

BURKE RANCH
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HAYS §

WHEREAS, John P. Burke, Jr. and Rosemary Burke Bullard now known as Rosemary Campise, (jointly hereinafter referred to as "Declarant"), are the owners of certain real property located in Hays County, Texas ("Property"), which Declarant proposes to develop and subdivide for residential and commercial purposes; and

WHEREAS, the Declarant desires to convey the Property subject to certain protective covenants, conditions, restrictions, liens, and charges set forth below; and

WHEREAS, Declarant desires to create and carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property.

NOW, THEREFORE, it is declared (i) that all of the Property shall be held, sold, conveyed, and occupied subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof, and (ii) that each contract or deed which may hereafter be executed with regard to the 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
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the following meanings:

1.01 Association. "Association" shall mean Burke Ranch Property Owners Association, Inc., a Texas non-profit corporation formed or to be formed in accordance with these Declarations.

1.02 Burke Ranch Restrictions. "Burke Ranch Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with Burke Ranch Rules, Committee Rules and the Articles and Bylaws of the Association from time to time in effect, as the same may be amended from time to time.

1.03 Burke Ranch Rules. "Burke Ranch Rules" shall mean the rules and regulations adopted by the Board of Directors of the Association as the same may be amended from time to time.

1.04 Declarant. "Declarant" shall mean John P. Burke, Jr. and Rosemary Burke Campise, their duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of John P. Burke, Jr. and Rosemary Burke Campise, as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

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

1.06 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, Outbuildings, storage sheds, barns, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wholes, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.07 Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on a Plat of a Subdivision out of the Property, together with all Improvements located thereon.

1.08 Outbuildings. "Outbuildings" shall mean to include a single garage, either attached or detached, for not less than two cars, an office, barns, guest house, and servants' quarters detached from the building; and such garage and servants quarters may include a laundry room and laundry services to be used for the convenience of the occupants of the dwelling house and not as a public laundry.

1.09 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, sample of exterior colors, plans for utility services, and all other documentation or information relevant to such improvement.

1.10 Property. "Property" shall mean that real property which is subject to the terms of this Declaration, which is comprised of the property described on Exhibit "A," attached to and incorporated herein by reference.

1.11 Supplemental Declaration. "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions and restrictions which may be recorded hereafter in order to withdraw land from the Property.

1.12 The Board. "The Board" shall mean the Board of Directors of the Association or the designees of said Board of Directors.

1.13 The Outboundary Fence. "The Outboundary Fence" shall mean the existing fence at the time of creation and execution of this Declaration which runs along the outer perimeter of the Property along FM 150.

ARTICLE II DEVELOPMENT OF THE PROPERTY

2.01 Development by Declarant. Declarant may divide or subdivide the Property into several areas, develop some of the Property, and, at Declarant's option, sell any portion of the Property free of these restrictions, in accordance with its master plan for the Property. It is contemplated that the Property will be developed pursuant to a master concept plan, which may, from time to time, be amended or modified in which the development of, and restrictions upon, each portion of the Property will benefit every other portion, as well as the entire Property.

2.02 Addition of Land. It is contemplated that Declarant will develop certain additional real property adjacent to the Property ("Added Land") for residential purposes, and add such Added Land, or a portion thereof, to the Property from time to time. Declarant may add the Added Land or portion thereof, without the consent of any Owner or any other person, and upon the filing of a notice of addition of land as described below, this Declaration and the covenants, conditions, restrictions, and obligations set forth herein shall apply to the added lands, and the rights, privileges, duties, and liabilities of the persons subject to this Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration.

2.03 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw lands owned by Declarant from the Property, and upon such withdrawal, this Declaration and the covenants, conditions, restrictions, and obligations set forth herein shall no longer apply to those lands withdrawn. In order to withdraw lands from the Property, Declarant shall be required only to record in the Official Public Records of Hays County, Texas, a notice of withdrawal of land containing the following provisions:

- (a) A reference to this Declaration, which reference shall state the book and page numbers of the Hays County Official Public records wherein this Declaration is recorded;
- (b) A statement that the provisions of this Declaration shall no longer apply to the withdrawn land; and
- (c) A legal description of the withdrawn land.

**ARTICLE III
GENERAL RESTRICTIONS**

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

3.01 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvements, shall be performed only with the prior written approval of the Board.

3.02 Animals - No swine shall be allowed on the Property or any Lot nor shall any animal or fowl feeding or commercial operations, expressly including commercial kennels, be permitted. Notwithstanding anything to the contrary, animals for 4-H and/or FFA purposes shall be allowed under the following conditions: (i) the participant is a member of an owners' family who is under the age of nineteen (19); (ii) the participant is a bona fide member of 4-H or FFA; (iii) the participant is duly enrolled in a qualified 4-H or FFA competition or club project; (iv) each participant is entitled to raise or care for only one project animal at a time; (v) the project animal is not a swine; (vi) the project animal is kept in a sightly pen or other enclosure; (vii) the pen or other enclosure shall be kept clean and in a sanitary and odorless condition at all times; and (viii) the project animal shall be removed from the Property upon completion of the competition or club project. No other animal or fowl may be kept on any Lot except household pets; and no animal or fowl may be kept for breeding purposes. Owners may have horses, sheep, or goats and any such offspring until weaning age, with a maximum of two (2) animal units per five (5) acres; but such animals shall be for domestic use only and not for any kind of commercialized stock operation. If the Lot is not kept clean and orderly a complaint may be filed by any Owner. This restriction shall in no way prohibit the keeping of a family pet (cat or dog). All dogs shall be kept in a fenced area or tethered. Notwithstanding the foregoing and subject to the last sentence of this Section 3.02, any Lot containing in excess of thirty acres may conduct a commercial equestrian center operation, provided that there shall be a maximum of one horse per acre, or if an irrigation system is installed, two horses per acre. The horses shall be in addition to other animals permitted on the Lot. The actual number of horses on a Lot in excess of thirty acres shall not exceed the Hays County Agricultural Extension Office recommendations, regulations or rulings and the Owner of such Lot shall provide personnel of the the Hays County Agricultural Extension Office access to such Lot.

3.03 Antennae. No exterior radio or television antenna, or serial or satellite dish receiver (except such satellite dish not exceeding eighteen inches in diameter), or other devices designed to receive telecommunication signals, including, but not limited to, radio, television, or microwave signals which are intended for cable television, network television reception, or other entertainment purposes shall be erected or maintained, without the prior written approval of the Architectural Committee. Satellite dishes not exceeding eighteen (18) inches are allowed on a Lot, but must be positioned at the rear of the dwelling, and not be visible from any road.

3.04 Building Materials. All residences and outbuildings shall be constructed of new materials and shall have a neat and attractive appearance. No metal walls or walls of temporary

shooting shall be permitted on any residence on the Property or any Lot. No geodesic structures are permitted on the Property or any Lot.

3.05 Construction Activities. Nothing in this Declaration shall 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 Lot within the Property. 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 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 the Board, provided that such waiver shall be only for the reasonable period of such construction.

3.06 Construction in Place. All dwellings constructed on the Property shall be built in place on the Lot.

3.07 Construction of Improvements. No Improvements shall be constructed upon any of the Property or any Lot without the prior written approval of the Board. The Improvements on any Lot shall be limited to one (1) single family residence not exceeding two stories in height, and basement and Outbuildings used in connection therewith for each five (5) acres contained within a Lot. No prefabricated structures are permitted. No buildings or portions of buildings shall be moved upon any Lot without the prior written consent of the Board. No trailer, motor home, pre-manufactured home, modular home, mobile home, trailer, tents, shacks, garage, barn or other structures located or erected on the Property or any Lot shall at any time be used as a residence temporarily or permanently (provided, however, this restriction shall not disallow the use of a tent, trailer or motor home to be used for recreational camping on a weekend basis, so long as the tent, trailer or motor home is not visible from the other Lots), nor shall any structure of a temporary character be used as a residence; except that one double-wide mobile home may be used for a residence on any Lot of thirty (30) acres or more so long as that mobile home is removed from the Lot upon the earliest to occur of (i) the completion of a single family home on the Lot or (ii) the expiration of ten (10) years from the date of the mobile home's installation. The entire exterior walls of all structures constructed on a Lot must be completed within one year after the commencement of the work thereon or the placing of materials therefor on such Lot, whichever occurs earliest; and in connection therewith, it is intended that the word "completed" shall also mean the finishing of all such exterior walls.

3.08 Dwelling Size. For any residence located on the Property, the minimum floor area for the main structure, exclusive of porches (screened or open) and garages, shall be 1,600 square feet.

3.09 Fences. The Owners of any and all Lots abutting or fronting FM 150 shall maintain the existing Outboundary Fence. Any Lot having an opening for ingress and egress through the Outboundary Fence shall be provided, at the expense of the Owner of such Lot, with a gate or cattleguard or combination thereof; except that such Owner does not have to provide such gate or cattleguard if such Owner elects to fence his entire Lot with a fence sufficient to

contain cattle. Any Owner who elects not to have livestock graze upon his Lot shall be responsible for fencing such Lot sufficient to contain cattle. After seventy-five percent (75%) of the Property is sold by the Declarant, the Declarant may elect to remove livestock from the Property. A Cattle Lease covering the Property shall run with the Property for a term of five (5) years from the recording of this Declaration.

3.10 Hazardous Activities. No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no open fires shall be lighted or permitted except within safe and well-designed interior or exterior fireplaces, or in contained barbecue units while attended and in use for cooking purposes. No firearms shall be discharged upon any Lot unless the Lot contains in excess of ten (10) acres and the firearm is discharged in such a way as to prevent any projectile from crossing the Lot's boundary line. Notwithstanding anything to the contrary, bow hunting is authorized on any Lot so long as such hunting is done in such a way as to prevent any projectile from crossing the Lot's boundary line.

3.11 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located on the Property without the prior written approval of the Board.

3.12 Mining and Drilling. No portion of the 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.

3.13 Noise. No exterior horns, whistles, bells, or sirens (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants; and such noise or other nuisance shall necessarily include noises and odors from any animal or fowl.

3.14 Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes.

3.15 Roadways. Except as specifically authorized by any written easement entered into contemporaneously with the creation and execution of this Declaration, no part of any Lot may be used for a roadway leading to other privately owned property outside the Property.

3.16 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property or any Lot and no odors shall be permitted to arise therefrom so as to render the Property or any portion of it 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. The Property nor any part thereof shall be used or maintained as a dumping ground for rubbish. No incinerators or other equipment for the storage or disposal of such material shall be permitted. No junk, repair, or wrecking yard shall be located on the Property or

any Lot. Material of any kind stored on any Lot shall be arranged in an orderly manner in the rear of the dwelling house and shall be properly covered.

3.17 Septic Systems. Installation of septic tank soil- absorption sewerage disposal system shall be in accordance with the minimum recommendations by the Division of Sanitary Engineering, Texas State Department of Health, and inspected by a duly authorized agent of Hays County Health Department. No outside toilets, privies or cesspools are permitted.

3.18 Setback Requirements. All structures and other improvements, other than fences, must be built in compliance with the following setback requirements: (i) 50 feet from the front Lot line or from any side road, except with the express written consent of the Board but only in those instances where the natural topography or features (i.e. creek bed or bluff) of a Lot prohibit compliance with this requirement; (ii) 25 feet from the side boundary line of the Lot unless the Owner of such Lot owns contiguous Lot(s) and in that instance, no side setback is applicable to the boundary line between such contiguous Lots and (iii) any other set back requirements imposed by any applicable governmental entity.

3.19 Subdividing. No Lot shall be further divided or subdivided to create a new Lot containing less than five (5) acres, nor may any easements or other interests in the Lot less than the whole be conveyed by the Owner without the prior written approval of the Board; provided, however, that when Declarant is the Owner, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Board. Notwithstanding anything to the contrary, this resubdivision restriction shall not apply to any Lot acquired by the Veterans Land Board of the State of Texas.

3.20 Temporary Structures. No tent, shack, or other temporary building, improvement or structure shall be placed upon the Property without the prior written approval of the Board; 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 with the approval of Declarant, approval dependent on the nature, size, duration, and location of such structure.

3.21 Use Restriction. Subject to the provisions herein described, the Lots shall be improved and used solely for single family residential use and no business or commercial structure shall be constructed or placed on the Lots. Any Lot facing or abutting FM 150 (but excluding any Lot that faces or abuts FM 150 exclusively through land that is located on a roadway easement) may have commercial uses and structures so long as such uses and structures are located within 500 feet of FM 150; further, any Lot containing in excess of thirty acres may be used as a commercial equestrian center, subject to the conditions contained herein.

3.22 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 Article II or elsewhere 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 Lot

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 the Lot, agrees to hold Declarant harmless therefrom.

**ARTICLE IV
BURKE RANCH PROPERTY OWNERS ASSOCIATION, INC.**

4.01 Organization. The Declarant shall, at such time as Declarant deems appropriate, cause the formation and incorporation of the Association. The Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in its Articles and Bylaws and in this Declaration. Neither the Articles nor the Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

4.02 Membership. Any Person, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to the said property interest.

4.03 Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of members to the Board of Directors of the Association, and on all other matters to be voted on by the Members, shall be calculated as provided below. Owners entitled to votes pursuant to (a) below are hereinafter sometimes referred to as "Class A Members." Declarant, which is entitled to vote pursuant to (b) below, is hereinafter sometimes referred to as the "Class B Member."

(a) The Owner of each Lot within the Property shall have one vote for each acre contained in each Lot so owned.

(b) In addition to the votes to which it is entitled by reason of subparagraph (a) of this section for every one (1) vote to which Declarant is entitled due to its ownership of Lots, Declarant shall have an additional three (3) votes for each acre contained in each Lot owned by Declarant until the earlier of (i) December 31, 2007 or (ii) the number of total votes in Class A equals the number of total votes in Class B. Thereafter, Declarant shall have only the votes, if any, to which it is entitled under subparagraph (A) of this section.

4.04 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 power 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 and the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

(a) Burke Ranch Property Owners Association Rules and Bylaws. To make, establish, and promulgate, and in its discretion to amend or repeal and re-enact, such Burke Ranch Property Owners Association Rules and Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.

(b) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association functions.

(c) Records. To keep books and records of the Association's affairs.

(d) Assessments. To levy assessments as provided in Article IV, below. An assessment is defined as that sum which must be levied in the manner and against the property set forth in Article IV in order to raise the total amount for which the levy in question is being made.

(e) Right of Entry and Enforcement. To enter at any time in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot for the purpose of enforcing the Burke Ranch Restrictions or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Burke Ranch Restrictions, and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be a lien upon the Lot entered upon and Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article VII hereof for regular and special assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, 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 the Burke Ranch Restrictions. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Burke Ranch Restrictions.

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Manager. 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 Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by law, the Association and the Board may delegate any other duties, powers and functions to the Manager. The members of the Association hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power, or function so delegated.

(h) Association of Property Services. To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property

of the Association; to maintain and repair easements, roads, roadways, rights-of-way, median strips, sidewalks, paths, trails and other areas of the Property, as appropriate.

(i) Other Services and Properties. To obtain and pay for any other property and services, and to pay for other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law, the terms of this Declaration, or the Articles or Bylaws of the Association.

(j) Construction on Association Property. To construct new improvements or additions to Association properties, subject to the approval of the Architectural Committee as required by this Declaration.

(k) Contracts. To enter into contracts with Declarant and other persons on such terms and provisions as the Board shall determine, to operate and maintain any Common Area or to provide any service or perform any function on behalf of Declarant or other person.

(l) Property Ownership. To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease gift, or otherwise.

4.05 Maintenance. The Association shall maintain all streets which have been completed but not accepted by the appropriate governmental entity for maintenance.

4.06 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 completed 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, reasonably incurred by him in connection with such action, suit or proceeding if it is found and determined by the Board 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, of its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in, or not 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.

**ARTICLE V
FUNDS AND ASSESSMENTS**

5.01 Assessments.

(a) Assessments established by the Board pursuant to the provisions of this Article VII shall be levied on a uniform basis against each Lot within the Property. The amount of the Assessment shall be determined by dividing the total amount determined by the Board to be necessary pursuant to Section 5.03 and/or 5.04 hereof by the total number of acres within the Property at the time the Assessment is levied, as determined by reference to each Plat of a portion of the Property which is of record at the time the Assessment is levied.

(b) Each unpaid assessment, together with interest and costs of collection, as provided below, shall be the personal obligation of the Owner of the Property against which the Assessment fell due, and shall become a vendor's lien against each such Lot and all its Improvements. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.

5.02 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

5.03 Regular Annual Assessments. Prior to the beginning of each fiscal year, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Burke Ranch Restrictions, including but not limited to, the cost of all maintenance, the cost of providing street lighting, the cost of enforcing the Burke Ranch Restrictions, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as provided herein, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including non payment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner as provided above. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion. In no event shall the regular annual assessment per acre for the year 1997 exceed the sum of \$3.00. Thereafter, at the Board's sole and absolute discretion, the maximum regular annual assessment permitted hereunder may be increased by no more than five percent (5%) per year. The maximum regular annual assessment may be increased by more than five per cent (5%) during a year only by affirmative vote of two-thirds (2/3) of each class of Members, voting in person or by proxy, at a meeting duly called for such purpose.

5.04 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the mandatory functions of the Association under the Burke Ranch Restrictions. The amount of any special Assessments shall be at the reasonable discretion of the Board. In no event shall the total special assessment per acre during the year 1997 exceed the sum of \$1.00. Thereafter, the maximum special assessment permitted hereunder may increase by no more than five percent (5%) per year. In addition to the special assessments authorized above, the Association may, in an assessment year, levy a special assessment applicable to that assessment year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, provided that any such special assessment shall have the assent of two-thirds (2/3) of the votes for each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.05 Owner's Personal Obligation for Payment of Assessments. The regular and special Assessments provided for herein shall be the personal and individual debt of the Owner of the Lot 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 lot 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, together with all costs and expenses of collection, including reasonable attorneys' fees.

5.06 Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall, together with interest as provided in Section 5.05, and the cost of collection, including reasonable attorneys' fees, thereupon become a continuing lien and charge on the Lot covered by such Assessment, which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors, or assigns. This lien shall be superior to all other liens and charges against the said Lot, except only for tax liens and all sums unpaid on a first deed of trust lien of record and a first vendor's lien of record. The Association shall have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board and such subordination may be signed by an officer 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 Lot covered by such lien, and a description of the Lot. 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 Hays County, Texas. Such lien for payment of Assessments shall attach with the priority set forth above from the date that such payment become delinquent and may be enforced by the foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property subsequent to the recording of a notice of Assessment lien as provided above, or the Association may institute suite against the Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien judicially. In any foreclosure proceeding, whether judicial or not judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' 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 Mortgagee, the Association shall report to said

Mortgagee any unpaid Assessments remaining unpaid for longer than thirty (30) days after the same are due.

ARTICLE VI EASEMENTS

6.01 Reserved Easements. All dedications, limitation, restrictions, and reservations shown on the Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights, made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed, or conveyance executed, or to be executed, by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner, or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including, without limitation, gas, water, cable television, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, which said easement shall have a maximum width of ten (10) feet on each side of such Lot line.

6.02 Installation and maintenance. There is hereby created an easement upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to, water, gas, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wire, conduits, service lines, or other utility facilities or appurtenances thereto, on above, across and under the property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Committee. The utility companies furnishing service shall have the right to remove all trees situated within the utilities easements shown on the Plat, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

6.03 Drainage Easements. Each owner covenants to provide easements for drainage and water flow, as contours of land the arrangement of Improvements approved by the Architectural committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as approved in writing by the Architectural Committee.

6.04 Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers. However, neither the Declarant nor

any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation, or repair of any facility in any such easement area.

6.05 Contemporaneous Easements. At its sole discretion, Declarant may enter into various other written easements contemporaneous with the creation and execution of these Declarations.

ARTICLE VII MISCELLANEOUS

7.01 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2027, unless amended as herein provided. After December 31, 2027, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots within the Property then subject to this Declaration.

7.02 Amendment.

(a) By Declarant. This Declaration may be amended for the purpose of complying with any requirements of the City of Dripping Springs, Texas, Hays County, Texas, the Veterans Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association by the Declarant acting alone until December 31, 2007, or until Declarant no longer holds a majority of the votes in the Association, whichever occurs first. No amendment by Declarant after December 31, 2007, shall be effective until there has been recorded in the Official Public Records of Hays County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment, and an instrument executed and acknowledged by the President and Secretary of the Board certifying that the Declarant had the requisite number of votes.

(b) By Owners. In addition to the method in Section 7.02 (a), this Declaration may be amended by the recording in the Hays County Official Public Records of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least seventy-five percent (75%) of the number of votes entitled to be cast pursuant to Section 4.03 hereof.

7.03 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 Association for the purpose of service of

notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

7.04 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

7.05 Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Board. 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 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 Lots or Property owned by Declarant or within any common easements for the benefit of all the Owners.

7.06 Assignment by Declarant. Notwithstanding any provision 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 or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

7.07 Compliance with Provisions of Burke Ranch Restrictions. Each Owner shall comply strictly with the provisions of the Burke Ranch Restrictions as the same may be amended from time to time. Failure to comply with any of the Burke Ranch Restrictions 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 the Board on behalf of the Association or by an aggrieved Owner.

7.08 Enforcement and Nonwaiver.

(a) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce all of the provisions of Burke Ranch Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.

(b) Nonwaiver. The failure to enforce any provision of the Burke Ranch Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

7.09 Construction.

(a) Restrictions Severable. The provisions of the Burke Ranch Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision

1244 577

or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

(b) Singular Includes Plural. 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.

(c) Captions. 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.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the 29 day of August, 1997.

DECLARANT

Rosemary Burke Bullard AKA Rosemary Campise
Rosemary Burke Bullard now known as Rosemary Campise

John F. Burke, Jr.
John F. Burke, Jr.

STATE OF TEXAS

§

COUNTY OF HAYS

§

This instrument was acknowledged before me on this 29 day of August, 1997, by Rosemary Burke Bullard now known as Rosemary Campise.

Patsy Wilborn
Notary Public, State of Texas

My Commission expires: _____



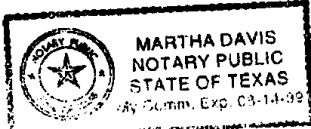
STATE OF TEXAS

1344 578

COUNTY OF NUECES

§
§
§

This instrument was acknowledged before me on this 13 day of Sept, 1997, by John P. Burke, Jr.



Martha Davis
Notary Public, State of Texas

My Commission expires: 8-14-99

JAMES E. GARON & ASSOCIATES

PROFESSIONAL LAND SURVEYORS

2312 Western Trails Blvd., Bldg. D-404

Austin, Texas 78745

512 - 707 - 8087

EXHIBIT "A"

Page 1

1344 579

LEGAL DESCRIPTION: BEING 106.76 ACRES LYING IN AND SITUATED OUT OF THE THOMAS R. JACKSON SURVEY NO. 25 IN HAYS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN CALLED 200.44 ACRE TRACT OR PARCEL OF LAND CONVEYED TO JOHN P. BURKE, JR., BY DEED RECORDED IN VOLUME 216, PAGE 13 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 106.76 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JAMES E. GARON & ASSOCIATES, IN AUGUST, 1997:

BEGINNING at a 1/2" rebar set in the north line of the said Burke tract, same being the south line of that certain called 489.0 acre tract or parcel of land conveyed to Nina Garnett by deed recorded in Volume 120, Page 456, of said deed records, and from which point a 1/2" rebar found at the northwest corner of the said Burke tract bears South 89°46'28" West a distance of 858.42 feet;

THENCE North 89°46'28" East a distance of 1,587.43 feet along the common line of the said Burke and Garnett tract to a 1/2" rebar set, for the northeast corner of the herein described tract;

THENCE through the interior of the said Burke tract along the east line of the herein described tract the following five (5) courses:

- 1) South 00°26'04" East a distance of 767.57 feet to a 1/2" rebar found at an angle point in the north line of that certain called 20.00 acre tract or parcel of land conveyed to Gerald J. Goff and Penny Goff by deed recorded in Volume 1299, Page 881 of said deed records, for an outside ell corner of the herein described tract;
- 2) South 89°33'56" West a distance of 72.85 feet along the north line of the said Goff tract to a 1/2" rebar found at the northwest corner of the said Goff tract, for an inside ell corner of the herein described tract;
- 3) South 00°26'04" East a distance of 597.92 feet along the west line of the said Goff tract to a 1/2" rebar found at an outside ell corner of the said Goff tract, for an inside ell corner of the herein described tract;
- 4) North 89°33'56" East a distance of 72.85 feet to a 1/2" rebar found at an inside ell corner of the said Goff tract, for an outside ell corner of the herein described tract;

1344 580

106.76 Acre Tract
Page 2 of 2

- 5) South $00^{\circ}26'04''$ East a distance of 1,560.54 feet to a 1/2" rebar set in the north right-of-way line of F.M. Highway No. 150, same being the south line of the said Burke tract, for the southeast corner of the herein described tract, and from which point an iron pipe found at the southeast corner of the said Burke tract bears South $88^{\circ}53'48''$ East a distance of 494.60 feet;

THENCE along the north right-of-way line of F.M. Highway No. 150, same being the south line of the said Burke tract the following three (3) courses:

- 1) North $88^{\circ}53'48''$ West a distance of 8.19 feet to a concrete highway monument found, for angle point;
- 2) South $88^{\circ}49'02''$ West a distance of 1,236.30 feet to a concrete highway monument found at a point of curvature;
- 3) a length of 363.51 feet along the arc of a curve to the right having a radius of 5689.58 feet and a chord bearing North $89^{\circ}20'38''$ West a distance of 363.44 feet to a 1/2" rebar set, for the southwest corner of the herein described tract;

THENCE North $00^{\circ}02'17''$ West a distance of 2,940.90 feet through the interior of the said Burke tract to the POINT OF BEGINNING and containing 106.76 Acres, more or less.

Surveyed by:


James E. Garon
Registered Professional Land Surveyor
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August 25, 1997

JAMES E. GARON & ASSOCIATES

PROFESSIONAL LAND SURVEYORS

2312 Western Trails Blvd., Bldg. D-404

Austin, Texas 78745

512-707-9087

SAVE AND EXCEPT:

EXHIBIT "A"

Page 3

1244 581

LEGAL DESCRIPTION: BEING 30.00 ACRES LYING IN AND SITUATED OUT OF THE THOMAS R. JACKSON SURVEY NO. 25 IN HAYS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN CALLED 200.44 ACRE TRACT OR PARCEL OF LAND CONVEYED TO JOHN P. BURKE, JR., BY DEED RECORDED IN VOLUME 216, PAGE 13 OF THE DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 30.00 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JAMES E. GARON & ASSOCIATES, IN AUGUST, 1997:

BEGINNING at a 1/2" rebar set in the north right-of-way line of F.M. Highway No. 150, same being the south line of the said Burke tract, for the southwest corner of the herein described tract, and from which point a concrete highway monument found at a point of curvature of the north right-of-way line of F.M. Highway No. 150 and the said Burke tract bears South 88°49'02" West a distance of 425.11 feet;

THENCE through the interior of the said Burke tract along the west line of the herein described tract the following seven (7) courses:

- 1) North 06°37'24" West a distance of 785.96 feet to a 1/2" rebar set, for angle point;
- 2) North 08°30'23" West a distance of 60.20 feet to a 1/2" rebar set, for angle point;
- 3) South 81°29'37" West a distance of 12.00 feet to a 1/2" rebar set, for angle point;
- 4) North 08°30'23" West a distance of 764.22 feet to a fence post found, for an inside ell corner;
- 5) North 83°51'58" West a distance of 447.47 feet along a fence line to a fence post found, for angle point;
- 6) North 84°22'57" West a distance of 120.74 feet along a fence line to a 1/2" rebar set, for an outside ell corner;

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Exhibit "A"
Page 4

7) North 00°02'17" West a distance of 1,282.36 feet to a 1/2" rebar set in the north line of the said Burke tract, same being the south line of that certain called 489.0 acre tract or parcel of land conveyed to Nina Garnett by deed recorded in Volume 120, Page 456 of said deed records, for the northwest corner of the herein described tract, and from which point a 1/2" iron pipe found at the northwest corner of said Burke tract bears South 89°46'28" West a distance of 858.42 feet;

THENCE North 89°46'28" East a distance of 949.29 feet along the common dividing line of the said Burke tract and the said Garnett tract to a 1/2" rebar set, for the northeast corner of the herein described tract;

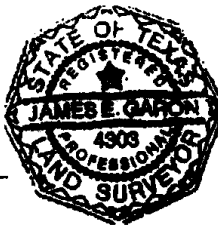
THENCE through the interior of the said Burke tract along the east line of the herein described tract the following four (4) courses:

- 1) South 00°00'00" East a distance of 1,359.74 feet to a 1/2" rebar set, for angle point;
- 2) South 76°0'19" West a distance of 354.69 feet to a 1/2" rebar set, for angle point;
- 3) South 08°30'23" East a distance of 720.12 feet to a 1/2" rebar set, for angle point;
- 4) South 06°37'24" East a distance of 787.30 feet to a 1/2" rebar set in the north right-of-way line of F.M. Highway No. 150, same being the south line of the said Burke tract, for the southeast corner of the herein described tract;

THENCE South 88°49'02" West a distance of 12.05 feet along the north right-of-way line of F.M. Highway No. 150 and the south line of the said Burke tract to the POINT OF BEGINNING and containing 30.00 Acres, more or less, and as shown on map of survey prepared herewith.

Surveyed by:


James E. Garon
Registered Professional Land Surveyor
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August 25, 1997

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Margie T. Villalpando
9-16-97 03:46 PM 9715749

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FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Margie T. Villalpando
9-16-97 03:46 PM 9715749
LACKEY \$49.00
MARGIE T VILLALPANDO, County Clerk
HAYS COUNTY