

Enchanted Vistas

DECLARATION OF COVENANTS, RESTRICTIONS, AND MAINTENANCE
AGREEMENTS FOR ENCHANTED VISTAS

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF GILLESPIE §
And COUNTY OF LLANO §

WHEREAS, ENCHANTED VISTAS, L.P., a Texas limited partnership (the "Declarant") acting herein by and through its duly authorized officers, is the owner of that certain tract of real property described as follows, (the "Property"), to wit:

1,140.5-acre tract of land situated in Gillespie County, and Llano County, Texas and, known as the ENCHANTED VISTAS Subdivision, as said subdivision is shown, described and delineated on map or plat recorded in Volume 2, Page 185 of the Plat Records of Gillespie County, Texas, and in Volume 11, Page 92 of the Plat Records of Llano County, Texas (the "Property").

WHEREAS, ENCHANTED VISTAS shall be tracts of land used solely for residential and/or agricultural purposes. A tract of land ("Tract") is hereby defined as one or more parcels of lands which Declarant shall sell or convey to third parties, or which are owned by Declarant out of the Property.

WHEREAS, Declarant has constructed a private road (the "Road") through the Property and now desires to sell off portions of the Property in smaller parcels (the "Parcels") to several interested purchasers;

NOW, THEREFORE, it is hereby declared that the Property shall henceforth be held, sold and conveyed subject to the following easements, restrictions, covenants and agreements, which are intended for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on all parties now or hereafter owning an interest in any part of the Property, and their heirs, successors and assigns, and which easements, restrictions, covenants and conditions shall inure to the benefit of each Owner thereof:

ARTICLE 1

Definitions

1. "Declarant" shall mean the undersigned, and any assignee or successor thereof.

2. "Parcel", or "Tract" shall mean each lot, tract, parcel and portion of the Property as shown, described and established by the plat of ENCHANTED VISTAS Subdivision or which shall be resubdivided as provided herein.
3. "Owner" shall mean the record owner or owners of the fee simple title to any Tract or Parcel in the Property. Even if there are several owners of a Tract the term "Owners" shall mean all of such owners of such Tract. Owner shall not include any lien holder, secured party, mortgagee, lessee, invitee or guest, even though an Owner may lease a Tract or permit invitees or guests, and may delegate to each tenant, invitee or guest, the right and easement of use and enjoyment in and to the Roads, such parties and such use and enjoyment by such parties shall be subject to, and as provided in the provisions of this Declaration, and any lease or agreement shall provide that the terms thereof shall be subject in all respects to the provisions of this Declaration and any failure by the lessee, invitee or guest to comply with the terms and provisions of this Declaration shall be and constitute a default under such lease or agreement and shall be a violation of this Declaration with the same consequences as if such Owner delegating such right and easement had violated the same.

ARTICLE 2

1. **Road Easement.** Shown, described and delineated on the Plat of ENCHANTED VISTAS Subdivision is a 60 foot wide easement roadway ("Road"). Declarant hereby dedicates the Road for the common use of all owners (the "Owners") of any part of the Property and does hereby grant to all such Owners, their heirs, successors and assigns and their agents, invitees and permittees a perpetual non-exclusive ingress and egress easement over and across the Road for uninterrupted access to and from that portion of the Property owned by each Owner, to other portions of the Property and to the public roadway. No gates, fences or enclosures shall be erected upon the road.
2. **Enchanted Vistas Homeowners' Association, Inc. and Covenants for Maintenance of Assessments.**
 - I. **Membership and Voting.** Declarant will cause to be incorporated the Enchanted Vistas Homeowners' Association, Inc. ("Association") and will delegate and assign to the Association all the rights, powers, obligations, and duties of Declarant under this Declaration of Covenants, Restrictions, and Maintenance Agreements. Every Owner of a Parcel within the Property shall be a member of the Association.
 - II. **Membership Voting Classes.** The Association shall have two classes of voting memberships.

- A. Class A – Class A members shall be all the Owners of Parcels with the exception of Declarant. Each Class A member shall be entitled to one vote for each acre, or portion of an acre, the Owner then owns out of the Property.
 - B. Class B – Declarant shall be the sole Class B member. For each acre, or portion of an acre then owned by Declarant out of the Property, Declarant shall be entitled to three votes on any matter coming before the members at any meeting or otherwise.
- III. Each Owner, by acceptance of a Deed, whether or not it shall be so expressed in such Deed, is deemed to agree to pay to the Association his prorated share of all regular assessments and all other Association dues, fees, fines, assessments or charges of any kind ("assessments"), which may be established and collected as hereinafter provided.
- IV. The assessments, together with interest, cost and reasonable attorney's fees shall be a charge on the land and shall be secured by a continuing lien upon each Parcel which is created herein. Each such assessment, together with interest, cost and reasonable attorney's fees shall also be the personal obligation of the Owner of such Parcel at the time when the assessment is due. This personal obligation to pay any assessment shall not pass to any successors or assigns in title unless assumed by them.
3. **Purpose of Assessment.** The assessments levied by the Association shall be used to maintain, repair, and replace the Road and the electronically controlled access gate (the "gate") located at the entrance of the Property and to promote the health, safety, and welfare of the Owners as a group. These expenses may include but shall not necessarily be limited to reconstruction, repair or replacement of the roads, security gates and entry, costs of professional and other outside services, implementing and carrying out a wildlife management plan, and labor, equipment, materials, and outside management and supervision necessary to carry out its authorized function, including the enforcement of these restrictions, covenants and agreements of the Declaration.

The Board of Directors of the Association shall prepare annually a maintenance budget for the ensuing calendar year and determine each owner's proportionate share of the maintenance budget. The annual assessment of each Owner shall be determined by multiplying the annual maintenance budget by a fraction resulting from the number of acres owned by each Owner, divided by the total number of acres within the boundaries of the Property.

The annual assessment shall be payable in a lump sum, or in semi-annual payments as shall be determined by the Board of Directors. For billing purposes, the semi-annual

assessment period will be the first day of each January and July. All assessments are payable upon receipt of written notice of the assessment.

4. **Initial Annual Assessment.** Until adjusted pursuant to the terms as noted in this document, the maximum Annual Assessments shall be initially as follows:

\$2.00 per acre contained in each Tract

- A. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, subject to the following:
- B. The maximum annual assessment may be increased each year by the Board of Directors by not more than 25% above the maximum assessment for the previous year without a vote of membership.
- C. The maximum annual assessment may be increased above 25% by a vote of 75% of the voting rights of the members who are voting in person or by proxy at a meeting duly called for this purpose.

5. **Special Assessments.** In addition to the annual assessments authorized above, the Board of Directors of the Association may levy a special assessment for the purpose of defraying the cost of any construction, reconstruction, repair or replacement of a capital improvement (other than the initial cost of construction of the road), including fixtures and personal property related thereto, or for carrying out other purposes of the Association as stated herein or in the Articles of the Association, which must be approved by members of the Association having at least 75% of the voting rights of the Association.

6. **Notice and Quorum for any Action Authorized Under Sections 4 and 5.** Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 above shall be sent to all members not less than 30 days nor more than 60 days in advance of any meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called by the same notice requirement, 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.

7. **Date of Commencement of the Annual Assessments.** The annual assessments for any particular Tract by the Home Owners' Association provided for herein shall not commence until January 1, 2001.

8. **Affect of Non-Payment of Assessments and 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 highest legal rate permitted by law to be charged to the nonpaying Owner, or if there is no highest legal rate, then at 10% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same and foreclose the lien against such Owner's Parcel, together with interest at the highest lawful rate and reasonable attorney's fees, if applicable. In addition, the defaulting Owner's right to use the Road may be suspended by the Board of Directors until such annual assessment, plus any accrued interest and attorney's fees thereon, are paid in full.
9. **Subordination of the Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage against a Parcel. The sale or transfer of any Parcel shall not affect the assessment lien. However, the sale or transfer of the Parcel pursuant to a mortgage foreclosure shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Parcel from liability for any assessments thereafter becoming due or from the lien thereof.
10. **Wildlife Management.** The Association is hereby specifically granted the right to develop and implement a wildlife management plan for the property which complies with Section 23.51 of the Texas Property Code. The Association is appointed the agent of each Owner to prepare and file an application on behalf of each Owner for qualified Open Space land used for wildlife management. Each Owner agrees to the payment of dues and assessments for the purpose of implementing and carrying out the Wildlife Management Plan. In the event any Owner determines not to have his or her property appraised as qualified Open-Space land used for wildlife management under the Association's Wildlife Management Plan, the Owner may elect to withdraw his or her property from the Association's Wildlife Management Plan by providing to the Association written notice prior to December 31st of any calendar year that the Owner is withdrawing effective January 1st of the next succeeding calendar year from the Wildlife Management Plan.
11. **Building Restrictions**
- I. Single-family dwellings shall contain a minimum of 800 square feet of living area, exclusive of porches, breezeways, carports, garages, or basements. The minimum square footage of living area shall be that area which is heated and cooled. The exterior of the residence shall be constructed of wood, masonite or comparable material, rock, stone, brick, stucco or masonry.
 - II. Dwellings shall be limited to single family residences. With the exception of Tract #5, only one permanent residence will be permitted on any one Tract.

- III. The exterior of any building shall be completed not later than ten (10) months after laying the foundation of that respective building.
- IV. A dwelling shall not be occupied until the exterior thereof is completely finished and Gillespie County and Llano County, and/or the State of Texas Health Department or other governing body controlling wells and septic systems has approved a septic system or other waster water disposal system.
- V. No dwelling shall be moved onto any Tract. All dwellings shall be constructed and erected on site. Mobile, modular, pre-manufactured and/or industrial-built homes shall not be used as a dwelling nor stored on any Tract.
- VI. A single-family dwelling shall not be erected on any Tract nearer than seventy-five (75) feet from the front, side, or rear property line. Other buildings erected on a Tract shall not be nearer than seventy-five (75) feet to any property line.
- VII. No Tract shall be used for any commercial purpose except permanent agricultural crops, including vineyards, fruit trees, pecan groves and permanent grass (i.e. hay meadows or grazing pastures), and up to one Bed and Breakfast facility per Tract, constructed in compliance with all restrictive covenants herein.
- VIII. Resubdivision of tracts shall not be permitted until the year 2008 without the prior written consent of the Declarant. Declarant may assign the authority to consent to resubdivision of Tracts to the Association. Resubdivision shall not result in any tract containing less than twenty-five (25) acres.
- IX. Abandoned or inoperative equipment, vehicles or junk shall not be permitted on any Tract. Owners are to keep their Tract clean and neat in appearance and free of litter at all times. Garbage or refuse or any hazardous materials, as defined in any statute or regulation of the State of Texas or U.S. Government, shall not be buried on any Tract. Noxious or offensive activity shall not be permitted on any Tract nor any activity which would be considered an annoyance or nuisance to the Property.
- X. Swine shall not be kept on any Tract. Other livestock, pets and poultry ("animals") shall be permitted provided such animals are sheltered and kept within the boundaries of the Tract at all times by fence or other enclosure. There shall be no commercial feeding operation or commercial breeding of animals or fowl on any Tract. Animals used for grazing Tracts while simultaneously raising young (i.e., cow/calf operations) shall not be considered commercial breeding animals.

- XI. All perimeter fences erected on any Tract shall be of new material and erected in accordance with professional fence-building standards regarding quality and appearance.
- XII. Mineral exploration of any type, which will damage the surface, shall not be permitted on any Tract.
- XIII. Declarant reserves unto himself and/or his assigns, an easement for utility purposes ten (10) feet wide on the front and side boundary of all Tract lines and twenty (20) feet wide along the entire perimeter (boundary) of the Property for the installation and maintenance of electric, telephone, and utility lines and easements for anchor/guy combinations wherever necessary, and reserves the right to trim trees which at any time interfere or threaten to interfere with the maintenance of such lines, with the right of ingress and egress from and across each Tract to employees of utilities owning said lines.

ARTICLE 3

- 1. These restrictive covenants shall be binding upon and inure to the benefit of all parties claiming under Declarant until September 1, 2010, at which time said restrictive covenants shall be automatically extended for successive periods of ten (10) years each without further notice until such time that the owners of 75% of the total area of the Property shall execute an instrument waiving or amending the restrictive covenants. A Tract owner shall be the record owner of legal title as shown by the real property records of Gillespie County, or Llano County, Texas. Any amendments shall be in writing and shall not be effective until duly recorded. A copy of the amendments as recorded shall be forwarded to the last known address of all Tract owners.
- 2. Declarant shall have and hereby reserves the right at any time and from time to time, without the joinder or consent of any other party, to amend these restrictive covenants by an instrument in writing duly signed and acknowledged by Declarant only, filed for record in the office of the County Clerk of Gillespie County, and Llano County, Texas, for the purpose of correcting any typographical or grammatical error or any ambiguity or inconsistency appearing herein or for any other reason, in keeping with the general scheme of the subdivision, that Declarant determines, in the exercise of its reasonable discretion, to be in the best interest of the owners of the Subdivision.
- 3. If any term or provision of this instrument or the application thereof shall be held to be invalid, all other terms and provisions of these restrictive covenants or the application thereof shall not be affected thereby, nor shall any failure of the Declarant or Tract Owner

to seek enforcement of any term or provision constitute a waiver of any right to do so in the future or the validity or enforceability of such term or provision.

4. Declarant and every other person, firm or corporation hereinafter having any right, title or interest in any Tract in the Property shall have the right to enforce, by any proceeding at law or in equity all restrictive covenants by injunction or other lawful procedure and to recover any damages resulting from such violations. Damages for the purpose of this paragraph shall include court costs and necessary attorney fees.
5. No Tract owner shall use the phrase "ENCHANTED VISTAS" or any word or words similar thereto, in connection with any Tract or any uses permitted hereunder in connection with any Tract, without the prior written consent of Declarant. This restrictive covenant is for the sole benefit of and may be enforced only by Declarant.

EXECUTED this _____ day of _____, 2000.

ENCHANTED VISTAS, L.P.

By WESTVEST PARTNERS, L.L.C., a Texas
Limited Liability Company, its General Partner

By: _____
Name: Kenneth A. Barfield
Title: Manager

THE STATE OF TEXAS §

COUNTY OF GILLESPIE §

This instrument was acknowledged before me on _____, 2000, by Kenneth A. Barfield, Manager of WESTVEST PARTNERS, L.L.C., a Texas Limited Liability Company, a General Partner of ENCHANTED VISTAS, L.P., on behalf of said company.

Notary Public, State of Texas