

Unless otherwise noted, the following Declaration was executed February 5, 1973 by Jack Devore and filed with the Bexar County Clerk's office February 6, 1973. It is recorded in Vol. 6991 pages 193 through 206. Copies of the recorded documents have been electronically scanned into a word processor and, as such should not be taken as a true copy of that Declaration nor of its Amendments. Further, in order to have a more functional document, various sections of the Declaration have been edited to merge later amendments. These sections are identified in endnotes, giving reference information on when the amendment was executed and where it was recorded.

**DECLARATION OF COVENANTS AND RESTRICTIONS  
AFTER AMENDMENTS OF  
1973, 1976, 1978, 1980 and 2000.**

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain property in Bexar County, Texas, which is more particularly described as:

N.C.B. 16043 MISSION TRACE SUBDIVISION  
lying and being situated in Bexar County, Texas.

**NOW, THEREFORE**, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed 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 real property and be binding on all parties having any right, title or interest in the described properties of 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 Mission Trace Homeowners Association, 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 lot 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, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

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 lot is described as follows:

Lot 231, N.C.B. 16043, MISSION TRACE SUBDIVISION, lying and being situation in Bexar County, Texas, SAVE AND EXCEPT 150 feet from the existing boundary lines of Lot 229 in a rectangular shape towards Vance Jackson Road, and 225 feet of Lot 230 in a rectangular shape towards Vance Jackson Road.<sup>1</sup>

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Jack Devore, his successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easement 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 Lot, subject to the following provisions:

(a) Every owner's interest in the Common Area shall be subject to and remain secondary to the Deed of Trust Lien to First Federal Savings and Loan Association until said lien shall be released and said lien shall be released when 75% of the lots in MISSION TRACE SUBDIVISION have been conveyed to owners or on January 1, 1978 whichever comes first;<sup>2</sup>

(b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(c) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation 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. Ownership of each lot shall entitle the owner or owners thereof to not more than two automobile parking spaces which shall be incorporated in the dwelling unit situated upon said lot, together with the right of passage over the driveway to and from said parking spaces.<sup>3</sup>

Section 4. Other Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided herein, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file or record a Supplementary Declaration of Covenants and Restrictions, as described as follows: (1) a general indication of the size and location of the additional land and proposed land uses in each; (2) the approximate size and location of common properties proposed for said land; (3) the general nature of the proposed common facilities and improvements; (4) a statement that the proposed additions, if made, will become subject to assessment for their just share of Association expenses.<sup>4</sup>

Section 5. Mergers. Upon a merger or consolidation of the Association with another association as provided herein, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, properties, rights and obligation of another association may, by operation of law, be added to the properties, rights and obligation of the association as surviving corporation, pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided.

Section 6. Approval. Approval of the "other additions," as set forth under Section 4 above, and "mergers" as set forth in Section 5, above, will require the affirmative vote of two-thirds (2/3) of the votes of each class of members voting in person or by proxy in a meeting called for this purpose, notice of which shall be given at least thirty (30) days in advance of such meeting.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every owner of a lot 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 Lot which is subject to assessment.

Section 2. Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 3. Was deleted as shown in footnote.<sup>5</sup>

### **ARTICLE IV**

#### **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned within the Properties hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Monthly assessments or charges, and (2) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The monthly 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 attorneys' fees, shall also be the personal obligation of the person who was the Owner such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.<sup>6</sup>

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 and for the improvement and maintenance of the Common Area, and of the homes situation upon the Properties.

Section 3. Maximum Monthly Maintenance Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be fifty-three and no/100 dollars (\$53.00) per Lot designated for attached dwellings.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum monthly assessment may be increased each year not more than 3% above the maximum assessments for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum monthly

assessment may be increased above 3% by a vote of two-thirds (2/3) of members who are voting in person or by proxy, at a meeting duly called for this purpose

- (c) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum.<sup>7</sup>

Section 4. Assessments for Capital Improvements. In addition to the monthly assessments authorized above, the Association may levy a special assessment 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 assent of two-third (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.<sup>8</sup>

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than 30 days or more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes shall constitute a quorum. If the required Quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate and may be collected on a monthly or quarterly basis as prescribed by the Board.<sup>9</sup>

Section 7. Date of Commencement of Monthly Assessments: Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The Board of Directors shall fix the amount of the monthly assessment against each Lot at least thirty (30) days

in advance of each assessment period. Written notice of change of the monthly assessment shall be sent to every Owner subject thereto. The due date 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 Lot have been paid.<sup>10</sup>

Section 8. Effect of Nonpayment 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 eight per cent (8%) per annum or a figure set by the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. 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 Lot.<sup>11</sup>

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 Lot shall not affect the assessment lien. However, the sale or transfer of any Lot 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 Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE V

### EXTERIOR MAINTENANCE

A. The Association shall provide Exterior maintenance only upon the Common Area. Exterior maintenance for attached and detached dwellings shall be performed by the owners in the manner prescribed in this Declaration.<sup>12</sup>

B. Each lot shall be subject to an easement for access to make reasonable repairs upon adjoining lots and structures thereon; provided, however, that (a) any damage caused by such entry shall be repaired at the expense of the Owner whose property was the object of the repair work which caused the same, (b) any such entry shall be made

only at reasonable times with as little inconvenience as possible to the Owner of the entered Lot, and (c) in no event shall said easement be deemed to permit entry into the interior portions of any residence.

C. In the event the Owner of any properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors shall have the right, through its agents and employees, to enter upon parcel and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject.

## ARTICLE VI

### ARCHITECTURAL CONTROL

No building, fence, wall or other structures 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, 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. No individual lot owner may alter or maintain any alteration in his garage in any manner that will prevent the parking of two (2) automobiles therein.<sup>13</sup>

## ARTICLE VII

### ADDITIONAL COVENANTS AND RESTRICTIONS

#### Section 1. Covenants and Restrictions on Lots.

(a) Land use: Except as herein noted, no Lot shall be used for anything other than single-family residential purposes. No business or other nonresidential activity shall be conducted on any Lot except the Common Area. This applies only to existing property.



(b) Signs: No sign of any kind shall be displayed, erected, or maintained on any Lot or Common Properties except one (1) sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales, or signs used by Developer in connection with the development of Mission Trace Addition.

(c) Animals: No animals, livestock, or poultry of any kind, shall be bred, raised, or kept on any lot or common properties, except dogs, cats, or other household pets shall be kept provided that they are not kept, bred, or maintained for any commercial purposes; and except that the Association shall be allowed to keep such animals, livestock and poultry as the Association chooses.<sup>14</sup>

(d) No lot or any part thereof shall be used for illegal or immoral purposes.

(e) Other buildings: No house trailer, truck body, basement, tent, shack, garage, barn or other outbuildings shall at any time be used as a residence, nor shall any residence of any temporary character be permitted.

(f) Old buildings: No structure shall be moved onto any residential lot.

(g) Antennae: No television or radio antennae shall be erected on any dwelling or any lot without the approval of the Architectural Committee; and the Architectural Committee shall be required to designate upon request the type and location of antennae for household use.<sup>15</sup>

(h) Yards: All yards of a dwelling shall be maintained so as to be an aesthetical asset to the dwelling.

(i) Maintenance of Lots: No owner of any Lot, either vacant or improved, shall be permitted to let such Lot go unmaintained, and no weeds or grass shall be permitted upon any Lot in excess of twelve (12) inches in height.

(j) Easements: The use of easements as shown on the plat is granted to the City of San Antonio and the various utility companies franchised in the City of San Antonio for the purposes of drainage; the location of sanitary and storm sewer lines; the location of gas, water, electrical and telephone lines and conduits, and the maintenance thereof.<sup>16</sup>

(k) Storage of Materials: No building material of any kind shall be placed or stored upon any lot or the common area without the approval of the Board. Any refuse of any kind may not be dumped on any lot or upon the common area. Any refuse from the building, remodeling, or reconstruction of improvements on any lot may not be placed upon another owner's lot and must be removed from the premises immediately following completion of any construction. Any damage to the common area caused by the building, remodeling, or reconstruction of the improvements on any lot shall be repaired by the owner of said lot to as nearly the original condition as practical or to the satisfaction of the Board of Directors of the Association. <sup>17</sup>

(l) Mining: No quarrying or mining operations or mineral extractions of any kind shall be permitted upon or in any Lot, nor shall any type of wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any lot. No derrick or other structure designed for drilling shall be erected, maintained, or permitted on any lot.

(m) Garbage Cans: All garbage will be placed in disposable cans or refuse containers and shall not be placed or permitted to remain at the front of the dwelling either within the street or upon the lot or a Common Area except on those days scheduled for garbage and refuse collection by the City of San Antonio or a privately contracted collector. Subsurface garbage containers shall be permitted if approved by the Architectural Control Committee. Except on days for collection as set out above, said containers will be kept in a place that is not subject to public view.

(n) No truck, boat, recreational vehicle or trailers may be kept on a lot unless it is concealed from public view nor can they be kept upon the common property or street within the properties. <sup>18</sup>

(o) Any other restrictions that might be desired to be placed on this property.

### **ARTICLE VIII**

#### **FIRE AND INSURANCE**

All units and lots shall be covered by full and proper insurance to cover the full replacement cost of said unit, and a certificate of such insurance shall be filed with the

Association, and if any unit is not insured, then the Association, may, on its own, purchase proper insurance for said unit and assess the cost to that individual unit. Each policy shall provide that it cannot be cancelled by either the insured or the insurance company until after ten (10) days prior written notice to the Association. The homeowner shall be responsible for insurance deductible monies or shortfall with respect to the repair and reconstruction of houses as a result of damage caused by fire, water, wind or other natural disasters.<sup>19</sup>

## ARTICLE IX

### DAMAGE AND DESTRUCTION

In case of fire, casualty or any other disaster, the insurance proceeds shall be applied to the restoration of the buildings, with such restoration being accomplished as promptly as possible by the individual unit owners. Restoration of the buildings, as used in this paragraph, means restoring the building to substantially the same condition in which they existed prior to the fire, casualty or other disaster with each unit and the Common Area having the same vertical and horizontal boundaries as before.

If the individual unit owner fails or refuses to start restoration of his unit within 90 days from the date of the fire, casualty or other disaster that caused the damage to or destruction of the building and proceed with diligence, then the Board of Directors may make the necessary repairs or restoration of the building and the individual unit owner shall be assessed for any amount expended for such repairs or restoration and said assessment shall be lien a against the individual unit owner's property.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservation, 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 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions 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 per cent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five per cent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. Attorney's Fees. In the event the Homeowner's Association is required to enforce these covenants and restrictions or any other Association rules or regulations through legal methods against any homeowner or homeowners, the prevailing litigant shall be entitled to recover from the other party its actual attorney's fees, court costs, if any, and any other expenses which it may incur in the enforcement of said restrictions, rules or regulations.<sup>20</sup>

**IN WITNESS THEREFOF**, the undersigned, being the Declarant herein, has hereunto set his hand and seal this 5th day of February 1973.

Signed: Jack Devore

Jack Devore, Declarant

Certified copies of of the original Declaration of Covenants and Restrictions and all amendments may be obtained from the County Clerk, San Antonio, Bexar County, Texas.

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<sup>1</sup> The Common area was augmented by an additional 12,300 square feet in the May 6, 1980 ADDITION TO DECLARATION OF COVENANTS AND RESTRICTIONS ANNEXING 0.5009 ACRES as recorded in Vol. 1979 pages 6 through 9.

<sup>2</sup> Release from lien is dated May 24, 1978 and is recorded in Vol. 1148, page 166.

<sup>3</sup> Article II, Section 3 has been changed to read as shown in the Amendment executed June 1, 1976 and recorded in Vol. 7889, pages 823 through 835.

<sup>4</sup> See attached "ADDITION TO DECLARATION OF COVENANTS AND RESTRICTIONS ANNEXING 0.5009 ACRES" dated June 6, 1980 as recorded in Vol. 1979, pages 6 through 9.

<sup>5</sup> Article III, Section 3 was added by Amendment executed March 5, 1973 and recorded in Vol. 7039, pages 644 through 648. An amendment executed September 22, 2000 and recorded in Vol. 8581, page 574, deleted Article III, Section 3.

<sup>6</sup> Article IV, Section 1 has been changed to read as shown in the Amendment executed March 5, 1973 and recorded in Vol. 7039, pages 644 through 648.

<sup>7</sup> Article IV, Section 3 has been changed to read as shown in the Amendment executed March 5, 1973 and recorded in Vol. 7039, pages 644 through 648. Article IV, Sections 3a, 3b and 3c have been changed to read as shown in the amendment executed September 22, 2000 and recorded in Vol. 8581 pg. 574.

<sup>8</sup> Article IV, Section 4 has been changed to read as shown in the Amendment executed March 5, 1973 and recorded in Vol. 7039, pages 644 through 648.

<sup>9</sup> Article IV, Section 6 has been changed to read as shown in the Amendment executed June 1, 1976 and recorded in Vol. 7889, pages 836 through 847. An earlier amendment executed March 5, 1973 and recorded in Vol. 7039, pages 644 through 648 was superseded.

<sup>10</sup> Article IV, Section 7 has been changed to read as shown in the Amendment executed March 5, 1973 and recorded in Vol. 7039, pages 644 through 648.

<sup>11</sup> Article IV, Section 8 has been changed to read as shown in the Amendment executed March 5, 1973 and recorded in Vol. 7039, pages 644 through 648.

<sup>12</sup> Article V, Paragraph A has been changed to read as shown in the Amendment executed June 1, 1976 and recorded in Vol. 7889, pages 873 and 875.

<sup>13</sup> Article VI has been changed to read as shown in the Amendment executed June 1, 1976 and recorded in Vol. 7889, pages 823 through 835.

<sup>14</sup> Article VII, Section 1(c) has been changed to read as shown in the Amendment executed June 1, 1976 and recorded in Vol. 7889, pages 848 through 860.

<sup>15</sup> Article VII, Section 1 (g) has been changed to read as shown in the Amendment executed June 1, 1976 and recorded in Vol. 7889, pages 848 through 860.

<sup>16</sup> Numerous plats involving Mission Trace Planned Unit Development are on file. See Vol. 6900, pages 59 through 62, filed November 17, 1972; Vol. 7100, pages 102 through 105, dated September 11, 1973; Vol. 7800, page 205, dated November 3, 1976; Vol. 7900, page 199, filed March 30, 1977; and Vol. 8000, page 237, filed September 23, 1977. In addition, a Dedication easement for sewer Tracts I through V was accepted by the San Antonio City Council and is recorded in Vol. 5315, page 326.

<sup>17</sup> Article VII, Section 1 (k) has been changed to read as shown in the Amendment executed June 1, 1976 and recorded in Vol. 7889, pages 848 through 860.

<sup>18</sup> Article VII, Section 1 (n) has been changed to read as shown in the Amendment executed June 1, 1976 and recorded in Vol. 7889, pages 873 through 875.

<sup>19</sup> Article VIII was amended to read as shown in the Amendment executed June 1, 1976 and recorded in Vol. 7889, pages 848 through 860.

<sup>20</sup> Replaces the original Article X, Section 5. FHA/VA approval became irrelevant with the cessation of Class C membership. (See Article III, Section 2).