

794133

STATE OF TEXAS
COUNTY OF KERR

VOL. 225 PAGE 442

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE ACE RANCH SECTION OF GUADALUPE HEIGHTS SUBDIVISION,
NO. FIVE

THIS DECLARATION, made on the date hereinafter set forth by WILMA E. PALMER, A Single Woman, of Harris County, Texas hereinafter referred to as "Declarant",

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the County of Kerr, State of Texas, being a part of Guadalupe Heights Subdivision No. Five such part being hereby designated as "THE ACE RANCH SECTION" of said subdivision, and which property is more particularly described in the attached Exhibit "A".

NOW THEREFORE, Declarant hereby declares that all of the properties described in said Exhibit "A" shall be held, sold and conveyed subject to the following easements, restriction, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to ACE RANCH PROPERTY OWNERS ASSOCIATION, a Texas Non-Profit Corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Building Plot which is a part of the Properties including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first Building Plot to an Owner other than a Declarant is described in the attached Exhibit "B".

Section 5. "Building Plot" shall mean and refer to each of the individual numbered lots in said ACE RANCH SECTION, being Lot 8 through Lot 22 of Guadalupe Heights Subdivision, No. Five, as set out on the plat recorded in Volume 4, Page 105 and 106, Plat Records of Kerr County, Texas, into which the property, excepting the Common Area, has been divided for the construction of houses thereon for individual use and ownership.

Section 6. "Declarant" shall mean and refer to WILMA E. PALMER, her heirs and assigns.

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Building Plot, subject to the following provisions:

(a) the right of the Association to make, publish and enforce reasonable Rules and Regulations for the use of the Common Area and facilities situated thereon.

(b) the right of the Association to suspend the voting rights and right to use of the facilities owned or operated by the Association by an Owner for any period during which any assessment against his Building Plot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published Rules and Regulations.

(c) the right of the Association to grant or dedicate any part of the Common Area to any public agency, authority or utility for any service to the Properties or any part thereof.

(d) the right of the Association to limit the number of guests of Owners using any portion of the Common Area and any facilities located thereon.

(e) the right of the Association, in accordance with its Articles of Incorporation or By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property. The rights of any such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.

Section 2. Delegations of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property.

Section 3. Parking Rights. The use of all other parking areas situated in the Common Area shall be subject to the exclusive control and management of the Board of Directors of the Association.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Members. Declarants and every owner of a Building Plot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Building Plot which is subject to assessment.

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

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

CLASS B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Building Plot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A members equals the total votes outstanding in the Class B members, or
- (b) on the tenth anniversary date of this Declaration.

ARTICLE IV

COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Building Plot owned within the Properties, hereby covenant, and each Owner of any Building Plot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties; the improvement, operation, administration, management, preservation and maintenance of the Common Area and any part thereof; the payment of all expenses and obligations lawfully incurred by the Association in connection with the Common Area or certain utilities and services for all Building Plots.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Building Plot to an Owner, the maximum annual assessment shall be ONE HUNDRED EIGHTY AND NO/100 (\$180.00) DOLLARS for each Building Plot, which shall be due and payable as provided hereinafter.

- (a) The annual assessment shall be payable to the Association in monthly installments equal to 1/12th of such annual assessment, the initial monthly installments shall be \$15.00 until changed as hereinafter provided.
- (b) From and after January 1 of the year immediately following the conveyance of the first Building Plot to an Owner, the maximum annual assessment may be increased each year not more than 10% (such percentage increase may be cumulative from year to year) above the maximum assessment for the previous year without a vote of the membership.
- (c) From and after January 1 of the year immediately following the conveyance of the first Building Plot to an Owner, the maximum annual assessment may be increased above 10% by the vote of written assent of 51% of each class of members.

(d) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of a majority of each class of members.

Section 5. Notice and Quorum For Any Action Authorized Under Sections 3 and 4. Any action authorized under Section 3 or 4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than 10 days nor more than 60 days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite majority of each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than 30 days from the date of such meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Building Plots. Annual assessments shall be made for each Building Plot at the rate of the full Annual Assessment as follows:

- (a) Building Plots owned by Declarant . . . none
- (b) Building Plots with a completed residence sold to individual homebuyers 100%
- (c) Building Plots sold for erection of Homes by the Owner. 100%

Section 7. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Building Plots on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Building Plot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Building Plot have been paid.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 10 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. Each such Owner, by his acceptance of a deed to a Building Plot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including judicial foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this action shall be in favor of

the Association and shall be for the benefit of all Building Plot owners. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Building Plot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Building Plot shall not affect the assessment lien. However, the sale or transfer of any Building Plot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Building Plot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Insurance.

(a) The Board of Directors of the Association shall obtain and continue in effect blanket property insurance to insure the buildings and structures in the Common Areas and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, and said insurance may include coverage against vandalism.

(b) The Board of Directors of the Association shall obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees, and each Owner, from and against liability in connection with the Common Areas.

(c) Each Owner shall be responsible at his own expense and cost for obtaining his own personal insurance on the building and contents of his own residence, garage, carport or parking space and his additions and improvements thereto, including decorations, furnishings and personal property therein, and his personal property stored elsewhere on the Properties; and for his personal liability not covered by liability insurance for all Owners obtained as a part of the common expense.

Section 12. Taxes. Each Owner shall directly render for taxation his own Building Plot and improvements and property thereon, and shall at his own cost and expense directly pay all taxes, levied or assessed against or upon his Building Plot and improvements and property thereon. It is contemplated that the taxing authorities will include a prorata part of the Common Area with the assessment on each Lot and this will eliminate separate taxes on the Common Area. The Association shall render for taxation, and as part of the common expenses of all Owners, shall pay all taxes levied or assessed against or upon that part of Common Area and the improvements and property appertaining thereto not taxed with the individual building plots.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior

addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

MAINTENANCE AND REPAIRS

Section 1. The Owner. The Owner shall maintain and keep in good repair his Building Plot and the improvements thereon as follows:

(a) On the Owner's Building Plot exterior to any Building thereon, but within the boundaries of the Building Plot including but not limited to the following: the roof(s), exterior walls, foundations, windows, doors, walks, drives, patio(s), fences, glass surface, hardware, gutters, downspouts, electrical, telephone, natural gas and plumbing facilities, heating and cooling equipment, trees, landscaping, shrubs, grass and all other improvements on and in the Building Plot.

(b) In the Common Area, all water, telephone, natural gas and electrical service systems from the point of Owner's connection to the service supplier's system to and throughout the Building Plot and its improvements; all walks and driveways for the exclusive use of Owner's Building Plot between the Building Plot and the Common Area drives and walks.

(c) The Owner shall not perform any act or work that may impair the structural soundness of another residence or impair any easement or hereditament, nor do any act nor allow any condition to exist on his Building Plot which will adversely affect the other residences or their Owners.

Section 2. The Association. The Association is responsible for the maintenance and repairs to the Common Areas as provided for within this document, but it is not responsible for any of the Owner's responsibilities as provided in Section 1 hereof. However, the Association shall and does have rights in connection with the Owner's responsibilities and acts related thereto as follows:

(a) In the event the Owner does not perform his responsibilities for maintenance as provided in Section 1 hereof or as may be set forth in the Rules and Regulations of the Association adopted from time to time, the Association, upon approval of two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon the Building Plot and to repair, maintain, and restore the Building Plot and its improvements. The cost of such work shall be added to and become a part of the assessment to which such Building Plot is subject.

(b) In the event the need for maintenance or repair of any Common Area which ordinarily would be the responsibility of the Association is caused through the willful or negligent act of the Owner, his family, guests, invitees, employees,

or agents, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which the Building Plot of such Owner is subject.

(c) The entire water system and sewer system including the septic tanks and the field lines are a part of the common area and shall belong to the Association. The Association shall be responsible for all repairs to the water and sewer systems.

(d) No dishwasher or washing machine shall be connected to the sewer system by any owner. If such appliances are installed in any house within the section the owner must arrange for their own surface disposal of the waste water from them.

ARTICLE VII

USE RESTRICTIONS

The Building Plots and the Common Area shall be occupied and used as follows:

Section 1. Residential Use. No Owner shall occupy or use his Building Plot or building thereon, or permit the same or any part thereof to be occupied or used for any purpose other than as a private single family residence for the Owner, his family, guests and tenants of not less than 1,000 square feet of floor area, measured through the exterior walls of the building. No Building Plot shall be used or occupied for any business, commercial, trade or professional purpose either apart from or in connection with the use thereof as a residence except as provided in Section 2 below. The size limitation on building shall not apply to buildings in existence as of the date of this Declaration but shall apply to all new construction hereafter.

Section 2. It is understood that Lot 2 is zoned for commercial use and is leased and is now being used as a restaurant and is excluded from The Ace Ranch section and the Lessee shall have no rights to the Common Area or the use thereof. The Lessee of Lot 2 has the option to purchase said Lot 2 and the further option to purchase Lot 22 and the adjoining part of the Common Area as described in Exhibit "B" attached hereto. In the event Lot 22 is sold with Lot 2, it may also be used for commercial purposes along with said Lot 2 and will be excluded from this Declaration by such conveyance.

Section 3. Obstruction of Common Area. There shall be no obstruction of Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors.

Section 4. Insurance. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law. No waste will be committed in the Common Area.

Section 5. Nuisances. No noxious or offensive activity shall be carried on upon any Building Plot, or the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other Owners. No repair work, dismantling or assembling of motor vehicles or any other machinery or equipment shall be per-

mitted in any street, driveway or yard adjacent to a street, or in the Common Area. No vehicle shall be parked on streets or driveways so as to obstruct ingress and egress by the Owners of the Building Plots, their families, guests and invitees except for the reasonable needs of emergency, construction, or service vehicles for a time limited to as briefly as possible. For a period not to exceed Forty-eight (48) hours, family, guests and invitees of Owners of Building Plots may park their vehicles in the guest parking areas. Guest parking areas are not intended for use by the Owners of Building Plots for parking or storing boats, trailers, camping units, or any personal vehicles and the Board of Directors may insure the proper use of said areas in such legal manner as it deems necessary.

Section 6. Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, barn, servants quarters or other out building shall be used on any Building Plot at any time as a residence either temporarily or permanently; nor shall any used residence or other structure be moved onto any Building Plot.

Section 7. Signs. No sign of any kind shall be displayed to public view on any Building Plot or Building except one sign of not more than five (5) square feet in area advertising the merits of the property for sale or rent.

Section 8. Oil and Mining Operations. No gas or oil drilling, gas or oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Building Plot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Building Plot.

Section 9. The Ace Ranch Section as described in Exhibit "A" attached hereto is designated as an adult living area for retired persons and couples with older children. No children under the age of Sixteen Years shall reside on any Lot in the Section. In the event a child should be born to any owners, such owners shall within one year sell or lease his or her property and move from the premises. Should any owner take custody of an older child, under sixteen years of age, then such owner shall sell or lease his or her property and move from the premises within Ninety (90) Days. No house in the section shall be sold, leased or rented to persons having children under sixteen years of age who shall reside on the property.

Section 10. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Building Plot, except that dogs, cats or other household pets, not to exceed a total of one pet, may be kept provided that it shall not become a nuisance and is not kept, bred or maintained for any commercial purposes.

Section 11. Garbage and Refuse Disposal. No Building Plot shall be used or maintained as dumping ground for rubbish. Trash, garbage or other waste shall be kept screened by adequate planting or fencing so as to conceal them from public view. There is reserved in favor of the Association the determination of the method of garbage disposal, that is, whether it shall be through public authority or through private garbage disposal contractor(s). All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition.

Section 12. Use of Common Area. Except within the areas of a Building Plot, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Properties except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated architectural committee. Except for the right of ingress and egress and the right and easement of

enjoyment as defined herein, the Owners are hereby prohibited and restricted from using any of the Properties outside the exterior property lines of each Building Plot, except as may be allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of the Properties, and any additions thereto, and is necessary for the protection of said Owners. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Area and the exteriors and roofs of the residences, including but not limited to, parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representatives.

Section 13. The Declarant has reserved the land lying between Lots 11 and 12, between Lots 15 and 16, between Lots 19 and 20 and between Lots 20 and 21, the exact areas of these reservations being determined by drawing a line between the inside corners of such lots. The purpose of the reservation of these areas is to allow the Declarant to increase the size of either or both of said Building Plots adjoining so that an additional room may be built on to the existing house. Should this additional area be conveyed with a lot then the owner is given the right to construct such additional room providing that the exterior harmonizes with the existing house on the lot and the other homes in the Section. Declarant also reserves a portion of the Common Area adjoining Lot 2 and Lot 22 as described in Exhibit "B" attached hereto. This reserved area may be sold with Lot 2 as set out in Section 2 above. Any part of any reserved area may be added to the Common Area at any time.

Section 14. Non-Discrimination. No action shall be carried on upon any Building Plot or the Common Area which might reasonably be considered as giving annoyance to neighbors of ordinary sensibilities and which might be calculated to reduce the desirability of the Properties as a residential neighborhood, even though such activity be in the nature of a hobby and not carried on for profit. The Board of Directors of the Association shall have the sole and exclusive discretion to determine what constitutes an annoyance.

ARTICLE VIII

EASEMENTS

Section 1. The roadways shown on the section appearing of record in Volume 4, Page 106, of the Plat Records of Kerr County, Texas, as Ace Ranch Road and Ace Ranch Lane are not a part of the Common Area and have been dedicated as Public Roads to serve the Ace Ranch division in Kerr County, Texas.

Section 2. Utility, Emergency and Association. There is hereby created a blanket and perpetual easement upon, across, over, under and above all of the Properties for ingress, egress, installations, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity, and a master television antenna system, if any such system is installed. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said residences. An easement is further granted to all police, fire protection, ambulance, garbage and trash collector pick-up vehicles and all similar persons to enter upon the Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area and any

Building Plot to perform the duties of maintenance and repair of the residence or Common Area provided for herein.

Section 3. Utility Services. Each Building Plot Owner shall directly pay at his own cost and expense for all gas, electricity and other utilities used or consumed by him.

Section 4. Changes and Additions to Easements. The Declarant reserves the right to make minor changes and additions to the above easements, as to any Building Plots owned by her, for the purpose of efficiently and economically installing and operating above mentioned utilities.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Special Common Area. Lots 3 and 39 of Guadalupe Heights No. Five are a part of the Common Area of THE ACE RANCH Section and these lots shall be used for the location of the septic tanks of the sewer system, parking areas, recreation areas and such other purposes as may be directed by the Board of Directors of the Association.

Section 2. Associate Memberships. The Association may create "Associate Memberships" to the Association and permit such members to use the recreation facilities in the Common Area, charging such fees as the Board of Directors may direct. However, such Associate member shall have no vote in the Association. Any Associate membership may be cancelled at anytime by the Board of Directors by refunding any fees paid, with or without cause.

Section 3. Enforcement. The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 5. Duration. The rights, use easements, and privileges of the Owners in and to the Common Area as provided for herein shall be deemed to be covenants running with the land and shall be of perpetual duration. All other provisions, restrictions, covenants and conditions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Building Plot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Building Plot Owners. Any amendment must be recorded in the Deed Records of Kerr County, Texas.

Section 6. Amendments by Declarant. The Declarant reserves and shall have the right at any time and from time to time without the joinder or consent of any Owner or any other person, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record, for the purpose of correcting any typographical error, ambiguity or inconsistency appearing in this Declaration, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration, and shall not impair the

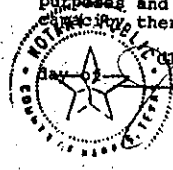
vested property rights of any home owner or his mortgagee.

IN WITNESS WHEREOF, the undersigned, has hereunto set her hand this 9th day of July, 1979.

Wilma E. Palmer
WILMA E. PALMER

STATE OF TEXAS Y
 Y
COUNTY OF HARRIS Y

BEFORE ME, the undersigned authority, on this day personally appeared WILMA E. PALMER, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in the therein stated.



GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 9th day of July, 1979.

E. L. Anthony
Notary Public in and for Harris
County, T e x a s

E. L. ANTHONY
Notary Public in and for Harris County, Texas
My Commission Expires June 20, 1980

FILED FOR RECORD
at 11:53 o'clock A.M.
JUL 17 1979
EMMIE M. MUEHNER
Clerk County Court, Harris County, Texas
By [Signature] Deputy

A tract of land of Guadalupe Heights No. Five, a Subdivision in Kerr County, Texas, according to the Plat thereof recorded in Volume 4 on Pages 105 and 106 of the Plat Records of Kerr County, Texas, said tract including Lots 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, and the Common Area lying between said Lots as shown on Page 2 of the Plat of the said Guadalupe Heights No. Five Subdivision (Vol. 4, Page 106 of the Plat Records of Kerr County, Texas) and Lot 3 and Lot 39 of said Guadalupe Heights No. Five (save and except the South twenty (20) feet of said Lot 39 which has been dedicated as a public roadway); all of said property being described by

metes and bounds as follows:

BEGINNING at the Northwest corner of Lot 3 of Guadalupe Heights No. Five Subdivision;

Thence along the South Right-of-way line of Cedar Way Street, North $79^{\circ} 48'$ east a distance of 226.50 feet to a point;

Thence North $74^{\circ} 46'$ east, continuing along the South line of Cedar Way Street, a distance of 328.12 feet to a point for corner in the Westerly right-of-way line of Texas State Highway No. 27;

Thence South $6^{\circ} 01'$ East, a distance of 318.3 feet to the intersection of the South line of Ace Ranch Road and the Westerly line of State Highway No. 27;

Thence along the Southerly line of Ace Ranch Road, North $81^{\circ} 55'$ West, a distance of 537.5 feet to the Southeasterly corner of Lot 39 of said Guadalupe Heights No. Five Subdivision;

Thence North $10^{\circ} 06'$ East along the Easterly line of said Lot 39, a distance of 20 feet;

Thence North $81^{\circ} 55'$ West parallel to the South line of said Lot 39, a distance of 75 feet to the Westerly line thereof;

Thence North $10^{\circ} 06'$ East along the Westerly line of the said Lot 39 and the Westerly line of said Lot 3, a distance of 166.5 feet to the place of beginning in the Southerly line of Cedar Way Street.

SAVE AND EXCEPT Lot 2 of said subdivision which is zoned C-1 commercial and is excluded and not a part of said Ace Ranch Section.

EXHIBIT "A"

A tract of land out of Guadalupe Heights No. Five, a Subdivision in Kerr County, Texas, according to the plat thereof recorded in Vol. 4 on Pages 105 and 106 of the Plat Records of Kerr County, Texas, being all of the land shown on Page 2 of the Plat of Guadalupe Heights No. Five Subdivision, Kerr County, Texas, which appears of record in Vol. 4 Page 106 of the Plat Records of Kerr County, Texas, and Lot 3, and Lot 39 of said Guadalupe Heights No. Five Subdivision, save and except the South Twenty (20) feet of said Lot 39 which has been dedicated as a public roadway;

SAVE AND EXCEPT the numbered building plot lots being Lots 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, as shown on said Page 2 of the recorded Plat of Guadalupe Heights No. Five Subdivision, Kerr County, Texas;

AND SAVE AND EXCEPT the land lying between Lots 11 and 12, between Lots 15 and 16, between Lots 19 and 20, between Lots 20 and 21, and between Lots 22 and 2 of said Guadalupe Heights No. Five Subdivision, the exact area of these exceptions being determined by drawing a line between the inside corners of such lots involved;

AND SAVE AND EXCEPT that the portion of the Common Area adjoining Lots 2 and 22 described as follows:

Beginning at the southwest corner of Lot Two (2) of the Guadalupe Heights No. Five (5) Subdivision;

Thence north $81^{\circ} 55'$ west, a distance of 15 feet, to the southeast corner of said Lot Twenty-two (22);

Thence north $8^{\circ} 8'$ east along the easterly line of said Lot Twenty-two (22), a distance of 41.05 feet to the northeastern corner of said Lot Twenty-two (22);

Thence north $81^{\circ} 40'$ west, a distance of 54 feet to the northwesterly corner of said Lot Twenty-two (22);

Thence north $8^{\circ} 08'$ east to the intersection of the northerly line of said Lot Two (2) if the same were extended on a course of south $83^{\circ} 59'$ west to such point;

Thence north $83^{\circ} 59'$ east to the northwesterly corner of said Lot Two (2);

Thence south $8^{\circ} 08'$ east, a distance of 79.35 feet along the west line of Lot Two (2) to the place of beginning.

AND SAVE AND EXCEPT the roadway tracts shown on the plat of said Guadalupe Heights No. Five Subdivision as ACE RANCH ROAD and ACE RANCH LANE which have been dedicated as public roads.

EXHIBIT "B"

3

74138

VOL 223 PAGE 455

Dec. of Courtship, Cont.
+ Restrictions of the Dec
Ranch Section of
Guadalupe Heights
Subdivision, N.E. Five

to
The Public

FILED FOR RECORD
at 11:53 o'clock A.M.

JUL 17 1979

EMMIE M. MUENKER
Clerk County Court, Kerr County, Texas
By Emma M. Muenker Deputy

Return to:
Wilma & Palmer ✓
Ace Ranch
4453 San Antonio Hwy.
Kerrville, Texas

Filed for record _____, 1979 at _____ o'clock .M.
Recorded July 19, 1979
EMMIE M. MUENKER, Clerk By _____ Deputy

0132

CORRECTION DEDICATION OF STREETS

THE STATE OF TEXAS §
COUNTY OF KERR §

WHEREAS, WILMA E. PALMER, is the owner of all of GUADALUPE HEIGHTS NO. FIVE SUBDIVISION, KERR COUNTY, TEXAS, according to the plat thereof recorded in Volume 4, Pages 105 and 106 of the Plat Records of KERR COUNTY, TEXAS;

WHEREAS, WILMA E. PALMER desires to dedicate certain land as streets within said GUADALUPE HEIGHTS NO. FIVE SUBDIVISION above described.

NOW THEREFORE, for and in consideration of the premises and in consideration of being allowed access to said land over the street rights-of-way hereinafter described, WILMA E. PALMER does hereby GIVE and GRANT to the public, and she does hereby DEDICATE the use of the public as streets the following described land out of the said GUADALUPE HEIGHTS NO. FIVE SUBDIVISION in KERR COUNTY, TEXAS, to-wit:

(See EXHIBIT "A" attached hereto, incorporated herein and made a part hereof for all purposes.)

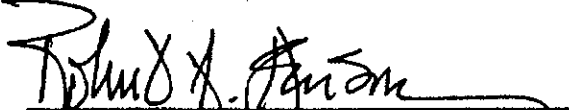
TO HAVE AND TO HOLD said land and right-of-way to the public forever for use as public streets.

This Dedication of Streets is made in place of and to correct a Dedication of Streets from WILMA E. PALMER to The Public, dated July 9, 1979, and recorded in Volume 223, Page 456, Deed Records of Kerr County, Texas. By mistake the description of the streets being therein dedicated was incorrect. This correction instrument is made by WILMA E. PALMER and accepted by the Commissioners Court of Kerr County, Texas, to correct that mistake and is effective on July 9, 1979, and in all other respects confirms the former Dedication of Streets.

EXECUTED the 6th day of January - 1998.

Wilma E. Palmer
WILMA E. PALMER

Approved and accepted by the
COMMISSIONERS COURT OF KERR
COUNTY, TEXAS


ROBERT A. BENSON
County Judge of Kerr County

THE STATE OF TEXAS §
COUNTY OF KERR §

This instrument was acknowledged before me on the 6th day
of JANUARY, 1998, by WILMA E. PALMER.


Notary Public, State of Texas



FILED FOR RECORD

at 3:35 o'clock P M

JAN 8 1998

BILLIE G. MEEKER
Clerk County Court, Kerr County, Texas
Manly M. Medrano Deputy

Filed By and
Return to:
Craig L. Leslie
Attorney at Law
829 B Main St.
Kerrville, TX. 78028

BEGINNING at the southeasterly corner of Lot 2 of said Guadalupe Heights No. Five Subdivision, said point being in the westerly line of State Highway No. 27;

THENCE in a southerly direction along the west right-of-way line of Texas Highway No. 27, along a curve, a distance of 20.7 feet to a point for the northeasterly corner of Lot 1 of said Guadalupe Heights No. Five Subdivision;

THENCE, N. 81° 55' W., a distance of 872.5 feet to a point in the south line of Lot 35 of said Guadalupe Heights No. Five Subdivision, said point being N. 81° 55' W., 35 feet from the southeasterly corner of said Lot 35;

THENCE, N. 10° 06' E., 20 feet to a point for corner;

THENCE, S. 81° 55' E., a distance of 335 feet to a point in the east line of Lot 39 of Guadalupe Heights No. Five Subdivision, which point is N. 10° 06' E., 20 feet from the southeast corner of said Lot 39;

THENCE, continuing S. 81° 55' E., approximately 84.66 feet to a point in the southerly line of Lot 18 of said Guadalupe Heights No. 5 Subdivision, which point is N. 81° 55' W., 24.93 feet from the southeasterly corner of said Lot 18;

THENCE, S. 81° 55' W., a distance of 452.84 feet to the PLACE OF BEGINNING.

TRACT TWO: ACE RANCH LANE

VOL **0932** PAGE **214**

BEGINNING at the northeasterly corner of Lot 3 of said Guadalupe Heights No. Five Subdivision, said point being in the southerly line of Cedar Way, a dedicated street;

THENCE, S. 79° 48' E. along the southerly line of Cedar Way Street, a distance of 56.53 feet to a point for corner, being the northwesterly corner of Lot 16 of said Guadalupe Heights No. Five Subdivision;

THENCE, S. 60° 18' W., a distance of 42 feet to a point, being the most westerly corner of Lot 16 of said subdivision;

THENCE, S. 22° 22' W., a distance of 20 feet to a point;

THENCE, S. 10° 06' W., a distance of 66.18 feet to a point, being the southwesterly corner of Lot 17 of said subdivision;

THENCE, S. 17° 48' E., a distance of 39.01 feet to a point;

THENCE, S. 58° 09' E., a distance of 39.65 feet to a point, which point is N. 81° 55' W., 24.93 feet from the southeasterly corner of Lot 18 of said subdivision;

THENCE, N. 81° 55' W., a distance of approximately 84.66 feet to a point in the easterly line of Lot 39 of said Guadalupe Heights No. Five Subdivision, which point is N. 10° 06' E., 20 feet from the southeast corner of said Lot 39;

THENCE, N. 10° 06' E., along the easterly line of Lot 39 and Lot 3, a distance of 163.95 feet to the PLACE OF BEGINNING.

RECORDER'S NOTE
AT TIME OF RECORDATION INSTRUMENT FOUND
TO BE INADEQUATE FOR BEST PHOTOGRAPHIC
REPRODUCTION DUE TO DEPTH & DARKNESS OF
PRINT, COLOR OF PRINT OR INK, BACKGROUND OF
PAPER, ILLEGIBILITY, CARBON OR PHOTO COPY, ETC.

RECORD Real Property
VOL 932 PG 214
RECORDING DATE

EXHIBIT "A"
Page 2 of 2

Provisions herein which restrict the sale, rental or use of the described property because of color or race is invalid and unenforceable under Federal Law, THE STATE OF TEXAS }
COUNTY OF KERR

I hereby certify that this instrument was FILED in the File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Real Property of Kerr County, Texas on

JAN 09 1998



Billie G. Meeker
COUNTY CLERK, KERR COUNTY, TEXAS

JAN 09 1998



Billie G. Meeker
COUNTY CLERK, KERR COUNTY, TEXAS

FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF THE ACE RANCH SECTION OF
GUADALUPE HEIGHTS SUBDIVISION NO. FIVE

Amendment made this 21st day of June 2002, by WILMA E. PALMER.

RECITALS

- 1. WILMA E. PALMER is the Declarant in the Declaration of Covenants, Conditions and Restrictions of the Ace Ranch Section of Guadalupe Heights Subdivision No. Five recorded in Volume 223, Page 442 of the Real Property Records of Kerr County, Texas. (the Restrictive Covenants)
- 2. Section 6 of the Restrictive Covenants provides as follows:

“The Declarant reserves and shall have the right at any time and from time to time without the joinder or consent of any Owner or any other person, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record, for the purpose of correcting any typographical error, ambiguity or inconsistency appearing in this Declaration, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration, and shall not impair the vested property rights of any home owner or his mortgagee.”

- 3. By inadvertent error or mistake Section 13 of Article VII on page 9 of the Restrictive Covenants failed to reserve the land lying between Lots 21 and 22 and this Amendment is made for the purpose of correcting this error, ambiguity or inconsistency.

NOW THEREFORE the Restrictive Covenants are hereby amended as follows:

- 1. Section 13 of Article VII on page 9 is hereby amended to read as follows:

“The Declarant has reserved the land lying between Lots 11 and 12, between Lots 15 and 16, between Lots 19 and 20, between Lots 20 and 21, and between Lots 21 and 22, the exact areas of these reservations being determined by drawing a line between the inside corners of such lots. The purpose of the reservation of these areas is to allow the Declarant to increase the size of either or both of said Building Plots adjoining so that an additional room may be built on to the existing house. Should this additional area be conveyed with a lot then the owner is given the right to construct such additional room providing that the exterior harmonizes with the existing house on the lot and the other homes in the Section. Declarant

5-5-1

also reserves a portion of the Common Area adjoining Lot 2 and Lot 22 as described in Exhibit "B" attached hereto. This reserved area may be sold with Lot 2 as set out in Section 2 above. Any part of any reserved area may be added to the Common Area at any time."

2. The third paragraph of Exhibit "B" is hereby amended to read as follows:

"AND SAVE AND EXCEPT the land lying between Lots 11 and 12, between Lots 15 and 16, between Lots 19 and 20, between Lots 20 and 21, between Lots 21 and 22, and between Lots 22 and 2 of said Guadalupe Heights No. Five Subdivision, the exact area of these exceptions being determined by drawing a line between the inside corners of such lots involved."

3. In all other respects the Restrictive Covenants are hereby ratified and confirmed.

Recorder's Note:
No Exhibit
"B"
Attached

Wilma E. Palmer
Wilma E. Palmer,
Declarant

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on the 26th day of June, 2002,
by Wilma E. Palmer.

Filed by:
Craig L. Leslie

Craig L. Leslie
Notary Public, State of Texas

RETURN TO:
Wilma E. Palmer
333 Water St., Apt. D2
Kerrville, TX 78028



FILED FOR RECORD
at 10:19 o'clock A.M.

JUL 01 2002

JANNETT PIEPER
Clerk County Court, Kerr County,
J. Pieper

Provisions herein which restrict the sale, rental or use of the described property because of color or race is invalid and unenforceable under Federal Law. THE STATE OF TEXAS } COUNTY OF KERR

I hereby certify that this instrument was FILED in the File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Real Property of Kerr County, Texas on:

JUL 02 2002



Janett Pieper
COUNTY CLERK, KERR COUNTY, TEXAS

RECORD *Real Property*
VOL. 1199 PG. 599
RECORDING DATE

JUL 02 2002



Janett Pieper
COUNTY CLERK, KERR COUNTY, TEXAS

05023

SECOND AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF THE ACE RANCH SECTION OF
GUADALUPE HEIGHTS SUBDIVISION NO. FIVE

Amendment made this 3rd day of January, 2003, by WILMA E. PALMER.

RECITALS

1. WILMA E. PALMER is the Declarant in the Declaration of Covenants, Conditions and Restrictions of the Ace Ranch Section of Guadalupe Heights Subdivision No. Five recorded in Volume 223, Page 442 of the Real Property Records of Kerr County, Texas (the Restrictive Covenants).

2. Section 6 of the Restrictive Covenants provides as follows:

"The Declarant reserves and shall have the right at any time and from time to time without the joinder or consent of any Owner or any other person, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record, for the purpose of correcting any typographical error, ambiguity or inconsistency appearing in this Declaration, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration, and shall not impair the vested property rights of any home owner or his mortgagee."

3. By inadvertent error or mistake Article IV on pages 3,4 and 5 of the Restrictive Covenants provided that any Owner of a "Building Plot" (with the exception of Declarant) was subject to pay annual and special assessments for each "Building Plot" owned when it was intended that such assessment should only apply to Owners of Building Plots with a completed residence thereon and this Amendment is made for the purpose of correcting this error, ambiguity or inconsistency.

NOW THEREFORE the Restrictive Covenants are hereby amended as follows:

1. Article IV, Section 3, is hereby amended to read as follows:

Section 3. Maximum Annual Assessment. *Until January 1 of the year immediately following the conveyance of the first Building Plot with a completed residence thereon to an*

Owner, the maximum annual assessment shall be ONE HUNDRED EIGHTY AND NO/100 (\$180.00) DOLLARS for each Building Plot with a completed residence thereon, which shall be due and payable as provided hereinafter.

- (a) The annual assessment shall be payable to the Association in monthly installments equal to 1/12th of such annual assessment, the initial monthly installments shall be \$15.00 until changed as hereinafter provided.
- (b) From and after January 1 of the year immediately following the conveyance of the first Building Plot with a completed residence thereon to an Owner, the maximum annual assessment may be increased each year not more than 10% (such percentage increase may be cumulative from year to year) above the maximum assessment for the previous year without a vote of the membership.
- (c) From and after January 1 of the year immediately following the conveyance of the first Building Plot with a completed residence thereon to an Owner, the maximum annual assessment may be increased above 10% by the vote of written assent of 51% of each class of members.
- (d) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

2. Article IV, Section 6, is hereby amended to read as follows:

Section 6. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Building Plots with a completed residence thereon. Annual assessments shall be made for each Building Plot with a completed residence thereon at the rate of the full Annual Assessment as follows:

- (a) Building Plots owned by Declarant.....none
- (b) Building Plots with a completed residence thereon.....100%

3. Article IV, Section 7, is hereby amended to read as follows:

Section 7. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Building Plots with a completed residence

thereon on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Building Plot with a completed residence thereon at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Building Plot with a completed residence thereon have been paid.

4. Article IV, Section 8, is hereby amended to read as follows:

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 10 per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. Each such Owner, by his acceptance of a deed to a Building Plot, if said Building Plot is improved with a residence, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including judicial foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this action shall be in favor of the Association and shall be for the benefit of all Building Plot owners. No owner of a Building Plot with a completed residence thereon may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Building Plot.

5. In all other respects the Restrictive Covenants are hereby ratified and confirmed.

Wilma E. Palmer
WILMA E. PALMER, Declarant

THE STATE OF TEXAS §

COUNTY OF KERR §

This instrument was acknowledged before me on the 3rd day of January, 2003, by WILMA E. PALMER.

Craig Leslie
Notary Public, State of Texas



*Filed by & Return to:
Craig Leslie
829-B Main
Kerrville, TX 78028*

Provisions herein which restrict the sale, rental or use of the described property because of color or race is invalid and unenforceable under Federal Law.
THE STATE OF TEXAS }
COUNTY OF KERR }
I hereby certify that this instrument was FILED in the File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Real Property of Kerr County, Texas on

MAY 28 2003



Jannett Pieper
COUNTY CLERK, KERR COUNTY, TEXAS

FILED FOR RECORD
at 3:45 o'clock P.M.

MAY 27 2003

JANNETT PIEPER
Clerk, County Court, Kerr County, Texas
Cheryl Thompson Deputy

RECORD Real Property
VOL. 1271 PG 257
RECORDING DATE

MAY 28 2003



Jannett Pieper
COUNTY CLERK, KERR COUNTY, TEXAS