

DECLARATION OF COVENANTS AND RESTRICTIONS FOR RESIDENTIAL PROPERTY

THE STATE OF TEXAS

COUNTY OF BURNET

THIS DECLARATION OF COVENANTS AND RESTRICTIONS OF ROCKY HOLLOW SUBDIVISION FOR RESIDENTIAL PROPERTY (the "Declaration"), is made as of the date hereinafter set forth by PAYNE/MILLER PROPERTIES (hereinafter referred to as Declarant").

RECITALS

- A. Declarant is the owner of Rocky Hollow Subdivision of approximately 337.79 acres of real property in Burnet County, Texas, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, which is currently designated for residential development.
- B. Declarant desires to hold and from time to time convey all of the tracts in the Rocky Hollow Subdivision (hereinafter referred to as "subdivision"), subject to certain covenants and restrictions hereinafter set forth in order to carry out a uniform plan for the improvements, development and sale of said Residential Property for the benefit of the present and future owners.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THAT Declarant, acting herein by and through its undersigned duly authorized representative, does hereby declare that this Residential Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants and restrictions hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with this Residential Property and shall be binding on all parties having any right, title or interest in or to the Residential Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Each contract or deed which may hereafter be executed with regard to the Residential Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following covenants, conditions and restrictions regardless of whether or not the same are set out or referred to in said contract or deed.

ARTICLE I GENERAL RESTRICTIONS

All of the Residential Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

Section 1.1 Subdividing. No Lot shall be further divided or subdivided; provided, however, that when Declarant is the owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interests therein.

Section 1.2 Construction of Improvements. No improvements shall hereafter be constructed upon any of the Residential Property without the prior written approval of the plans and specifications for the Improvement(s) by Declarant. Anything herein to the contrary notwithstanding, in the case of single family residences constructed on any Lot, Declarant shall limit its review to a review of specific floor plans, and elevations, and upon Declarant's approval of such specific floor plans and elevations, residences may be constructed consistent with the approved floor plans and elevations without the requirement of further review or approval by Declarant.

Section 1.3 Construction Requirements. All homes constructed on Lots shall be built in place using only new material and have a minimum of 2000 square feet of living area, exclusive of garage, carports and porches. The square footage and height of each home will be verified by submittal to Declarant of the architectural plans and specifications prior to commencement of construction. No home shall exceed three (3) stories in height. The total square feet of the exterior walls shall be a minimum of 75% rock or brick. All residences shall have a concrete slab on grade type foundation.

Section 1.4 Unfinished Structures. No structure shall remain unfinished for more than nine (9) months after the same has been commenced.

Section 1.5 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Residential Property and no odors shall be permitted to arise therefrom so as to render such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. In the event the owner shall fail or refuse to keep or cause to be kept such owner's property or any improvements thereon free from rubbish or debris or any kind, and such failure or refusal shall continue for fifteen (15) days after a delivery of written notice thereof, then Declarant may enter upon such property and remove or correct the same at the expense of the property owner and such entry shall not be deemed a trespass.

Section 1.6 Temporary Structures. No shack or other temporary building, improvement or structure shall be placed upon the Residential Property without the prior written approval of Declarant; provided; however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen during actual construction may be maintained.

Section 1.7 Mobile Homes. No mobile homes, double-wide mobile homes, modular homes or manufactured homes are permitted on any Lot.

Section 1.8 Mining and Drilling. No portion of the Residential Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth.

Section 1.9 Exemption of Declarant. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage and/or detention patterns and facilities, to construct any and all other types of improvements, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Subdivision.

Section 1.10 Unightly Articles; Vehicles. No article deemed to be unsightly by Declarant shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, busses, motorcycles motor scooters, and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures or areas screened from view.

Section 1.11 Animals-Household Pets. Livestock, with the exception of hogs, and specifically including, but not limited to, horses, cattle and poultry may be raised, bred and kept on any Lot. The number of cattle permitted shall not be more than (2) per five acres; the number of horses permitted shall not be more than four (4) per five acres; and the number of sheep and goats permitted shall not be more than five (5) per five acres. No commercial poultry operation shall be allowed. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on any portion of the Residential Property other than on the Lot of its owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire on the Residential Property and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by Declarant, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof.

Section 1.12 Sewers. All homes constructed on any portion of the Residential Property must be served by a septic tank, which has been certified by the State of Texas

and the Burnet County Health Department (or such other authority having jurisdiction over septic systems) as meeting or exceeding certification requirements.

Section 1.13 Fences - Perimeter / Boundary. Fences shall be a minimum of 4 feet and a maximum of 5.5 feet in height, shall be constructed using new materials and shall be constructed at the owner's expense. Fence maintenance shall be the responsibility of the owner.

Section 1.14 Firearms. No firearm shall be discharged in the subdivision; however, a firearm or firearms may be kept in the subdivision by Lot owners.

ARTICLE II

PROTECTIVE COVENANTS

Section 2.1 Use Limitations. The Residential Property shall be improved and used solely for single family residential use. Only one single family dwelling shall be constructed on any Lot. One (1) guest house, having a minimum of 1,000 square feet of living area, may also be constructed on any Lot, the square footage of which will be verified by submittal to Declarant of the architectural plans and specifications prior to commencement of construction.

Section 2.2 Setback Requirements. No parking or loading area and no structure or building of any kind or any part thereof shall be placed within these setback lines:

- (a) two hundred feet (200') from the front property line; and
- (b) fifty feet (50') from any side or rear property line;

provided, however, that the following improvements are expressly excluded from these setback requirements; structures below and covered by the ground; steps, walks, driveways and curbing; planters, walls, landscaping, and fences or hedges (not exceeding four feet (4') in height); and any other improvement approved by Declarant.

Section 2.3 Signage. No sign of any type other than a "For Sale" sign 3 feet by 3 feet or smaller shall be erected on any portion of the Residential Property; provided, however, Declarant may erect such signage as it deems appropriate. Any other sign may be erected with Declarant's prior written consent.

ARTICLE III

MAINTENANCE

Section 3.1 Upkeep of Lot. Each owner of a Lot shall keep all areas of such Lot, which are visible from boundary lines or roadways free of trash and other unsightly material.

Section 3.2 Repair of Buildings. All Improvements upon any of the Residential Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the owner thereof.

ARTICLE IV

ROCKY HOLLOW RANCH HOMEOWNERS ASSOCIATION

Section 4.1 Creation. At any time after the execution and recording of this Declaration, Declarant may create and form the Rocky Hollow Ranch Homeowners Association, a Texas non-profit corporation (the "Association"), to carry out the purposes, duties and obligations contained herein and in the Articles of Incorporation and Bylaws of the Association.

Section 4.2 Membership. Each and every person, persons or legal entity who shall own any lot, tract or parcel of land in the Residential Property, shall automatically be a member of the Association; provided, however, that any person or entity who holds such an interest merely as security for the performance of any obligation shall not be a member.

Section 4.3 Classes of Voting Members. The Association shall have two (2) classes of voting memberships:

(a) Class A. Class A members shall be all those members described in Section 4.2 hereof with the exception of Declarant. Class A members shall be entitled to one (1) vote for each full acre in that portion of the Residential Property owned by each such member. When two (2) or more persons or entities hold undivided interests in any part of the Residential Property, all such persons or entities shall be Class A members and the vote for such part of the Residential Property shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to each full acre of the portion of the Residential Property in which such members own undivided interests.

(b) Class B. The Class B member shall be Declarant. For every one (1) vote outstanding in favor of the Class A members, the Class B member shall have three (3) votes; provided, however, that after ninety percent (90%) of the Residential Property has been sold by Declarant to a non-affiliated third party, notwithstanding any other

provision of this Article IV, the Class B member shall be entitled to only one (1) vote for each full acre of the Residential Property owned by it.

- (a) Assignment of Voting Rights. Voting rights may be assigned, in whole or in part, as such rights relate to a particular tract of land, to a lessee holding a ground lease on such particular tract of land; provided, however, that the primary term of such ground lease is for a period of not less than twenty (20) years.

Section 4.4 Duties of the Association. Subject to and in accordance with this Declaration, the Association shall have and perform each of the following duties:

- (a) To accept, own, operate and maintain all property, real and personal, conveyed or released to the Association by Declarant and to maintain in good repair and condition all lands, improvements and other Association property owned by or leased to the Association.
- (b) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association to the extent that such taxes and assessments are not levied directly upon the members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (c) To obtain and maintain in effect policies of insurance adequate, in the opinion of the Association, in kind and amount to carry out the Association's functions, including without limitation, director and officer liability insurance and general liability insurance.
- (d) To make, establish and promulgate and, in its discretion, to amend or repeal and re-enact, such rules (the "Rules") and Bylaws not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions, including the use and occupancy of Association property. Without limiting the generality on the foregoing, such Rules may set dues and fees and prescribe the regulations governing the operation of Association property. Each member of the Association shall be entitled to examine such Rules and Bylaws during normal working hours at the principal office of the Association.
- (e) To enforce, on its own behalf and on behalf of all owners, this Declaration, as beneficiary of said covenants, conditions and restrictions and as assignee of Declarant and to perform all other acts, whether or not expressly authorized herein, as may be reasonably necessary to enforce any of the provisions of this Declaration, the Rules or Bylaws. The Board shall be authorized to institute litigation, settle claims, enforce liens and take all such actions as it may deem necessary or expedient to enforce the provisions of this Declaration and/or the Rules and Bylaws.
- (f) To keep books and records of the Association's affairs.

- (g) To carry out and enforce all duties of the Association set forth in this Declaration or the Articles of Incorporation or Bylaws of the Association.

Section 4.5 Roadway Maintenance and Landscape Obligation. The association shall maintain the landscaping, entry sign(s) and gates located at the entry(ies) to the Subdivision. In addition, the Association shall maintain, landscape and repair easements, rights-of-way, sidewalks, paths, trails, detention ponds and other areas of the Subdivision, as appropriate, owned by the Association. The Association shall maintain all areas dedicated to the Association for maintenance.

Section 4.6 Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in this Declaration. It shall further have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association shall have the power and authority at all times as follows:

- (a) To levy assessments as provided in Section 4.8 below. An assessment is defined as that sum which must be levied in the manner and against the property set forth in Section 4.8 hereof in order to raise the total amount for which the levy in question is being made.
- (b) To commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin any breach or threatened breach of this Declaration, the Rules or the Bylaws.
- (c) To retain and pay for the services of a person or firm (the "Manager") to manage and operate the Association, including its property, to the extent deemed advisable by the Association. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association may delegate any other duties, powers and functions to the Manager. The members of the Association hereby release the Association from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.
- (d) To retain and pay for legal and accounting services necessary or proper in the operation of the Association, the operation and management of its property, the enforcement of this Declaration, the Bylaws or the Rules or in the performance of any other duty, right, power or authority of the Association.
- (e) To maintain and repair easements, roads, driveways, rights-of-way, parks, parkways, median strips, sidewalks, paths, trails, ponds, lakes and other areas of the Subdivision, as appropriate.
- (f) To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.

- (g) To elect an architectural control committee (hereinafter referred to as "ACC") which shall enforce the restrictions or construction or repairs of improvements on all lots in the subdivision. After the election of the Architectural Control Committee all plans and specifications shall be submitted to the ACC prior to construction. The ACC shall have the right and power to cause the plans and specifications to be changed, altered or amended to conform to the requirements of the ACC. All construction or repairs shall be done only according to the plans and specifications approved by the ACC.

Section 4.7 Indemnification. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, officer, committee member, employee, servant or agent of the Association, against expenses (including attorney's fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Association or a court that he (1) acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, or (2) with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by settlement or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in or was opposed to the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability hereunder or otherwise.

Section 4.8 Assessments.

- (a) Covenant to Pay. Declarant, for each lot, tract or parcel of land owned by it within the Residential Property hereby covenants, and each purchaser of any lot, tract or parcel of land, by acceptance of a deed therefore, whether or not it shall expressly so state, hereby covenants to pay to the Association: (1) annual assessments (as specified in subsection (c) hereof) and (2) special assessments for capital improvements (as specified in subsection (d) hereof), all of such assessments to be fixed, established and collected from time to time as hereinafter provided.
- (b) Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the comfort, health, safety and welfare of the owners of the Residential Property and the maintenance and improvement of the Subdivision or any part thereof and

for carrying out the purposes of the Association as stated herein or as otherwise provided in its Articles of Incorporation or Bylaws.

- (c) Annual Assessment. Each purchaser of any part of the Residential Property shall pay to the Association an annual assessment determined by the Association. The Association may, after consideration of current operation and maintenance costs and future needs of the Association, fix the actual assessment for any year at a greater or lesser amount.
- (d) Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year or years, a special assessment for the purpose of defraying, in whole or in part, the cost of repair or replacement of any improvement located in the Subdivision, including the necessary fixtures and personal property related thereto or for carrying out other purposes of or otherwise benefiting the Association. Any special assessments shall be allocated proportionately among the owners in accordance with the acreage owned by each as compared with the total acreage of the Residential Property.
- (e) Commencement Date and Due Date of Annual Assessment. The first annual assessment provided for herein shall commence on the date stated in the resolution authorizing, fixing or creating the annual assessment, and shall continue thereafter from year to year. An annual assessment shall be considered delinquent if not paid within thirty (30) days from its due date. The assessments for any year thereafter shall become due and payable on the same day of each succeeding year and delinquent if not paid within thirty (30) days of their due date. The due date and delinquent date of any special assessment shall be fixed in the resolution authorizing, fixing or creating such assessment.
- (f) Owner's Personal Obligation for Payment of Assessments. The annual and special assessments provided for herein shall be the personal and individual debt of the owner of the property covered by such assessments. No owner may exempt himself from liability for such assessments. In the event of default in the payment of any such assessment, the owner of the property shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the assessment from the due date thereof (or if there is no such highest rate, then at the rate of one and one-half percent (1 1/2%) per month) together with all costs and expenses of collection, including reasonable attorney's fees.
- (g) Assessment of Lien and Foreclosure. All sums assessed in the manner provided in this Article 4 but unpaid, together with interest as provided above and the cost of collection, including attorney's fees, shall there upon become a continuing lien and charge on the property covered by such assessment, which shall bind such property in the hands of the owner and such owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against the said property, except only for tax liens and all sums unpaid on

a first mortgage lien or first deed of trust lien of record, securing in either instance sums borrowed for the purpose or improvement of the Residential Property in question, and shall be coupled with a power of sale. The Association shall have the power to subordinate the aforesaid assessment lien to any other lien. Such power shall be entirely discretionary with the Association and such subordination may be signed by an officer of the Association duly authorized by the Association to act in behalf of the Association. To evidence the aforesaid assessment lien, the Association may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the owner of the property covered by such lien and a description of the property. Such notice shall be signed by one of the officers of the Association and shall be recorded in the office of the County Clerk of Burnet County, Texas. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent as set forth in subsection (e) above and may be enforced by the foreclosure of the defaulting owner's property subsequent to the recording of a notice of assessment lien as provided above and the Association providing such owner with notice in the form and in accordance with the time periods set forth in Section 51.002 of the Texas Property Code, as amended, or the Association may institute suit against the owner personally obligated to pay the assessment to collect same and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or nonjudicial, the owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association shall have the power to bid on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any owner of, or of any mortgagee holding a prior lien on, any part of the Residential Property, the Association shall report to said owner or mortgagee any unpaid assessments thereon remaining unpaid for longer than thirty (30) days after the same are due.

- (h) Association Property Exempt. All Association property and any common areas of the Subdivision shall be exempt from the payment of any assessments levied by the Association.

ARTICLE V

MISCELLANEOUS

Section 5.1 Duration. This Declaration and the covenants and restrictions set out herein shall run with the Residential Property and shall inure to the benefit of and be enforceable by every owner of any part of the Subdivision, including Declarant and the Association, and their respective legal representatives, heirs, successors and assigns, for a term beginning on the date this Declaration is recorded and continuing through and including December 31, 2040, after which time said covenants shall be automatically

extended for successive periods of five (5) years unless a change (the word "change" includes additions, deletions or modifications thereto, in whole or in part) is approved by the owners of fifty-one percent of the property in the Subdivision, voting in person or by proxy at a meeting duly called for such purpose; provided, however, that no such change shall be effective prior to the recording of a certified copy of a resolution signed by the owners of seventy-five percent or more of the property in the Subdivision in the Official Public Records of Burnet County, Texas. Written notice of such meeting shall be given to all owners at least thirty (30) days in advance by the owner or owners calling such meeting and shall set forth the purpose of such meeting. No vote taken at such meeting shall be effective unless a quorum of owners is present in person or by proxy. The owners of seventy-five percent of the property in the Subdivision shall constitute a quorum.

Section 5.2 Amendment. This Declaration may be amended or terminated, in whole or in part, upon approval by the owners of fifty-one percent or more of the property in the Subdivision, voting in person or by proxy at a meeting duly called for such purpose. Written notice of such meeting shall be given to all owners at least thirty (30) days in advance by the owner or owners calling such meeting and shall set forth the purpose of such meeting. No such amendment or termination shall be effective prior to the recording in the Official Public Records of Burnet County, Texas, of a certified copy of a resolution signed by the owners of fifty-one percent or more of the property in the Subdivision. No vote taken at such meeting shall be effective unless a quorum of owners is present in person or by proxy. The owners of seventy-five percent of the property in the Subdivision shall constitute a quorum. Any amendment to this Declaration that imposes on any portion of the Residential Property additional covenants or restrictions not otherwise set forth herein shall not be effective unless seventy-five percent of the owner or owners of that portion of the Residential Property affected by such amendment has consented thereto by a written instrument filed in the Official Public Records of Burnet County, Texas.

Section 5.3 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Declarant for the purpose of service of notices or to the residence of such person if no address has been given to the Declarant.

Section 5.4 Variance. Declarant may issue a written variance to the deed restrictions on an individual basis to any lot owner and such variance shall not be a waiver of the deed restrictions as to other lots.

Section 5.5 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development and

operation of the Subdivision. This Declaration shall be construed and governed under the laws of the State of Texas.

Section 5.6 Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements by an owner (including Declarant) upon any property within the Subdivision. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence, is in compliance with the provisions of this Declaration, and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by Declarant, provided that such waiver shall be only for the reasonable period of such construction.

Section 5.7 Assignment by Declarant. Notwithstanding anything in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person and may permit the participation, in whole or in part, by any other person in any of its privileges, exemptions, rights and duties hereunder.

Section 5.8 Enforcement and Nonwaiver.

- (a) Except as otherwise provided herein, any owner of land within the Subdivision, at his own expense, and/or Declarant shall have the right to enforce all of the provisions of this Declaration. Such right of enforcement shall include both damages, and an action for injunctive relief against the breach of any such provisions.
- (b) Every act or omission whereby any provision of this Declaration is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any owner of land within the Subdivision (at his own expense) and/or Declarant.
- (c) Any violation of any federal, state or local law, ordinances or regulation pertaining to the ownership, occupancy or use of any portion of the Residential Property is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.
- (d) The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of this Declaration.

Section 5.9 Construction. The provisions of this Declaration shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision. If any

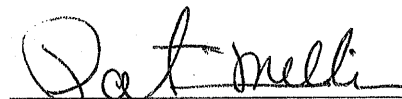
paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof. It is specifically understood that all decisions, determinations, consents and approvals provided for hereunder or with respect to any matter and by any person or entity shall not be unreasonably withheld.

Section 5.10 Compliance with Provisions of this Declaration. Each owner shall comply strictly with the provisions of this Declaration as the same may be amended from time to time. Failure to comply with any of this Declaration shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by Declarant, the Association or by an aggrieved owner.

Section 5.11 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any owner acquiring a portion of the Residential Property in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring said property, agrees to hold Declarant harmless therefrom.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this
10th day of May, 2004.

PAYNE/MILLER PROPERTIES

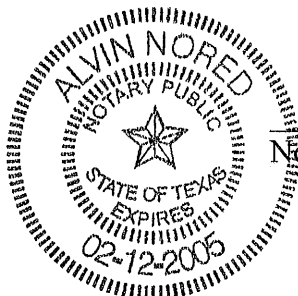


PATRICK MILLER, Partner

THE STATE OF TEXAS

COUNTY OF BURNET

This instrument was acknowledged before me this 10th day of May, 2004, by PATRICK MILLER, Partner of PAYNE/MILLER PROPERTIES



Alvin Nored
Notary Public - State of Texas