

title, or interest in the described premises, 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 Mariposa Sunday Farms Homeowners Association, Inc., a Texas Non-Profit Corporation, its successors and assigns which shall be formed upon acceptance of the final plat by the City of Fredericksburg and County of Gillespie.

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 described in plat recorded in Volume 1, Page 96 of the Plat Records of Gillespie County, Texas, and that portion of the development designated "common areas", and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property, and improvements located thereon, owned by Fernando Marcelino Menendez, Trustee, d/b/a Mariposa Sunday Farms for the common use and enjoyment of the owners.

Section 5. "Lot" shall mean and refer to any plot of land shown upon or recorded on any subdivision map of the properties with the exception of the "common area".

Section 6. "Declarant" shall mean and refer to Fernando Marcelino Menendez, Trustee, d/b/a Mariposa Sunday Farms, its successors and assigns, if such successors or assigns should own more than one undeveloped lot from the Declarant for the purpose of development.

ARTICLE II.

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and enjoyment of an Easement of Enjoyment in and of the Common Areas which shall be appurtenant to and shall pass with title to each and every lot, subject to the following provisions:

A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the "common area"; and

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

C. The right of Fernando Marcelino Menendez, d/b/a/ Mariposa Sunday Farms, its successors or assigns to dedicate or transfer all or any part of the Common Area or Sunday Circle to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members as set forth herein. No such dedication or transfer shall be effective unless an instrument signed by three-fourths (3/4) of the members agreeing to such dedication has been recorded; and

The right of Fernando Marcelino Menendez d/b/a Mariposa Sunday Farms, its successors or assigns to dedicate Mariposa Drive to the City of Fredericksburg or County of Gillespie without the consent of the members.

D. The right of the Association to contract for exclusive services such as water, trash collection and sanitary sewage to each lot; and

E. The right of the Association, in accordance with its articles of Incorporation or By-Laws, to borrow money for the purpose of improving its properties and facilities and in such thereof to mortgage said property. The rights of any such mortgagee in such properties shall be subordinate to the rights of the Owners hereof.

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

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. The Association shall have two (2) 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 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, however, shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one lot.

Class B - Class B members shall be the Declarant, its successors and assigns, and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership.

ARTICLE IV.

COVENANTS FOR MAINTENANCE ASSESSMENT

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Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot within the properties, a private subdivision, hereby covenants, and each owner of any lot by affixing his signature to the attached dedication or 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 attorneys fees, shall be a charge on the land and shall be a continuing vendor's lien upon the property against which 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 they expressly assume such obligation.

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 and the properties and for the improvement and maintenance of the common area. The judgment of the Board of Directors of the Association in establishing assessments and other charges shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Annual Assessment. The annual assessment shall be \$ 30⁰⁰ per lot until January 1, 1985. After January 1, 1985, the annual assessment may be increased each year

not more than 18% (such percentage increase may be cumulative from year to year) above the maximum assessment for the previous year without a vote of membership.

The board of Directors may fix the annual assessment at an amount that they feel appropriate.

Section 4. Special Assessments For Capital Improvements. In addition to the annual assessments authorized herein, 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 its capital improvements, including fixtures and personal property related thereto, provided that any such assessment shall have the 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 Three (3) and Four (4) shall be taken at a meeting called for that purpose. Written notice of any meeting being called for the purpose of taking any action authorized under Section Three (3) or Four (4) shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) per cent of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly or annual basis.

Section 7. Date of Commencement of Annual Assessments, Due Dates. The annual assessments provided for herein shall commence as to all lots on the date fixed by the 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 lot at least thirty (30) days in advance of each 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 when the assessments on a specified lot 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 date due shall bear interest at the rate of twelve (12) 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. Interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. Each such Owner, by his acceptance of a deed to a Lot, or by his signature affixed hereto 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 non-judicial foreclosure pursuant to Article 3810 of the Texas Revised Civil Statutes and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Lot 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 lot.

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 sale or transfer. No sale or transfer shall relieve such lot 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 personal property insurance on his Sunday House and other improvements on his lot and the

contents of his own house, 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 Owners obtained as a part of the common expense.

(d) All costs, charges and premiums for all insurance that the Board of Directors authorized as provided herein, shall be a common expense of all Owners and be a part of the maintenance assessment.

Section 12. TAXES. Each Owner shall directly render for taxation his own Lot and improvements and property thereon, and shall at his own cost and expense directly pay all taxes, levied or assessed against or upon his Lot and improvements and property thereon. 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 the "Common Area" and the improvements and property appertaining thereto.

Section 13. UTILITY BILLS. Each Owner shall have his separate electric meter and shall directly pay at his own cost and expense for all electricity, sanitary sewer service, telephone service, cable television and other utilities used or consumed by him on his Lot, excepting water.

(b) All costs and charges for water shall be a common expense of all owners and be a part of the maintenance assessment.

ARTICLE V.

ARCHITECTURAL CONTROL

No building, sign, incinerator, trash, or garbage receptacle, fence, wall or other structure shall be commenced, erected or maintained upon any tract, nor shall any exterior addition to or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been

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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 Control Committee to be made up of no fewer than three (3) members appointed by the Board. If the Architectural Control Committee or the Board of Directors of the Association, whichever the case may be, fails to approve or disapprove such design and location within sixty (60) days after submission to it of said plans and specifications, or in any event if no suit to enjoin the improvement, addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Section shall be deemed to have been fully complied with.

ARTICLE VI.

USE RESTRICTIONS AND EASEMENTS

Section 1. Each Lot shall be used for resort purposes only and for no other purpose whatsoever and no business, commercial or manufacturing enterprise shall be conducted on or from the same, with the exception of the sales and rental management company, Sunday Broker's Inc., its successors or assigns. The Association shall require that all leases of any Lot or improvements thereon must provide that such leases are specifically subject in all respects to the provisions of the Declaration, Articles of Incorporation and By-Laws of the Association, and that any failure by the lessee to comply with the terms and conditions of such documents shall be a default under such leases. Other than the foregoing, there shall be no restriction on the right of lot owner to lease his property.

Section 2. No tree having a diameter of three (3) inches or more shall be cut, damaged or removed from any lot without the prior approval of the Board of Directors or its Architectural Control Committee.

Section 3. The outside finishing of all buildings shall be completed within six (6) months after construction has started and no asphalt, shingles or imitation brick, building paper, insulation paper or sheeting or similar non-exterior material shall be used for the exterior finish of any such building without the prior consent of the Board of Directors or its Architectural Control Committee.

Section 4. No signs of any nature and not previously specifically approved in writing by the Architectural Control Committee shall be permitted on any lot. No clotheslines of a permanent nature shall be erected on any lot.

Section 5. No animals or birds of any kind shall be raised, bred, or kept on any lot except that not more than two dogs and two cats may be kept provided that they are not kept, bred or maintained for any commercial purposes. Obnoxious or poisonous weeds shall not be permitted to grow on any tract.

Section 6. The dumping or accumulation of trash or rubbish shall not be permitted on any lot. Trash, garbage, or other waste shall not be kept except in a sanitary container. No burning or dumping of trash is allowed on any of the lots.

Section 7. Easements are hereby reserved along and within twenty (20) feet of all front, side and rear lot lines of each tract for the construction and perpetual maintenance of pipes, conduits, poles, wires and fixtures for electric lights, telephones, water lines, sewer lines, drainage and other public and quasi public utilities, as may be already existing or which may be created in the future and to trim or remove any trees which at any time may interfere or threaten with the maintenance of such lines with the right of ingress to and egress from and across said premises to employees of said utilities. There is also created a blanket and perpetual easement upon, across, over, under and above all of the Properties for ingress and egress, of emergency vehicles, in addition to the easement shown on Lot F of

the Plat. Easements are hereby reserved along and within 10 feet of all front lot lines of each tract for future street or road purposes if it becomes necessary or practical to widen or improve the existing roads or streets. Notice is hereby given that the roads, streets and alleyways are not maintained by the City of Fredericksburg or the County of Gillespie, State of Texas. The existing streets and roads are maintained by the Declarant, Fernando Marcelino Menendez, d/b/a Mariposa Sunday Farms as of the date of this Declaration. The maintenance and cost of maintenance of the roads and streets shall be the responsibility of the lot owners once the streets and roads have been built and paved, but in no event shall the responsibility be turned over to the lot owners until 60% of the lots in Mariposa Sunday Farms, Unit No. 1 have been sold. Notice is also given that pursuant to agreement between Fernando Marcelino Menendez and the City of Fredericksburg, Mariposa Drive may be dedicated to the public at some future date.

Section 8. It shall not be considered a violation of the easement if wires or cables carried by such pole lines pass over some portion of said properties not within the twenty (20) foot wide easement as long as such lines do not hinder the construction of buildings on the property.

Section 9. Each residence shall be provided with and served by inside toilets.

Section 10. Water and Sewer. Each tract in Mariposa Sunday Farms Unit No. 1 shall have the privilege of connecting to the City of Fredericksburg water system. There is no central sewer system to serve all tracts. Each residence shall be connected with a septic tank and drain field, and notice is hereby given that more than one tract may be serviced by one (1) common septic system. On those tracts which contain the septic system used in common with other tracts, easements are hereby reserved along the tract for maintenance purposes with right of ingress to and

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egress from and across said premises of said premises of said tract containing the septic system. Drainage of septic tanks or sewage into roads, streets, ditches, ravines, or upon open ground shall be prohibited. No sewer line or drain field shall be permitted within 60 feet of the center line of the City Water Easements shown on the plat referred to in Section 3 of Article I hereinabove unless written permission is granted by the City of Fredericksburg.

Section 11. Walking Easements. Walking easements to the Common Areas are hereby granted to Lot owners on Lots 8 and 10 as shown on the plat referred to above.

ARTICLE VII.

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, 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 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any of the provisions which shall remain in force and effect.

Section 3. 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 covenants and restrictions of this Declaration shall run with and bind the land until December 31, 2035, after which they shall be automatically extended for successive ten (10) year periods unless on or before one month prior to the end of any such period of time three-fourths (3/4) of the Class "A" and Class "B" members

shall agree in writing, properly executed and recorded in the office of the County Clerk of Gillespie County, Texas, to amend or repeal such restrictions.

Section 4. 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 lot owner or his mortgagee.

Section 5. Rights of Mortgagees, Trustees or Lienholders. No violations of any of these restrictions, covenants or conditions, shall affect or impair the rights of any Mortgagee, Trustee or Lienholder under any mortgage or deed of trust, or the rights of any assignee of any Mortgagee, Trustee or Lienholder under any such mortgage or deed of trust.

Section 6. Dedications. The plat of MARIPOSA SUNDAY FARMS, UNIT NO. 1, recored in Volume 1, Page 96 of the Plat Records of Gillespie County, Texas establishes certain dedications, limitations, reservations and restrictions applicable to the Properties. Easements affecting the Properties are hereby reserved as shown on the recorded plat. All dedications, limitations, restrictions and reservations shown on said plat are incorporated herein and made a part hereof 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 said property or any part thereof. In the event that 3/4 of each Class of members of the Association assent in writing to dedicate the street known

as Sunday Circle to an appropriate public agency and such dedication will not be accepted by such agency unless each lot owner dedicates additional footage of his lot to the public agency, not to exceed twenty (20) feet, such conditional terms shall be submitted to the owners who must again approve such dedication by 3/4 of each Class of members. If 3/4 of each Class of members assent in writing to such conditional terms, all lot owners shall be bound thereby. Fernando Marcelino Menendez, Trustee, d/b/a Mariposa Sunday Farms covenants that should title to a street be in him, he will make the necessary dedication to the public agency to accomplish the dedication approved by the Association.

Section 7. Annexation. Additional land within the general area described herein may be annexed by the Declarant without the consent of members within ten (10) years from the date of this instrument, so long as its use is not in conflict with the terms of this Declaration.

In Witness whereof, the undersigned being the Declarant herein, has hereunto set its hand and seal this 10th day of December, 1983.

Fernando Marcelino Menendez, Trustee
 FERNANDO MARCELINO MENENDEZ, Trustee
 d/b/a/ Mariposa Sunday Farms

THE WOODLANDS TRUST COMPANY

Fernando Marcelino Menendez, Pres
 BY: FERNANDO MARCELINO MENENDEZ
 President

SUNDAY BUILDERS, INC.

Van C. Estill, President
 BY: VAN C. ESTILL, President

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THANK YOU
MARY LYNN RUSCHE
GILLESPIE COUNTY CLERK
DEPUTY: KCAIN