

portion of the Properties. No derricks or other structures for use in the boring or drilling for oil, natural gas, minerals or water shall be erected, maintained or permitted upon, in or within any portion of the Properties. No Lot shall be used for the purpose of boring, drilling, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, rock, sand or earth; provided, however, that nothing contained herein shall prohibit or restrict removal of fill or earth materials to construct or create approved drainage structures or landscaped berms.

Section 4.5.5 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry or any kind unless the area is fully screened, by fencing or landscaping, from view of adjacent Lots or streets, in a manner approved by the ACC.

Section 4.5.6 Water. No individual water supply system shall be permitted on any Lot, including, but not limited to, water wells.

Section 4.5.7 Parking and Storage of Vehicles. The Board may from time to time promulgate rules which restrict, limit or prohibit the use of any driveway or street which may be in front of, adjacent to or part of any Lot as a parking place for personal passenger vehicles, trailers, recreational vehicles, self-propelled motor homes, motorcycles and boats. No boat, trailer, tent, recreational vehicle, camping unit, truck larger than a three-quarter (¾) ton pick-up, wrecked, junked, inoperable, self-propelled or towable vehicle, equipment or machinery of any sort shall be kept, parked, stored or maintained in any portion of the Lot or street, except in an enclosed structure or in a screened area behind the main residence which prevents the view thereof from adjacent Lots and streets.

Division 4.6 Maintenance

Section 4.6.1 Duty of Maintenance. Owners and occupants (including lessees) of a Lot shall jointly and severally have the duty and responsibility, at their sole cost and expenses, to keep the Lot so owned or occupied, including the Improvements and grounds in connection therewith, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance shall include, but is not limited to, the following:

- A. Prompt removal of all litter, trash, refuse, and wastes;
- B. Lawn mowing;
- C. Tree and shrub pruning;
- D. Watering;
- E. Keeping exterior lighting and mechanical facilities in working order;
- F. Keeping lawn and garden areas alive, free of weeds, and attractive;
- G. Keeping parking areas, driveways and roads in good repair;
- H. Complying with all government health and safety requirements; and
- I. Repair of exterior damages to Improvements.

Section 4.6.2 Maintenance of Yards, Etc. Owners shall at all times keep weeds, grass, shrubbery and trees thereon cut in a sanitary, healthful, and attractive manner. Owners shall also be required to provide and allow safe and adequate drainage within their Lot including, but not limited to, with respect to building, maintaining or constructing fences, walks, landscaping, or any other obstruction which may divert, impede, or cause to back up runoff water coming not only from their respective Lot but also from other Lots.

Section 4.6.3 Maintenance of Easements. By acceptance of a deed to any one or more Lots, the Owner thereof covenants and agrees to keep and maintain in a neat and clean condition any utility, pedestrian or other easement which may traverse any portion of said Lot or Lots, including without limitation, by removing weeds, mowing grass and trimming shrubbery and trees, if any, within such area.

Section 4.6.4 Enforcement of Maintenance. If, in the reasonable opinion of the Board, any such Owner or occupant has failed in any of the foregoing duties or responsibilities, the Board may give such person written notice of such failure and such person must within ten days after receiving such Notice, perform the care and maintenance required. Should any such person fail to fulfill his duty and responsibility within such period, the Board shall have the right to authorize its agent or agents to enter on the Lot and perform such care and maintenance without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any persons. The Owners and occupants of the Lot on which such work performed shall be jointly and severally liable for the cost of such work and shall promptly reimburse the Association for such costs. If such Owner or occupant shall fail to reimburse the Association within thirty days after receipt of a statement for such work, said indebtedness shall be a debt of all persons jointly and severally and shall constitute a lien against that specific Lot on which said work was performed. Such lien shall have the attributes as the lien for Annual assessments and Special Assessments as set forth herein, which provisions are incorporated herein by reference.

Division 4.7 Environmental Concerns

Section 4.7.1 Governmental Restrictions on Use of Properties. The Properties lie within the area classified as the Edwards Aquifer Recharge Zone and as such the Properties are subject to the rules and regulations of agencies of the State of Texas, including the Texas Natural Resources Conservation Commission ("TNRCC"), governing the use of the Properties, in addition to the ordinances of the City of San Antonio and statutes, or regulations affecting the Properties enacted by other governmental authorities. Owners are advised that such requirements and prohibitions may

relate to the types of pesticides and fertilizers which may be used, minimum topsoil requirements, inspection of sewer laterals prior to covering, and criteria standards for sewer pipe, among other matters. For additional information regarding pesticides, Owners are advised to obtain, read and use *What's Bugging You? A Practical Guide to Pest Control*, available from the Edwards Underground Water District (210-222-2204), or equivalent information produced by recognized authorities such as the Soil Conservation Service, Texas Department of Agriculture, U.S. Dept. of Agriculture, etc.

Section 4.7.2 **Responsibility.** Each Owner is responsible for ascertaining all such requirements and prohibitions with respect to his Lot and, by acceptance of a deed to a Lot, agrees to abide by the same. No statement herein, nor action by the Declarant, ACC, or Association shall act to relieve an Owner from such duty of compliance.

Section 4.7.3 **WPAP.** Each Owner is required to abide by and comply with all the terms of that certain Water Pollution and Abatement Plan ("WPAP") recorded in the Official Public Records of Real Property, Bexar County, Texas. A copy of the WPAP may be obtained from Declarant or the Association. **OWNERS ARE ALERTED THAT THE WPAP CONTAINS RESTRICTIONS APPLICABLE TO THEIR LOTS.**

Section 4.7.4 **Storm Water Pollution Prevention Plan.** Prior to beginning any phase of construction on any Lot, the Lot owner shall comply with the provisions of the Storm Water Pollution Prevention Plan established by the Environmental Protection Agency.

Section 4.7.5 **Geological Features: Caves and Sinkholes.** Natural caves, sinkholes and/or other geological features may exist on some of the Lots in the Subdivisions. Each prospective Owner should personally inspect the Lot in which he is interested and/or seek the advice of a professional engineer and/or geologist to assure himself of the location of any such caves, sinkholes and/or other geological features which may be located thereon.

ARTICLE 5

MISCELLANEOUS PROVISIONS

Division 5.1 **General**

Section 5.1.1 **Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, Declarant and any Owner, their respective legal representatives, heirs, successors and assigns until February 1, 2028, at which time said covenants shall be automatically renewed and extended for successive periods of ten (10) years. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, a majority of the total eligible votes of the membership of the Association cast at a duly held meeting of the Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least thirty (30) days and no more than sixty (60) days in advance of such meeting. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that Notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes cast in favor of such resolution and the total number of votes cast against such resolution. The certificate shall be recorded in the Real Property Records and Deed and Plat Records of Bexar County, Texas, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 5.1.2 **Assignment of Rights and Duties.** Any and all of the rights, powers and reservations of the Association and Declarant may be assigned to any person, corporation or association which will assume the duties of the Association or Declarant, as applicable, pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment, have the same rights and powers and be subject to the same obligations and duties, it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Association or Declarant. Further, the Association or Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate.

Section 5.1.3 **Power of Attorney.** The Association is hereby granted an irrevocable power of attorney to represent the Owners in any proceedings, negotiations, settlements or agreements relating to the damage, destruction or condemnation of the Common Facilities, Common Area and dedicated rights-of-way.

Section 5.1.4 **Mineral Reservation.** Declarant hereby reserves and retains all of its rights, title and interest in all oil, gas, coal, caliche and other minerals in and to the Properties. The minerals herein reserved include all minerals regardless of the method of mining or exploitation.

Section 5.1.5 **Incorporation of Other Documents.** The Residential Design Guidelines, Articles, Bylaws

and Rules and Regulations as may, from time to time, be amended or modified are incorporated herein for all purposes.

Section 5.1.6 Authorized Action. All actions which the Association is permitted to take under this instrument shall be authorized actions of the Association as approved by the Board in the manner provided for in the Bylaws of the Association, unless the terms of this Declaration provide otherwise.

Section 5.1.7 Limitation of Liability. Declarant, as well as its partners, agents, employees, officers, directors, partners and their respective officers, directors, agents and employees, shall not be liable to any Owner or lessee of the Lot or any portion thereof or to any other party for any loss, claim or demand in connection with a breach of any provision of these covenants by any party other than Declarant.

Section 5.1.8 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

Section 5.1.9 Effect of Violations on Mortgages. No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provision herein contained.

Section 5.1.10 Terminology. All personal pronouns used in this Declaration and all exhibits attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Title of articles and Sections are for convenience only and neither limit nor amplify the provision of this Declaration itself. The terms "herein", "hereof" and similar terms, as used in this instrument refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear.

Section 5.1.11 Disclaimer by Declarant. EXCEPT AS SPECIFICALLY STATED HEREIN, DECLARANT HAS NOT MADE, DOES NOT MAKE AND DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATIONS, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS, TO, OR CONCERNING (I) THE NATURE AND CONDITION OF THE PROPERTIES, INCLUDING BUT NOT BY WAY OF LIMITATION, THE WATER, SOIL, GEOLOGY AND THE SUITABILITY THEREOF, AND OF THE PROPERTIES, FOR ANY AND ALL ACTIVITIES AND USES WHICH OWNER MAY ELECT TO CONDUCT THEREON OR ANY IMPROVEMENTS ANY OWNER MAY ELECT TO CONSTRUCT THEREON, EXPENSES TO BE INCURRED WITH RESPECT THERETO, OR ANY OBLIGATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME; (II) THE MANNER OF CONSTRUCTION AND CONDITION OF ANY OF THE IMPROVEMENTS ON COMMON AREAS CONSTRUCTED BY DECLARANT; AND (III) THE DESIGNATION OR LOCATION OF GREENBELT OR COMMON AREAS OR THE TYPE OR NATURE OF ANY AMENITIES OR IMPROVEMENTS THAT COULD BE CONSTRUCTED THEREON OTHER THAN ANY AMENITIES OR IMPROVEMENTS SHOWN ON ANY RECORDED PLAT. DECLARANT SPECIFICALLY RETAINS THE RIGHT, BUT NOT THE OBLIGATION, TO USE OTHER PHASES OF THE DEVELOPMENT FOR COMMERCIAL USES, HIGHER DENSITY RESIDENTIAL USES, A GOLF COURSE, AN EQUESTRIAN CENTER AND/OR A COUNTRY CLUB. DECLARANT FURTHER RESERVES THE RIGHT TO DESIGNATE WHICH OWNERS HAVE THE RIGHT TO USE ANY AMENITIES OR IMPROVEMENTS CONSTRUCTED IN OTHER PHASES OF THE DEVELOPMENT.

Division 5.2 Amendment

Section 5.2.1 Amendment by Members. This Declaration may be amended, at a regular or special meeting of the Members, by a vote of at least a majority of the total eligible votes of the membership of the Association.

Section 5.2.2 Notice and Quorum. For any meeting called to amend the Declaration, the following must be followed:

A. Notice. Written notice of any meeting called for the purpose of amending the Declaration shall be sent to all Members not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting.

B. Quorum. At the first meeting called the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) 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 requirements set forth herein, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

Section 5.2.3 Amendment by Declarant. Until such time as Declarant ceases to be a Class B Member as referred to in Article 2, Declarant specifically reserves for itself, its successors and assigns, the absolute and unconditional right to alter, modify, change, revoke, rescind or cancel any or all of the restrictive covenants contained in this Declaration by filing, in the real property records, an amendment to the Declaration where such amendment,

alteration, deletion or removal is in the best interests of the Owners, as determined by Declarant in its sole discretion. The sole restriction on Declarant's ability to amend the declaration in this fashion is that the amendment must not be illegal or against public policy. The Declarant is not required to send out notices or conduct a meeting in order to amend the Declaration under this Section.

Division 5.3 Rules of Construction

Section 5.3.1 Severability. Should any covenant, condition, or restriction herein contained, or any article, section, paragraph, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 5.3.2 Interpretation. The Board shall have the right except as limited by any other provisions of this Declaration, Articles or Bylaws, to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its good faith determination, construction or interpretation shall be final and binding.

Section 5.3.3 Singular, Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

Section 5.3.4 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation and development of the Properties.

Section 5.3.5 Articles, Divisions and Sections. Article, division and section headings in this Declaration are for the convenience of reference and shall not affect the construction or interpretation of these covenants. Unless the context otherwise requires, reference herein to articles, divisions and sections are to articles, divisions and sections of this declaration.

Division 5.4 Violations Defined. Any act of commission or omission contrary to the commands or directives of this Declaration, or any breach of any duty imposed by this Declaration shall constitute a violation hereof. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

Division 5.5 Penalties. Failure of an Owner to comply with this Declaration, guidelines set by the ACC, Articles, Bylaws or Rules and Regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief or any combination thereof, including costs and attorneys' fees incurred in bringing such actions, and if necessary, costs and attorney's fees for appellate review. The Association shall also have the right to amend the Rules and Regulations in order to provide for the imposition of fines for failure to comply with this Declaration or the Rules and Regulations.

Division 5.6 Remedies

Section 5.6.1 Enforcement. Enforcement of the covenants, conditions and restrictions contained in this Declaration shall be by any proceeding at law or in equity and may be instituted by Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or recover damages, and against the land, and to enforce any lien created by this Declaration. Failure by Declarant, the Association or any Owner to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 5.6.2 Effect of Other Regulations. Wherever higher or more restrictive standards are established by the provisions of any other applicable statute, ordinance or regulation than are established by the provisions of this Declaration, the provisions of such statute, ordinance or regulation shall govern.

Section 5.6.3 Hearing by the Board. In addition to other remedies provided for the enforcement of these covenants, the Board of Directors is authorized to hear and determine the facts in cases of alleged nuisances and where it finds that facts exist which constitute a nuisance, the Board may order the cessation and abatement of such nuisance.

[signature page to follow]

IN WITNESS WHEREOF, Declarant has executed this Declaration on the 22nd day of January, 1999.

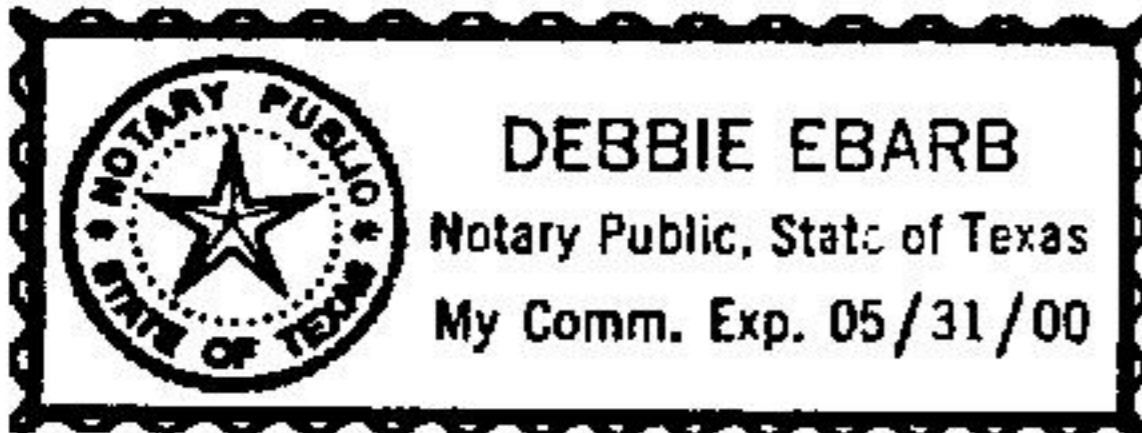
EVANS ACRES, LTD., a Texas limited partnership

BY: EVANS ACRES MANAGEMENT, L.L.C., a Texas limited liability company, its general partner

By: A. Bradford Galo
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 22 day of January, 1999, by A. BRADFORD GALO, as Manager of EVANS ACRES MANAGEMENT, L.L.C., a Texas limited liability company, as general partner of EVANS ACRES, LTD., a Texas limited partnership on behalf of said limited partnership.



NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO:

Mr. A. Bradford Galo
22920 Mangrove Dr.
San Antonio TX 78258

RECORDER'S MEMORANDUM

AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARSON OR PHOTO COPY, DISCOLORED PAPER, ETC.

Any provision herein which restricts the sale, rental, or use of the described real property because of race is invalid and unenforceable under Federal law STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence or the date and at the time stamped herein by me and was duly RECORDED the Official Public Record of Real Property of Bexar County, Texas on:

FEB 08 1999



COUNTY CLERK BEXAR COUNTY, TEXAS

Filed for Record in:
BEXAR COUNTY, TX
GERRY RICKHOFF, COUNTY CLERK

On Jan 29 1999

At 4:24pm

Receipt #: 197910
Recording: 55.00
Doc/Mgmt: 6.00

Doc/Num : 99- 0020685

Deputy -Catherine Revilla

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