

065209

THIS DOCUMENT IS BEING RE-FILED TO
INCLUDE EXHIBITS "A", "B" AND "C",
ATTACHED HERETO AND MADE A PART HEREOF.

THE STATE OF TEXAS

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§

064549

COUNTY OF BLANCO

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
MARSHALL RIDGE, SECTION I**

KATIE ROSE, LTD., a Texas Limited Partnership, hereinafter called "Declarant" is the Owner in fee simple of certain real property located in Blanco County, Texas, said property being known as "Section I of Marshall Ridge", as per the survey plat thereof attached hereto as Exhibit "A" and the metes and bounds description attached hereto as Exhibit "B", both of which are incorporated herein ("the Property").

The Property is now or will be divided into smaller parts ("Tracts"), the total of which will hereinafter be referred to as the "Project" or "the Property" or as "Marshall Ridge, Section I."

Know all men by these presents that the Property is hereby subject to those restrictions, covenants and conditions of record as amended, and are hereby placed under the restrictions, covenants and conditions as set forth in this document.

For the purpose of enhancing and protecting the value, utility, attractiveness and desirability of the Tracts constituting such Project, and to enhance Declarant's ability to market and sell the Property, and to benefit the property Owners, and to define the rights and obligations of the property Owners, Declarant hereby declares that all of the real property described above and each part thereof shall be held, sold, and conveyed subject to the following easements, authority, covenants, conditions and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above-described property or any part thereof, and on their heirs, successors, and assigns, and shall inure to the benefit of such parties.

**ARTICLE I
DEFINITIONS**

1. "Declarant" shall mean KATIE ROSE, LTD., its successors and assigns, provided such assign acquires the project in total, or the remainder in total then owned by Declarant, for purposes of development and sale.
2. "Tract" or "Tracts" shall mean any plot of land as is divided or re-divided within the Project.
3. "Mortgagee" shall mean a holder of a bona fide mortgage or a beneficiary under or holder of a Deed of Trust.
4. "Mortgage" shall mean a bona fide mortgage, a Deed of Trust, or a Vendor's Lien.
5. "Authority" shall mean that authority as created herein or in Declarant for future vestment into the Owners.
6. "Road" shall mean the improved portion of the Road and Utility Easement.
7. "Road and Utility Easement" or "Easement" shall mean that portion of the Property identified on the attached Exhibit "A" and described by metes and bounds on the attached Exhibit "C".
8. "Owner" or "Owners" shall mean the record Owner, including Declarant, whether one or more persons or entities, of fee simple title to the Tracts on the Property, or any portion thereof, and shall include purchasers under contract for deed, but shall not include those holding title merely as security for performance of an obligation.
9. "Project" or "Property" shall mean that certain real property located in Blanco County, Texas, said property being known as "Section I of Marshall Ridge", as per the survey plat thereof attached hereto as Exhibit "A" and incorporated herein and the metes and bounds description thereof attached hereto as Exhibit "B" and incorporated herein, and such additions thereto as hereinafter provided.

10. "Vote" where vote is stated herein, it shall mean one vote per Tract.
11. "Declaration" where declaration is stated herein, shall mean this instrument, the Declaration of Covenants, Conditions and Restrictions of Marshall Ridge, Section 1

ARTICLE II EASEMENTS AND PRIVATE ROAD

Section 1: The Road and Utility Easement shall be used for ingress and egress to the Tracts from State Highway 290, and for installation and maintenance of utilities to the Tracts. Title to the Easement shall be conveyed by Declarant to the Owners on either side of the Road and Utility Easement, who shall own to the center of the real estate that contains said Easement, and said ownership shall be subject to said easement. The Easement is appurtenant to and runs with all Tracts on the Property; nonexclusive and irrevocable; and perpetual. The Easement is for the benefit of the Owners, and their heirs, successors, and assigns who at any time own any of the Tracts or any interest in the Tracts. By acceptance of a deed to a Tract, the grantee accepts the Easement upon and across their Tract. Notwithstanding the foregoing, Declarant reserves for itself and its successors and assigns the right to continue to use and enjoy the surface of the Easement for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by the Owners, and the right to convey to others the right to use all or part of the Easement in conjunction with the Owners so long as such further conveyance is subject hereto. The use of said easement shall be governed by separate instrument filed by Declarant in the Blanco County Property Records contemporaneously herewith.

Section 2: So long as Declarant owns a Tract within the Property, Declarant may take unto itself or grant any fresh water supply, electric utility, gas utility, telephone or other utility entity right of way easement in the form and under the conditions as may at that time be required by said entity as a prerequisite to service of this Project with fresh water, electricity, gas, telephone, T.V. cable, or other utility or service.

Section 3: It is understood and agreed that the easements granted herein and to be granted hereafter are reserved as permanent easements for the purpose set forth and are not subject to the time limits applicable to other restrictions.

ARTICLE III ARCHITECTURAL and USE RESTRICTIONS

Section 1: With the exception of the Road and Utility Easement, and Tracts 5 and 6, all Tracts are designated and shall be used only as residential home sites for site-built single-family dwellings. No Tract shall be used for more than one primary single-family residence and one single-family guest or servants' house.

- A. Tracts 5 and 6 may also be used for "Light Commercial Use" (defined below).
- B. The term "residential" as applied to Tracts 1-4 and 7-9 shall not be construed to prohibit home-based businesses on such Tracts, provided that vehicle traffic to and from the Tract does not materially exceed the vehicle traffic to the other such Tracts.

Section 2: The primary single family residence constructed on said Tracts must have a floor area of not less than 1800 square feet, exclusive of open or screened porches, terraces, patios, driveways, carports and garages; shall be site-built; and shall be constructed of at least standard frame construction. Any improvements to a Tract (including without limitation, roof peaks, chimneys, antennas, and satellite dishes) shall be height restricted to 35 feet above ground level if said improvements are constructed at or above the 1400 foot contour line above mean sea level. Improvements constructed below said contour line shall not exceed 40 feet in height. If any building is set on blocks or piers, it shall have an outside or perimeter beam of stone, stucco or concrete, or material comparable to the exterior of the house, on all sides of the building. The primary single-family residence must be completely dried in within 6 months of beginning of construction, and construction shall be completed in twelve (12) months.

Section 3: The Owner may place one servants' or guest house on that Owner's Tract. Said house must have a floor area of not less than 600 square feet, inclusive of open or screened porches, and otherwise conforming to the these restrictions; however, no such house shall be permitted prior to completion of construction of the primary single family residence on the Tract.

Section 4: No dwelling, garage, barn, shed, outbuilding shall be placed nearer than two hundred (200) feet from the southern right-of-way line along State Highway 290 or from the boundary line of the Road and Utility Easement that is on each Tract, or one hundred (100) feet from an adjacent Owner's property line. No structure shall be placed within and no items, vehicles, material or property shall be stored, parked or placed within two hundred (200) feet from the southern right-of-way line along State Highway 290.

Section 5: No mobile homes are permitted on any Tract; provided that, such restrictions shall not apply to prohibit Declarant from installing a mobile home or temporary building on the Property for use a sales office while engaged in the marketing and sale of any portion of the Property. Travel trailers and recreational vehicles shall not be used as permanent places of residence on any Tract; provided that, for a period not to exceed twelve (12) months, a Tract Owner can reside in a travel trailer or recreational vehicle on that Owner's Tract while a permanent home is under continuous construction on the Tract. Outbuildings shall be permitted.

Section 6: Prior to beginning construction on any house or building on any Tract, Owner shall install a driveway from the improved road in the Road and Utility Easement to the outside boundary of such Easement, said driveway to be constructed of at least four inches (4") of compacted caliche, rock, gravel, crushed limestone or better. Said driveway shall be installed so as to not interfere with any drainage facilities or flow in the Easement.

Section 7: Any culvert installed by a Tract Owner shall be professionally installed and maintained so as to prevent erosion.

Section 8: Any fence installed within fifty (50) feet of the Road and Utility Easement or any adjacent Owner's property line must be professionally installed, and professionally maintained in good repair and condition.

Section 9: Any security or outdoor lights shall be limited to twelve feet in height, and shall be hooded.

Section 10: All equipment for the storage and disposal of rubbish, trash and garbage shall be kept in a clean and sanitary condition. The Owner of a Tract or Tracts in the Project, whether occupied or unoccupied, shall be required to keep said Tract(s) free of any unsightly or offensive accumulation of trash, garbage, or unsightly deposits of any nature or kind from the date of purchase of said Tract. No Tract shall be used or maintained as a dumping ground for rubbish or trash, and no garbage or other waste shall be kept except in sanitary containers.

Section 11: Animals may be kept on any Tract, subject to the following:

- A. Only horses, cattle, poultry, domestic household pets, dogs and cats, goats, sheep and pigs may be kept.
- B. Every Tract will be limited to numbers as follows: Five chickens per acre owned; Two geese, turkeys or ducks per acre owned; No more than three pigs or hogs, provided that they are raised and kept solely for show at contests sponsored by Future Farmers of America or similar organization.
- C. All horse, cattle and other livestock shall be kept enclosed by suitable fencing and not allowed to roam free.
- D. The premises shall be maintained in such a manner as to prevent health hazards and shall not be offensive to the neighboring Tracts. Should any animal, including but not limited to horses, cats and dogs, become offensive to the neighborhood, that animal situation constitutes a violation of these covenants.
- E. There shall be no commercial hog farms, or feed lots, or commercial fowl or poultry hatcheries, or any meat processing or rendering operations on any Tract.
- F. An Owner may lease a Tract for purposes of maintaining an agricultural exemption for ad valorem tax purposes so long as there is compliance with the other terms hereof.

- G. No over-grazing of a Tract shall be permitted. The county agricultural extension agent shall be deemed the final arbiter as to whether a Tract is being over-grazed.

Notwithstanding the foregoing, Declarant reserves the right to lease the property owned by it for agricultural purposes.

Section 12: No abandoned or inoperative automobile, other vehicle or trailer shall be permitted to remain on any Tract. This prohibition is not to be construed to mean that personal campers, boats, tractors, trailers, recreational vehicles, etc. in good and usable condition may not be kept on premises; however, campers, trailers, boats, tractors and utility vehicles of every nature must not be stored within two hundred (200) feet from the southern right-of-way line along State Highway 290 or nearer than two hundred (200) feet from the Road and Utility Easement or one hundred (100) feet from an adjacent Owner's property line, or shall be stored in a garage, shed or other suitable building located in accordance with the other provisions hereof.

Section 13: No commercial, manufacturing or industrial activities shall be conducted on any Tract other than as permitted herein for Tracts 5 and 6. No vehicle storage yards shall be permitted on any Tract. Raising of trees or farm produce is not considered a commercial use, provided that the Tract is also being used as a residential home site.

Section 14: It is hereby specifically stated that to rent space to campers, recreational vehicles, trailers, or other units for occupancy or storage or to maintain stables, kennels or space for rental to others is considered commercial operation for purposes of these restrictions, and is not permitted.

Section 15: Commercial signs shall be permitted only on Tracts being utilized for Light Commercial Use. No commercial signs will be placed upon any other Tract; except that signs may be erected advertising the property for sale; and advertising the services of anyone constructing any improvements to any portion of the property during and only during said construction, not to exceed 3 square feet. Declarant is exempt from this section while actively marketing Tracts. Name or address identification signs not exceeding two (2) square feet are permitted.

Section 16: All Owners shall provide for the disposal of waste material through a sewage treatment system approved by the appropriate governmental authority. Equipment related to any water well, or any septic system or other system for human waste disposal, shall be located so as to not be visible from any of the property lines of the Tract on which the equipment is located.

Section 17: No Tract will be re-subdivided to a size that is less than twenty-five (25) acres. Declarant, may subdivide and relocate Tract boundary lines for unsold Tracts for better utilization and function, provided that the minimum Tract size is maintained.

Section 18: Rock may be quarried from a Tract solely for the purpose of construction of permitted improvements to or on the Tract; otherwise, there shall be no quarrying or mining operations.

Section 19: Any electric, cable, data or telephone transmission lines to the Tracts shall be located within the boundaries of the Road and Utility Easement, and shall be placed thereon so as to not interfere with use of the easement for ingress and egress or any drainage facilities or flow thereon.

Section 20: No noxious, unlawful or immoral activity, and no nuisances shall be permitted on any Tract. No junk yards shall be permitted on any Tract.

Section 21: No radio, cell or telephone towers or antennas or other towers or antennas shall be permitted on any Tract. No satellite dishes larger than three feet in diameter shall be permitted on any Tract. Windmills are permitted, provided that the wheel is no larger than eight (8) feet in diameter, the tower is no taller than thirty (30) feet above the established ground level (i.e., the lower of the existing grade prior to construction of the windmill, or the grade after construction of the windmill, exclusive of any berming or mounding), and the windmill is aesthetically similar to the majority of windmills within a three mile radius of it.

Section 22: No hunting blinds shall be permitted within two hundred (200) feet of the southern right-of-way line along State Highway 290 or the Road and Utility Easement, or one hundred (100) feet from an adjacent Owner's property line.

Section 23: "Light Commercial Use" means any of the following uses: real estate office, doctor or other health care professional office, dentist office, veterinarian office (with barns and pens), law, accountant or bookkeeping office, engineer, surveyor or architect office, bed and breakfast, corporate retreat, health or beauty spa, stable, art gallery or studio, winery or vineyard (with tasting rooms and sales permitted), or other business similar to the foregoing listed businesses and to the extent not expressly prohibited by the following sentence. Said use does not include, and **THE FOLLOWING USES ARE HEREBY PROHIBITED:** vehicle sale lots, vehicle parts storage, recreational vehicle park, travel trailer park, mobile home park, vehicle or farm implement or heavy equipment repair or servicing, body shop, welding shop, convenience or grocery store, service or gasoline station, motel, restaurant or cafe, dance hall, music venue (not to be construed as prohibiting acoustical and low volume amplified music that does not disturb occupants of residential Tracts), sales of other alcoholic beverages, fireworks sales, fruit or vegetable stand or sales, feed store, ranch supply store, and such other uses as are expressly prohibited herein.

Section 24: Commercial Buildings. No more than one commercial building shall be constructed or located on any Tract on which Light Commercial Use is permitted; shall be site-built; and shall be constructed of at least standard frame construction. If any building on such site is set on blocks or piers, it shall have an outside or perimeter beam of stone, stucco or concrete, or material comparable to the exterior of the building, on all sides of the building. The building must be completely dried in within 6 months of beginning of construction, and construction shall be completed in twelve (12) months.

Section 25: Commercial Signs. On any Tract on which Light Commercial Use is permitted, there shall be no more than one sign on any Tract advertising the location of a business on that Tract. The sign shall be no larger than sixteen (16) square feet (measured by height and length, and inclusive of any support or frame for the sign), and shall have a depth or thickness of no more than fifteen (15) inches (inclusive of any support or frame for the sign). A sign structure with two (2) faces back-to-back, oriented in opposite directions with the same sign on both sides shall be counted as the area of only one face. The sign shall be constructed of rock, stone, brick or wood, or a combination of those materials.

- a. The vertical distance between the highest point on any sign (inclusive of any support or frame for the sign) and the established ground level shall be no more than seven (7) feet. The established ground level is the lower of (1) the existing grade prior to construction of the sign, or (2) the grade after construction of the sign, exclusive of any berming or mounding.
- b. If lit, the lights shall be hooded so that light is directed down and towards the sign, and oriented away from adjacent properties and any private or public roadway. The light fixture shall be no higher off the ground than seven (7) feet. No lighting of a sign shall be directed upward. No sign shall be internally illuminated. No flashing, moving, blinking, rotating, or traveling lights, or lights that change in color or intensity shall be permitted in conjunction with a sign.
- c. No part of the sign or any support for it shall be placed or shall extend into any public, private or utility easement or right-of-way.
- d. The sign and its support, and any lighting thereof, must be maintained, freshly painted and/or kept in good repair and condition. No sign shall remain or be kept in use to advertise an activity, business or service no longer conducted on the Tract on which the sign is located.
- e. No other sign or signage is permitted. No flags made of fabric or other flexible material displayed for commercial purposes; provided that the official flag of a nation or state is not prohibited. No portable signs, neon signs, balloons, inflatable signs or devices or figures, banners (i.e., a flexible sign hung or mounted without a frame, made of paper, plastic, fabric or other flexible material), or changing signs (i.e., where any part of characters, letters or illustrations on a sign can be changed or rearranged without altering the face or surface of the sign, such as a theater marquee or gasoline price sign). No vehicular signs; provided that signage on a vehicle is not prohibited so long as the vehicle is not used as the primary signage for the location of any business on the Tract. No sign shall be placed upon any tree, or on any utility pole or pedestal (except for signs placed thereon by the utility company).

Section 26: Parking and Driveways for Commercial Use. Any parking area, and any driveway to and from such parking area, shall be constructed of at least four inches (4") of compacted caliche, rock, gravel, crushed limestone or better. Said driveway shall be no wider than twenty (20) feet.

**ARTICLE IV.
OWNER'S OBLIGATION TO REPAIR**

Each Owner shall, at his sole cost and expense, repair and maintain his/her residence, and other buildings on his/her Tract, keeping the same in a condition comparable to the condition of such building at the time of its initial construction, excepting only normal wear and tear.

**ARTICLE V.
ENFORCEMENT**

Section 1: Should any Owner herein violate these covenants and restrictions, Declarant (so long as it continues to own a Tract), and any one or more of the Owners, shall have the power to file suit to enforce compliance. Prior to filing suit, thirty (30) days written notice shall be given to the violator. Such notice shall be a condition precedent to the recovery of any attorney's fees by the party bring such suit.

Section 2: Any on-going violation may be prosecuted on an on-going basis.

**ARTICLE VI
AMENDMENT**

This Declaration may be amended by complying with the following procedure.

Section 1: Petition. To add to or modify an existing restriction, a Petition (as provided below) shall be filed with the Blanco County Clerk's office before the first anniversary of the date the Petition Committee (described below) files with the Blanco County Clerk's office the Notice required below. If a Petition meeting the requirements hereof is filed with the county clerk within the required period, the provisions of the Petition adding to or modifying a restriction apply to and burden all of the Property. The addition to or modification takes effect on the later of the dates the Petition is filed with the county clerk or a date specified in the Petition.

Section 2: Petition Committee. At least three Owners may form a Petition Committee, which shall file a written Notice of its formation with the Blanco County Clerk, setting forth: that the Committee has been formed for the addition to or modification of one or more restrictions of this Declaration; the name and residential address of each member of the Committee; the recording information for this Declaration and for any subsequent amendments hereto; and the proposed amendment or modification, and the original restriction that is affected. Each Committee member must sign and acknowledge the notice before a notary or other official authorized to take acknowledgments.

a. An individual's membership on the Committee terminates if the individual ceases to own land in the Project. If a vacancy on the Committee occurs, either because a member ceases to own land in the Project or because a member resigns or dies, a majority of the remaining members may appoint as a successor an individual who owns land in the Project and who consents to serve as a Committee member, and the Committee shall file written notice of the name and address of each successor Committee member with the Blanco County Clerk, and send written notice to all Owners, not later than the 10th day after the date of the appointment.

b. Only one Committee may file to operate hereunder at one time. If more than one Committee files a Notice, the Committee that files its Notice first is the Committee with the power to act. A Committee that does not effect a successful petition within the time provided hereunder is deemed dissolved by operation of law. A petition circulated by a dissolved Committee is ineffective for any of the purposes of this chapter.

Section 3: Petition Procedure. The Petition shall be circulated among the Owners, signed and acknowledged by the Owners, and filed with the Blanco County Clerk during the circulating Committee's existence. To be effective, the Petition must be signed and acknowledged by Owners who own in the aggregate at least 75 percent of the Tracts in the Property (both husband and wife must sign if Tract owned by them). After an Owner signs a

Petition, the fact that the Owner subsequently conveys his/her Tract does not affect the previous signing of the Petition.

Section 4: Contents of Petition. The Petition shall contain the same contents as the Notice, plus:

(1) original acknowledged signatures of the required number of Owners as provided herein, with an assertion that they own record title to Tracts (identified by legal description and street address shown beside or above their signature); and,

(2) a statement that Owners who do not sign the Petition must file suit before the 181st day after the date on which the Certificate called for below is filed in order to challenge the procedures followed in adding to or modifying a restriction.

Section 5: Certificate and Notice.

(a) Not later than the 10th day after the date on which a Petition that meets the requirements hereof is filed with the county clerk, the Committee shall send a signed and acknowledged Certificate to all person who are then record Owners. The Certificate must contain the same contents as the Notice, a statement that the proper number of Owners have signed and acknowledged the Petition, the date the Petition was filed with the county clerk, and a copy of the fully executed and acknowledged Petition. The Certificate shall be sent by certified mail, return receipt requested, to each person who owned a Tract as of the date the Certificate is sent, excluding the Owners of land dedicated for public use or for use by utilities.

(b) The Committee shall also publish a notice once a week for two consecutive weeks in a newspaper of general circulation in Blanco County containing a general description of the purpose and effect of the Petition, and the date it was filed with the county clerk.

Section 6: If the Committee acts in good faith in determining ownership and giving notice as required by this section, the failure to give personal notice to an Owner does not affect the application of a modification or addition to a restriction.

Section 7: Notwithstanding anything herein to the contrary, so long as Declarant owns a Tract, these restrictions cannot be altered unless Declarant signs and acknowledges the Petition.

Section 8: A lienholder whose lien is filed before the effective date of a Petition is not bound by the Petition unless the lienholder signs it and it is later filed. If such a lienholder who does not sign the filed Petition later acquires title to the Tract through foreclosure, the acquisition is free of the restrictions added or modified by the Petition. However, if any other person acquires the title to said property at or after a foreclosure sale, that person takes title to the property subject to the restriction added or modified.

ARTICLE VII

GENERAL PROVISIONS

Section 1: In all instances herein where notice is required, notice will have been given upon depositing said notice in the United States mail, proper postage prepaid, addressed to the last known address of such person or party (according to the records of the Association) to whom notice is to be given.

Section 2: Failure by Declarant or any Owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

Section 3: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 4: No breach of any of the conditions herein contained by reason of such breach shall defeat or render invalid the prior lien of any mortgage made in good faith and for value as to the Project or any Tract therein; provided however, that such conditions shall be binding on any Owner, except Declarant, whose title is acquired by foreclosure, trustee's sale, or otherwise.

Section 5: The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Owners for a period of fifteen (15) years from the date of recording this Declaration, and thereafter shall continue in effect for additional, successive and recurring periods of ten (10) years, unless they are canceled or amended by written vote by the then Owners in accordance with the foregoing section herein regarding the amendment of these restrictions.

Section 6: Declarant shall have the right during the term of this Declaration to add to the real property within the Project. The Owners of the Tracts within such added portion shall be subject to these same restrictions, except that Declarant may impose additional restrictions on such additions, including without limitation, quality of improvements, land use, set back lines or other requirements considered by Declarant to be beneficial to the best use of the added property and for so long as such additional restrictions do not conflict with these restrictions.

Section 7: The Authority created herein and vested in Declarant shall continue until such time as Declarant has sold all of the Tracts.

Section 8: Without limiting any other remedy, the terms of this Declaration may be enforced by restraining orders and injunctions prohibiting violations and commanding compliance, which shall be obtainable on proof of the existence of a violation or threatened violation, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this Declaration; provided however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

Section 9: *Enforcement.* Without limiting any other remedy, the terms of this Declaration may be enforced by restraining orders and injunctions prohibiting interference and commanding compliance, which shall be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this Declaration; provided however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity. The prevailing party in any action concerning the enforcement of the terms of this Declaration shall be entitled to recover their reasonable attorney's fees, costs and other litigation expenses. Venue for any action concerning the enforcement of the terms of this Declaration shall lie exclusively in Blanco County, Texas, and no other place.

Section 10: **MEDIATION.** Any disputes arising under this Declaration shall be submitted to mediation by a qualified and impartial mediator prior to filing of any action or claim in a court of the United States or of the State of Texas or any of their respective subdivisions. In all respects, the mediation shall be governed by and conducted in accordance with Chapter 154 of the Texas Civil Practices and Remedies Code.

Section 11: Any reference herein to a term which is not capitalized but is otherwise defined in this Declaration shall have the same meaning as the defined and capitalized term. Whenever the context may require, any pronoun used in this Declaration shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The section headings of this Declaration are for convenience and reference only and shall not be deemed to alter the meaning or interpretation of any provisions hereof.

EXECUTED THIS 19TH day of October, 2006.

KATIE ROSE, LTD.,
BY ITS GENERAL PARTNER
EAST 4TH STREET PROPERTIES, LLC

By: _____

Stephen E. Marshall, Manager