of German Emigration Survey 808, Abstract 291, Tom Green County, Texas, described more fully by metes and bounds in a deed dated January 15, 1934, recorded in Volume 173, Page 572, Deed Records of Tom Green County, Texas.

TRACT NO. 13: All of German Emigration Company Survey 809, Abstract 302, Tom Green County, Texas, SAVE AND EXCEPT 5.80 acres, more or less, heretofore conveyed to the United States of America by deed dated April 21, 1961, recorded in Volume 424, Page 650, Deed Records of Tom Green County, Texas, reference to which is hereby made for a more particular description of this 5.80 acre tract.

TRACT NO. 14: All of German Emigration Company Survey 810, Abstract 292, Tom Green County, Texas, SAVE AND EXCEPT 16.1 acres, more or less, heretofore conveyed to the United States of America by deed dated April 21, 1961, recorded in Volume 424, Page 650, Deed Records of Tom Green County, Texas, reference to which is hereby made for a more particular description of this 16.1 acre tract.

TRACT NO. 15: All of German Emigration Company Survey 811, Abstract 293, Tom Green County, Texas, SAVE AND EXCEPT 23.70 acres, more or less, heretofore conveyed to the United States of America by deed dated April 21, 1961, recorded in Volume 424, Page 650, Deed Records of Tom Green County, Texas, reference to which is hereby made for a more particular description of this 23.70 acre tract.

TRACT NO. 16: All of German Emigration Company Survey 812, Abstract 294, Tom Green County, Texas, SAVE AND EXCEPT 63.4 acres, more or less, heretofore conveyed to the United States of America by deed dated April 21, 1961, recorded in Volume 424, Page 650, Deed Records of Tom Green County, Texas, reference to which is hereby made for a more particular description of this 63.4 acre tract.

TRACT NO. 17: All of that part of German Emigration Company Survey 813, Abstract 313, Tom Green County, Texas, lying North and Northwest of the Northwest line of the San Angelo-Knickerbocker Road, SAVE AND EXCEPT 48.80 acres, more or less, heretofore conveyed to the United States of America by deed dated April 21, 1961, recorded in Volume 424, Page 650, Deed Records of Tom Green County, Texas, reference to which is hereby made for a more particular description of this 48.80 acre tract.

TRACT NO. 18: All of that part of Joseph Tweedy Survey 813 1/2, Abstract 7424, Tom Green County, Texas, lying North and Northwest of the Northwest line of the San Angelo-Knickerbocker Road, SAVE AND EXCEPT 3.50 acres, more or less, heretofore conveyed to the United States of America by deed dated April 21, 1961, recorded in Volume 424, Page 650, Deed Records of Tom Green County, Texas, reference to which is hereby made for a more particular description of this 3.50 acre tract.

TRACT NO. 19: All of Ida R. Rainey Survey 4 (S.F. 13327), Tom Green County, Texas, SAVE AND EXCEPT 2.50 acres, more or less, heretofore conveyed to the United States of America by deed dated April 21, 1961, recorded in Volume 424, Page 650, Deed Records of Tom Green County, Texas, reference to which is hereby made for a more particular description of this 2.50 acre tract.

The above total acreage figure of 4,234.998 acres has been reduced by the following acreages which are hereby expressly SAVED AND EXCEPTED from this conveyance, to-wit:

1. 20.00 acres out of German Emigration Surveys 805 and 806, Tom Green County, Texas, being the same 20.00 acre tract described in Exhibit B to deed dated January 2, 1979, recorded in Volume 685, Page 381, Deed Records of Tom Green County, Texas;

2. 9.762 acres out of Surveys 756, 1146 1/2 and 6 conveyed to the State of Texas by right-of-way deed dated June 18, 1956, recorded in Volume 384, Page 367 of the Deed Records of Tom Green County, Texas; reference to the above said deeds and their record is hereby made for all pertinent purposes.

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Filed for Record on the 16th day of February A. D., 19 79 at 3:34 o'clock P. M.

Duly Recorded this the 19th day of February A. D., 19 79 at 10:00 o'clock A. M.

OMA JONES, COUNTY CLERK, TOM GREEN COUNTY, TEXAS

Instrument No. 135995

By: *Marie Russell* Deputy