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DECLARATION OF PROTECTIVE COVENANTS

This Declaration of Protective Covenants ("Declaration") is made to be effective as of October 22, 2001, by **Shavano Creek Commercial Partnership Unit 1, Ltd., a Texas limited partnership** ("Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of the real property in the City of Shavano Park, Bexar County, Texas, described in Exhibit A attached hereto and incorporated herein (the "Property");

WHEREAS, Declarant intends to market and develop the Property and certain surrounding properties owned by Declarant described in Exhibit B attached hereto and incorporated herein (collectively, the "Shavano Creek Commercial Properties") for commercial purposes and Declarant desires to provide for the systematic, orderly development and use of the Property for the benefit of the Property and the Shavano Creek Commercial Properties, and to enhance the compatibility of the use and development of the Property and the improvements constructed thereon with the adjoining residential neighborhood; and

NOW THEREFORE, Declarant declares that the Property shall hereinafter be held, transferred, sold, conveyed, occupied and used subject to the covenants, requirements, conditions, restrictions, easements and charges hereinafter set forth, it being expressly acknowledged and agreed that the covenants, restrictions, easements and conditions herein set forth shall run with the land and be binding on all parties having all right, title or interest in the Property, and their respective heirs, successors and assigns.

1. **DEFINITIONS.**

(a) "Architectural Design Guidelines" and "ADG" shall mean the architectural standards, guidelines, objectives and procedures for the design, placement and construction of Improvements within the Property. Declarant shall have the right to revise, amend and update the ADG. A copy of the current ADG is available from Declarant upon request.

(b) "City" shall mean the City of Shavano Park, Texas and/or the City of San Antonio, Texas, and their applicable agencies, departments, and commissions.

(c) "DBH" and "Diameter at Breast Height" shall mean the diameter of a tree measured approximately forty-two (42") inches from the ground or top of the root ball.

(d) "Declarant" shall mean Shavano Creek Commercial Partnership Unit 1, Ltd., a Texas limited partnership, and its successors or assigns who are designated by

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Declarant as such in writing, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Property.

(e) "Declaration" shall mean this instrument and any amendment or supplement hereto duly approved in accordance with the terms hereof and recorded in the Official Public Records of Real Property of Bexar County, Texas.

(f) "Governmental Authority" shall mean all federal, state and local authorities, agencies, commissions and regulatory bodies having jurisdiction over the Property, or any portion thereof, or over the Declarant or any Owner.

(g) "Governmental Regulations" shall mean all statutes, rules, codes, ordinances, regulations, permits, licenses and other requirements of any Governmental Authority.

(h) "Improvements" shall mean every structure on the Property and all appurtenances thereto, including, but not limited to, buildings, outbuildings, roads, driveways, sidewalks, walkways, paved areas, parking areas, fences, screening walls, retaining walls, loading areas and facilities, signs, utilities, lawns, hedges, mass plantings, landscaping, water lines, sanitary and storm sewers, electrical and gas distributions facilities, street lights, and all exterior HVAC or other exterior fixtures or equipment, pumps, tanks, lines, antennas, satellite dishes, towers, metering equipment and other utility or infrastructure facilities.

(i) "Owner" shall mean and refer to each owner of record, whether one or more persons or entities, of fee simple title to all or any part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(k) "Property" shall mean and refer to the real property described in Exhibit A attached hereto and incorporated herein, and/or any portion thereof.

(l) "Required Plans" shall mean complete architectural and engineering plans, including site plans, grading plans, exterior elevations, typical floor plans, light spillage plans, landscape and irrigation plans, and any other plans or information deemed necessary in the reasonable judgment of the Declarant in accordance with Section 3 herein.

(m) "Shavano Creek Commercial Properties" shall mean and refer to the real property described in Exhibit B attached hereto and incorporated herein, and/or any portion thereof.

2. **PROPERTY SUBJECT TO THIS DECLARATION**. The real property which is and shall be held, transferred, sold, conveyed, developed and occupied subject to this Declaration is the Property described in Exhibit A attached hereto and incorporated herein.

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3. **ARCHITECTURAL CONTROL.**

(a) **Plan Review.** No Improvement shall be erected, constructed, placed, altered (either by addition or deletion), maintained or permitted to remain on any portion of the Property until the Required Plans, in such form and detail as the Declarant may deem reasonably necessary, shall have been submitted to and approved in writing by the Declarant. The Required Plans shall include the location of and accommodate all easements affecting the Property, including the reserved easements described in Section 7 herein. The Declarant may employ professional consultants to assist it in such review, and impose reasonable fees for processing of applications. The decision of the Declarant shall be final, conclusive, and binding upon the applicant and the Declarant, entitling the applicant to rely on such decision. Declarant has promulgated the Architectural Design Guidelines to more fully describe the design and aesthetic requirements for the Property and other matters in connection with the plan submission and review required herein.

(b) **Limitation of Liability.** Declarant and its representatives shall not be liable to any person subject to or possessing or claiming the benefits of this Declaration for any damage or injury to property or for damage or loss arising out of their acts hereunder. Declarant's evaluation of the Required Plans is solely to determine compliance with the terms of this Declaration. Declarant expressly disclaims any responsibility to determine compliance of the plans with any applicable Governmental Regulations, building code or other standard for construction. Declarant shall not be responsible for reviewing any plans or specifications from the standpoint of structural safety, engineering soundness, or conformance with building or other codes, or other Governmental Regulations, nor shall Declarant's approval be deemed a verification of the structural safety, engineering soundness, or conformance of the Improvements to building or other codes, or other Governmental Regulations. Neither the Declarant, nor any of the partners, employees or agents thereof, shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any Owner affected by this Declaration by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications or requests for variance.

(c) **Procedures.** The Required Plans submittals are more fully described in the ADG and may be revised by Declarant from time to time effective upon written notice to the Owners. Declarant shall notify Owner in writing whether any Required Plans are approved or disapproved (specifying reasons for disapproval) within thirty (30) days after Declarant has received the Required Plans and written notice that the Owner desires to obtain Declarant approval thereof. If plans submitted by any Owner are not sufficiently complete or are otherwise inadequate, Declarant may reject them as being inadequate or may approve or disapprove them in part, conditionally or unconditionally, and reject the balance, or may notify the Owner that additional documents or information are required. If the submitted plans are deemed to be inadequate or

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incomplete and written notice of such determination is given to Owner within thirty (30) days of submission of such plans, the thirty (30) day review period shall not commence until Declarant has received a complete set of the Required Plans. If Declarant fails to reject or approve submitted plans within the review period, such plans shall be deemed approved as submitted by the Owner.

(d) **Variances**. Declarant may, but shall not be obligated to, grant variances and waivers relative to deviations from this Declaration and/or the ADG, or to correct or avoid hardships to any Owner. Upon submission of a written request for variance, Declarant may, from time to time, in its reasonable discretion, permit an Owner to construct, erect or install an Improvement which is in variance from the covenants, restrictions or architectural standards which are provided in this Declaration or the ADG. In any case, however, the Improvement with such variances must, in Declarant's reasonable discretion, blend effectively with the general architectural style and design of existing Improvements on the Property and must not detrimentally affect the integrity of the Property and the Shavano Creek Commercial Properties as a first class suburban commercial and retail center. All requests for variances shall be in writing, shall be specifically indicated to be a request for variance, and shall indicate with specificity the particular standard sought to be varied and the nature of the variance requested. All requests for variances shall be deemed to be disapproved if Declarant has not expressly approved such request in writing within fifteen (15) days of the submission of such request. Declarant shall not be liable to Owner or any other person for any claims, causes of action or damages arising out of the grant of any variance to an Owner. Each request for a variance submitted hereunder shall be reviewed independently, and the grant of a variance to any one Owner shall not constitute a waiver of Declarant's right to deny a variance to another Owner. The decisions of Declarant with respect to variances shall be final and mutually binding upon the applicant and Declarant. All variances, to be effective, must be in writing. Owners are advised that certain variances may require the separate approval of the Board of Adjustments of the City or other applicable Governmental Authority.

(e) **Approval Letter**. Upon approval of the final Required Plan submittals, an Approval Letter will be issued by Declarant. The Approval Letter must be signed by the Owner and returned to Declarant before construction of the Improvements specified therein may begin. By execution and delivery to Declarant of the Approval Letter, the Owner covenants and agrees as follows:

(i) Construction of the Improvements will be completed within twelve (12) consecutive months from start of construction.

(ii) Construction will be in substantial accordance with the approved Required Plans.

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(iii) Any exterior changes after final approval of the Required Plans by Declarant must be approved in writing by Declarant prior to construction of those changes.

(iv) Declarant may, upon advance notice to Owner, make regular inspections of the Improvements and construction site at times reasonably acceptable to Owner and accompanied by a representative of Owner if required by Owner.

If any of these conditions are not met and such failure continues for thirty (30) days after written notice thereof to Owner detailing the nature of such failure, the Approval Letter shall terminate and be of no further force or effect, and Owner shall be subject to the plan review process and all other requirements set forth herein with respect to the construction of any Improvements on the Property.

(f) **Failure of Declarant to Act**. If Declarant fails to provide Owner with written notice of its approval or disapproval of any plans within thirty (30) days after submission by Owner of the Required Plans (subject to Declarant's rejection thereof and/or request for additional documents or information pursuant to subsection (c) above), it shall be conclusively presumed that Declarant has approved such plans; provided, however, that a deemed approval of any plan submittal shall not permit a violation of any of the terms of this Declaration, nor extend to any deviation from or alteration to the plans actually submitted, nor to any matter requiring a written variance.

(g) **Decisions Final**. All decisions of Declarant shall be final and binding, and there shall not be revisions of any action of Declarant except by appropriate legal proceedings. In the event of construction of Improvements or threatened construction of Improvements in violation of this Declaration, any Owner or Declarant may seek to enjoin such construction or seek other relief against the Owner and/or builder responsible therefor, provided that Owner shall first be given written notice of the perceived violation and a reasonable period of time to remedy the violation prior to the filing of suit as provided herein.

(h) **Compliance Inspection and Enforcement**. Declarant, may, but is not required, to police or enforce compliance with such considerations as setbacks or other specific, objective construction requirements. Declarant's agent may inspect those items reviewed by Declarant, including inspection for conformance to the site plan (grading and drainage), building plan, landscaping plan, and exterior design, colors and materials. In the event Declarant reasonably determines that significant field discrepancies exist, Declarant may notify Owner of the nature and extent of the discrepancy. Written clarification must be supplied by Owner to Declarant within ten (10) business days of receipt of such notification. In the event clarification by the Owner is not forthcoming or is determined to be inadequate by Declarant in its reasonable discretion, Declarant may at it's sole discretion retain a private consultant for the purpose of obtaining an outside opinion. All reasonable professional fees and

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expenses associated with the retention of a private consultant up to $750 may be assessed by Declarant against the Owner.

(i) **Cooke Plans.** Declarant has approved the building and grading plans submitted by Paul M. Cooke for the proposed children's day care center and related facilities described in Exhibit C attached hereto and incorporated herein ("Cooke Plans"), and has granted a variance and/or waiver with respect to any specifications herein or in the ADG, which conflict or are inconsistent with the Cooke Plans, subject to the submission and approval of the signage, lighting and landscape and other required plans for the project and the requirements and limitations set forth in Section 3(e)(i), (ii), (iii) and (iv) and in Section 7 herein. Any material change in the Cooke Plans, or any material modification or addition to the Improvements after initial construction in accordance with the Cooke Plans, shall be subject to the plan submission, review and approval process and all other terms and conditions set forth in this Section 3.

4. **USES OF PROPERTY.**

(a) **Permitted Uses.** The Property and Improvements shall be developed, constructed and used only for retail and/or commercial uses permitted by applicable Governmental Authority and Governmental Regulations to operate on the Property, including but not limited to a children's day care center, except those uses which are prohibited pursuant to subsection (b) below. Notwithstanding anything herein to the contrary, that portion of the Property fronting on Huebner Road and described in Exhibit D attached hereto and incorporated herein ("Restricted Area") shall be used only for the purposes of a driveway to service the Property and the Shavano Creek Commercial Properties and attendant lighting, landscaping and signage in accordance with the standards and requirements for such Improvements set forth herein and in the ADG.

(b) **Prohibited Uses.** No portion of the Property shall be used for purposes prohibited by the zoning and other ordinances of the City of San Antonio or City of Shavano Park or for any of the following:

(i) Adult entertainment, including, but not limited to: adult bookstore, adult booths, adult dancing establishments, adult motel, adult theater, or other activity or use (which terms include anything capable of being discerned by the human senses) which is pornographic, obscene, lewd, or lascivious, as such terms are defined from time to time by the Supreme Court of the United States.

(ii) Trailer, mobile home, or recreational vehicle park.

(iii) Commercial storage facility, or commercial storage or sales of motor vehicles, new or used automobile parts, mobile homes, portable buildings or other temporary buildings.

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(iv) Yards for junk, wrecking, parts reclamation, or salvage.

(v) Sale of used appliances or equipment.

(vi) Feeding pens for animals, animal slaughtering, confinement of animals, stockyards, or uses related to the preparation of animals for slaughter.

(vii) Asphalt manufacturing or refining; petroleum or petrochemical refining or manufacturing; asphalt or concrete paving, mixing, or batching plant; corrosive acid manufacturer or bulk storage, including but not limited to hydrochloric, nitric, sulfuric, and similar acids; bone distillation or the reduction, rendering, incineration or storage of garbage, offal, animal parts or animal waste, fats, fish, or similar materials or products.

(viii) Manufacture of cement, limes, gypsum or plaster of paris.

(ix) Manufacture, refining, or open storage of raw materials or finished products related to the manufacture or refining of, glue, size, gelatin, aloe, grease, lard, or vegetable oil.

(x) Biomedical waste, storage or transfer.

(xi) Wholesale meat and produce distribution.

(xii) Welding, bottling and distribution plants.

(xiii) Machine or trade shop.

(xiv) Heavy equipment rental or sales.

(xv) Manufacture or stripping or refinishing of furniture.

(xvi) Manufacture of garments.

(xvii) Contractor storage and equipment yards.

(xviii) Manufacture of confectionery.

(xix) Repair, storage, or terminals for buses, cabs or trucks.

(xx) Bulk paint mixing.

(xxi) Manufacture of billboards.

(xxii) Auction house or other business devoted primarily to holding auctions.

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(xxiii) Any use or activity reasonably deemed by Declarant to be offensive, unpleasant, unsightly, or illegal by reason of the light emissions, vibrations, odor, fumes, gas, dust, airborne dirt ash, smoke, noise, sound frequency or shrillness, or pollution or which Declarant reasonably determines to present excess hazards by reason of excessive danger of fire or explosion.

(xxiv) Exploration, mining, or quarrying or drilling for oil, gas, phosphate, or other minerals of any type or kind.

(xxv) Use, manufacture, transportation, storage, disposal, handling, generation, or treatment of "toxic waste," "hazardous waste," "hazardous substance," or "hazardous material" as those terms are defined in or pursuant to any Governmental Regulations.

(xxvi) Storage, handling or use of explosive material.

(xxvii) Commercial landfill, dump, junkyard or other similar operation.

(xxviii) Raising, maintenance, housing or treatment of livestock or other animals overnight; provided, however, that a veterinary clinic with no outdoor kennels, dog runs or other outside animal housing facilities is permitted, if the facility is given the approval of TNRCC and other applicable Governmental Authority.

(xxix) Outdoor storage or display of equipment, material or merchandise except where not visible from any public street; provided, however, that outside restaurant tables and bank teller equipment is permitted.

(xxx) Nightclubs, taverns, massage parlors, play parks, or dance halls, except as such use is wholly contained within a bona fide restaurant or as is otherwise considered an amenity by the Owner's or Property clientele, such as a health club, tennis club or racquetball club.

(xxxi) Outdoor theater.

(xxxii) Institutional establishments which by nature of operation or character are incompatible with the Owner's or Property environment, including but not limited to, mortuaries, funeral homes, and cemeteries.

(xxxiii) Temporary buildings, trailers and mobile homes in the open, except as a construction office for a project on the Property and only for the period of such construction.

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(c) **Edwards Aquifer**. Owners will be sensitive to the fact that the Property lies over the Edwards Aquifer Recharge Zone. Owners will abide by and comply with all City and State laws, rules, and regulations relating to construction over the Edwards Aquifer Recharge Zone.

5. **CONSTRUCTION AND DEVELOPMENT STANDARDS.**

(a) **Structural Requirements.**

(i) Exterior Walls: Each exterior wall shall be not less than ninety percent (90%) masonry, inclusive of brick, brick veneer, stucco, masonry, limestone, or such other exterior building materials as may hereafter be in use for construction of first class buildings, in each case of a design and color approved by Declarant. No corrugated metal may be used unless approved by Declarant for use as architectural elements. No concrete block or tilt wall construction may be used unless the wall is completely covered with stucco or a similar material or painted (textured paint) to resemble masonry or stucco. All tilt wall construction must have architectural reveals as approved by Declarant. No product regardless of composition which is manufactured to have a wood or non-masonry appearance will be considered masonry. All design, colors, coursing, and

pattern will be subject to approval by Declarant and in accordance with the standards set forth in the ADG.

(ii) Roof Design: Roof design shall be gable, Dutch gable, hip, shed, or other such design as Declarant may deem appropriate. Flat roofs with parapets may be approved on a case by case basis by Declarant.

(iii) Roofing Material: Standing seam metal, Tennessee v-crimp, and concrete tile are acceptable roofing materials. Declarant may approve other materials in its sole discretion.

(iv) Roof Structure: All objects mounted on the roof of any building, including, but not limited to, air-conditioning units, exhaust fans, and chillers, must be screened by parapets or other screening approved by Declarant. The height of the screen must be equal to the height of the tallest item being screened. If the screen is proposed to be less than the tallest item, a sight line study must be submitted to and approved by Declarant.

(v) Overhead Doors: All overhead doors, service entrances and installation entrances shall be limited to side or rear entrances only. For the purpose of determining the side or rear elevation, the building wall line parallel or most closely parallel to any public street shall be deemed the front. A

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building located on a corner may be deemed to have two (2) front elevations by Declarant in its discretion.

(b) **Lighting.**

(i) Parking Lot Lighting:

(1) Lights shall not exceed fifteen feet (15') in height. Height variance may be granted by Declarant to accommodate overall light designs, provided the lights comply with spillage requirements.

(2) Pole and reflector design must be submitted for approval by Declarant.

(3) A complete light spillage diagram shall be submitted to Declarant, and is subject to Declarant approval.

(4) Parking lots will be fully lighted during business hours. Security lighting levels shall not exceed 15-20 foot candle 24 hours a day.

(ii) Landscape and walkway lighting plans shall be submitted to Declarant, and are subject to Declarant approval.

(iii) Wall or building lighting:

(1) All wall or building lighting shall be ground-mounted and visually shielded by berms or landscaping. Decorative mounted wall lighting will be considered on a case-by-case basis relative to the architecture of the structure(s).

(2) Lighting shall be designed so as to light only the exterior walls of the building.

(3) A complete light spillage diagram shall be submitted to Declarant, and is subject to Declarant approval.

(4) Buildings may be lighted from 6:00 a.m. to 10:00 p.m., San Antonio time. Lighting must be reduced to security level after 10:00 p.m. and shall not be increased over such level until 6:00 a.m. of the following day.

(iv) All lighting shall be designed to prevent the spill-over of light onto adjacent properties and shall be installed so as not to create traffic hazards due to impairment of vision and/or confusion with traffic signals. Not more than

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0.25 foot candles will spill into a residential area from lights or signs within the Property.

(c) **Signs.**

(i) Permitted signs are those which:

(1) Identify the Property or a project situated thereon and/or give directions.

(2) Identify a building or a particular business.

(3) Monument signs which:

(A) Conform to the architectural spirit and integrity of the Property and the Shavano Creek Commercial Properties and all applicable Governmental Regulations of Governmental Authority.

(B) Are ground mounted and constructed of brick, masonry, stone, stucco or comparable material as approved by Declarant.

(C) Are no more than ten feet (10') in width and ten feet (10') in height. A sign less than ten feet (10') in height may be wider than ten feet (10'), but the surface area of the sign shall not exceed one hundred feet (100') square feet.

(D) Are used as reader board signs (defined as a sign listing more than one business or entity on one sign) and contain no more than five (5) business and entity names.

(4) Directional, advertising, promotional or for sale or lease signs that:

(A) Are no larger than four feet (4') wide and eight feet (8') tall.

(B) Are installed in a vertical position.

(C) Are placed at locations approved by Declarant.

(D) Are painted in a color scheme approved by Declarant.

(ii) Monument signs, wall signs and pole or pylon signs may be lighted from 6:00 a.m. to 10:00 p.m., San Antonio time.

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(iii) Prohibited signs are:

(1) Portable signs of any kind.

(2) Bench signs.

(3) Pole signs or pylon signs or signs protruding above the building roof line or building parapet.

(4) Neon signs, blinking, rotating, animated, painted, Day-Glo colored signs, or internally lit signs (except internally lit signs as may be approved by Declarant on a case-by-case basis in the sole discretion of Declarant).

(5) For Sale or For Lease signs, except one (1) sign of not more than four feet (4') by eight feet (8') erected in a vertical position and used to advertise the Property or a particular part of the Property for sale or lease. Each For Sale or For Lease sign must be removed as soon as the Property is sold or leased.

(6) Inflatables (e.g. purple gorillas) or banner signs located on any building elevation, roof or any other portion of the Improvements or the Property.

(7) "Bandit" signs located on the Property or on any street outside the Property when such signs direct traffic to the Property.

(iv) Approval: All signs must be architecturally coordinated with the development to which they apply and architecturally compatible with other signs on or approved for the Property. All plans for any new or replacement signs and placement thereof must conform to the current sign criteria promulgated by Declarant, and must be approved in writing by Declarant and conform to the standards set forth in the ADG.

(d) **Dumpster and Other Screening.**

(i) Screen walls shall be constructed of the same or comparable material comprising the exterior walls of the main building and be a minimum of six feet (6') in height but not less that one foot (1') taller than the item being screened. The screen wall shall screen from the view of all parking areas, major thoroughfares, major collection streets, public streets and other buildings or residences, the following items:

(1) Refuse containers, dumpsters, utility meters, transformers and satellite dishes.

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(2) Loading areas, service areas and outside storage, other than normal parking associated with the use of the Property.

(ii) A wood framed non-climb mesh fence with dense landscaping may be substituted for the screen wall described above in the areas approved by Declarant.

(iii) Gates in screen walls shall be solid and of a design and material approved by Declarant. Such gates shall remain closed at all times.

(iv) All screening and outdoor storage must comply with applicable Governmental Regulations of Governmental Authority.

(v) Outdoor HVAC condensers shall be screened to limit off-site sound intrusion into neighboring residential areas.

(e) **Fences**.

(i) No fence may be built within view of any public or private street unless the fence conforms to the requirements of Section 5(d) above or is of a design approved by Declarant.

(ii) No fence may be erected forward of the building front setback line as prescribed herein and by applicable Governmental Regulations.

(iii) All fences shall be a minimum of six feet (6') in height. Height restriction for fences may be reduced to not less than five feet (5') at the discretion of Declarant.

(iv) There is an existing eight foot (8') cedar fence along the north and east boundary of the Property ("Existing Fence"). The Owner(s) of the Property on which the Existing Fence is situated shall continuously maintain the Existing Fence in good condition, including the replacement of broken or missing slats and support structures to ensure the Existing Fence shall not become more than ten degrees (10°) out of vertical alignment.

(f) **Parking and Loading Areas.**

(i) Parking lots, driveways and service roads shall be paved with concrete, asphalt or other permanent material approved by Declarant.

(ii) All driveway approaches must be concrete from the street pavement to the property line.

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(iii) All parking areas shall conform to or exceed the then current requirements of the City of San Antonio building codes and landscape ordinances and applicable ordinances of the City of Shavano Park, Texas, as amended from time to time.

(iv) No inventory, vehicles, equipment or other property may be maintained, stored, or placed outdoors without the express written consent of the Declarant, except for overnight and weekend or holiday parking of business vehicles, and vehicles kept within the loading area of the Improvements and appropriately screened.

(v) No on-street parking shall be permitted.

(vi) Owners shall be responsible for managing the parking of vehicles by their employees, contractors, customers and invitees.

(g) **Curb Cuts**. The number and location of all curb cuts on Huebner Road and Lockhill Selma Road will be subject to approval by Declarant.

(h) **Setbacks**. All setbacks on the Property shall conform to applicable Governmental Regulations.

(i) **Off-street parking areas**.

(i) Shall be curbed and paved.

(ii) Shall be built and maintained so that grades are acceptable from a civil engineering and public safety standpoint and with due regard for any overall grading plan for the Property.

(iii) Shall be landscaped in accordance with either the City of San Antonio landscape ordinance or the following guidelines, whichever is more stringent:

(1) There shall be the equivalent of one (1) planting area containing a tree and one hundred square feet (100') of planting area for each ten (10) parking spaces. Landscaped areas within setbacks or landscape buffers shall count as planting areas for purposes of calculating the foregoing ratios. Trees shall be live oaks (or equal quality) and shall be at least twelve feet (12') in height and four inches (4") in caliper measured thirty-six inches (36") from the ground. Groupings of trees with smaller calipers may be deemed to satisfy this requirement as determined by Declarant.

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(2) All landscaping shall be maintained in a neat and orderly condition. The location of plant material and its design shall conform to the landscape requirements set forth herein and in the ADG.

(3) Landscape plans for parking lots shall be submitted to Declarant for review along with building plans.

(iv) There shall be no on-street parking permitted within the Property.

(j) **Landscape Requirements and Guidelines.**

(i) In connection with the preliminary design of a building or project, Owner will furnish Declarant two (2) copies of a detailed landscaping plan which shall comply with the requirements from time to time promulgated by Declarant. Such plans shall be drawn to scale and shall include delineation of existing or proposed structures, pavement and other site features, and shall designate by name, size, spacing and location the plant material to be installed. The approximate location, size and type of all existing trees, six inches (6") in diameter (DBH) or greater, or significant motts (groupings) of smaller trees shall also be clearly shown. After a landscaping plan has been approved and instituted, Owner is required to submit to Declarant a written request for any change in the plan. Owner shall at all times maintain the minimum required vegetation as shown in the original plans. Owner shall make every effort to preserve significant natural vegetation. Revised landscape plans shall incorporate all commercially reasonable changes suggested by Declarant and shall be resubmitted for final approval by Declarant.

(ii) Landscaping shall consist of a combination of undisturbed areas, and designed and enhanced areas of native plants including, grasses, trees, shrubs, flowers, and ground cover as listed in the ADG. Landscapes will consist of plants and trees that are drought tolerant, indigenous to the area and require minimum amounts of water to survive and prosper. Low flow, water efficient systems will be used to irrigate the landscaping material that requires periodic supplemental watering. Installation of all landscaping and irrigation systems must be completed within ninety (90) days following the completion of the initial building and parking areas on the Property. Owner shall be responsible for watering and maintaining the landscaping on the Property owned by it, including landscape buffers and easements and pedestrian easements.

(iii) The reasonable cost of any watering or maintenance of vegetation or landscaping by the Declarant on the Property as a result of Owner's failure to do so for more than five (5) business days after receipt from Declarant of written notice detailing such failure shall be billed to Owner

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and paid by Owner to Declarant within ten (10) days after receipt of such invoice.

(iv) Non-Developed Areas:

(1) Non-developed areas, including drains, drainage areas, creeks, greenbelts and buffers, shall be left in a relatively natural state and shall not be cleared, mowed or otherwise disturbed except as designated and approved by Declarant or required by applicable Governmental Authority.

(2) Each Owner shall selectively and minimally clear a continuous area twelve feet (12') in depth from the curb line of all publicly used streets and maintain and clean this area regularly.

(3) Each Owner will be responsible for cleaning and removing trash from the undeveloped areas.

(v) All landscape plans and materials lists shall be reviewed and approved by Declarant prior to installation.

(vi) Owner shall be responsible for the installation, maintenance, and upkeep of the landscaping and a water efficient irrigation system. All such items must be constructed and installed concurrently with the development of a project on such portion of the Property.

(vii) Should any Owner neglect, damage, or in any way destroy, or allow to be destroyed any vegetation or landscaping upon the Property, such Owner shall be solely responsible for the repair or replacement thereof, and, in absence of timely repair or replacement thereof by the Owner, within thirty (30) days after notice thereof from Declarant, the Declarant may perform such repair or replacement on behalf of the Owner. Owner shall then reimburse Declarant for the reasonable costs thereof within five (5) business days after demand therefor together with reasonable supporting evidence of such expenses.

(k) **Sidewalks**.

(i) Required Sidewalks: Each Owner of the Property will construct and continuously maintain all sidewalks required by Governmental Authority. All required sidewalks will be constructed of broom finish concrete or other material acceptable to the City and Declarant, and shall be constructed concurrently with the development of a project on such portion of the Property. Declarant may require the preservation of significant trees within the area otherwise designated for the required sidewalks, in which

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event the Owner will be required to vary the location of the sidewalk to accommodate such tree(s).

(ii) Optional Sidewalks: All other sidewalks shall be optional but shall require the approval of Declarant and shall be shown on plans submitted to Declarant. Optional sidewalks may be either broom finished concrete or pebble finish concrete.

(l) **Building Height Restrictions.** All buildings on the Property will be limited to forty-five feet (45') in height, as measured from the average finished ground level to the highest point of the roof's surface if a flat surface, or to the deck line of mansard roofs, or to the mean height level between eaves and ridge for hip and gable roofs (excluding chimneys, cooling towers, ornamental cupolas, domes or spires, parapet walls not exceeding four feet (4') in height, and basements).

(m) **Maintenance.**

(i) Construction Sites: Each Owner shall maintain construction sites in a clean condition, removing accumulation of scrap and rubbish regularly and storing construction materials and equipment in a neat, orderly manner. On-site burning or disposal of trash shall be prohibited. Each Owner shall, during construction, provide adequate dumpsters and port-a-potties on site and be responsible for having these receptacles emptied and reset on a regular basis.

(ii) Developed Property: Outdoor storage of trash, materials, equipment and vehicles must be screened as set forth in Section 5(d) hereof. All trash must be removed on a regular basis, and in no event less frequently than once weekly.

6. **GOVERNMENTAL REQUIREMENTS.**

(a) **Compliance.** All Improvements located, erected, constructed and installed upon the Property and all activities of each Owner, their tenants, invitees, agents, employees and contractors on or about the Property, shall conform to and comply with all applicable Governmental Regulations.

(b) **Precedence Over Less Stringent Governmental Regulations.** If the covenants, conditions and restrictions set forth in this Declaration set or establish minimum standards or limitations or restrictions on use in excess of any Governmental Regulations, the covenants, conditions and restrictions set forth in this Declaration shall take precedence and prevail over any less stringent Governmental Regulations. Similarly, when any Governmental Regulations are more stringent than those set forth in this Declaration, the more stringent Governmental Regulations shall control.

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(c) **Remedies of the Declarant**. By acceptance of a deed to all or any part of the Property, each Owner agrees that Declarant shall have the right to enter upon the Property if one or more conditions or activities prohibited by applicable Governmental Authority or this Declaration is maintained, or on which there has been a failure to perform any act required by applicable Governmental Authority or this Declaration, for the purpose of curing any such violation, provided that Owner has been given five (5) business days prior written notice and has failed to remedy the violation within such time, or if such violation cannot be remedied within such period, has failed to commence such remedy within such period and pursue the same diligently to completion. **EACH OWNER INDEMNIFIES AND HOLDS HARMLESS DECLARANT FROM ALL COST AND EXPENSE OF ANY SUCH CURATIVE ACTION AND ANY COST OR EXPENSE OR PENALTIES OR FINES LEVIED BY ANY GOVERNMENTAL AUTHORITY AS A RESULT OF THE ACT OR FAILURE TO ACT OF THE OWNER WITH RESPECT TO THE PROPERTY. THE FOREGOING REMEDY SHALL BE CUMULATIVE OF ALL OTHER REMEDIES FOR VIOLATIONS OF PROVISIONS OF THIS DECLARATION.**

(d) **Water Pollution Abatement Plan**. The Property lies within the area classified as the Edwards Aquifer Recharge Zone and as such is subject to the rules and regulations of agencies of the State of Texas, including the Texas Natural Resources Conservation Commission (TNRCC), governing the use of said land, in addition to the Governmental Regulations of the City of San Antonio, the City of Shavano Park, and other Governmental Authority. Each Owner is advised that such requirements and prohibitions may relate to the types of pesticides and fertilizers which may be used, minimum topsoil requirements, inspection of sewer laterals prior to covering, and criteria standards for sewer pipe, among other matters. Each Owner is responsible for ascertaining all such requirements and prohibitions with respect to the Property and, by acceptance of a deed to all or any part of the Property, agrees to abide by the same. No statement herein, nor action by the Declarant shall act to relieve any Owner from such duty of compliance. Each Owner is advised to obtain, read and use What's Bugging You? A Practical Guide to Pest Control, available from the Edwards Aquifer Authority (210/222-2204), or equivalent information produced by recognized authorities such as the Soil Conservation Service, Texas Department of Agriculture, U.S. Dept. of Agriculture, S.A.W.S., etc.

In addition to the foregoing, each Owner is required to abide by and comply with all of the terms of the Water Pollution Abatement Plan (WPAP) approved by TNRCC applicable to the Property and certain other properties. EACH OWNER IS ADVISED THAT THE WPAP CONTAINS RESTRICTIONS APPLICABLE TO THE PROPERTY. A copy of the WPAP may be obtained from Declarant.

(e) **Additional Obligations**. By acceptance of a deed to the Property, or by initiating construction of Improvements to the Property, each Owner assumes responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable Governmental Regulations, including, but not

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limited to those promulgated or issued by the Environmental Protection Agency and related to Storm Water Discharges from Construction Sites (see Federal Register, Volume 57, No. 175, Pages 41176 et seq.), and with the responsibility of ascertaining and complying with all regulations, rules, rulings, and determinations of the Texas Natural Resources Conservation Commission (TNRCC), related to the Property, including, without limitation, the provisions of Chapters 325 and 331, Texas Administrative Code, and any specific rulings made pursuant to the terms thereof. The foregoing references are made for the benefit of each Owner and do not in any way limit the terms and requirements of this covenant and the requirement that Owners and contractors comply with all Governmental Regulations, and any plan required by such Governmental Regulations, such as a Storm Water Pollution Plan, affecting the Property and construction site with which they are associated, including delivery to Declarant of a certification of understanding relating to any applicable NPDES permit prior to the start of construction. **EACH OWNER, BY ACCEPTANCE OF A DEED TO ALL OR ANY PART OF THE PROPERTY OR UNDERTAKING THE MAKING OF IMPROVEMENTS TO THE PROPERTY, AGREES TO HOLD HARMLESS, DEFEND AND INDEMNIFY DECLARANT FROM AND AGAINST ALL COST (INCLUDING REASONABLE ATTORNEYS FEES AND COURT AND OTHER COSTS), LOSS, LIABILITIES, FINES, PENALTIES OR DAMAGE OCCASIONED BY OWNER'S FAILURE TO ABIDE BY ANY APPLICABLE GOVERNMENTAL REGULATIONS RELATED TO THE PROPERTY.**

(f) **Annexation**. The Property lies within the extraterritorial jurisdiction of the City of Shavano Park ("CSP") and Declarant has requested the Property be annexed by CSP. It is anticipated that CSP will or may impose use or development requirements or standards on the Property or portions of the Property as a condition of approval of plats for one or more lots or in connection with such platting process. Each Owner is hereby advised that it is Declarant's intent that this Property be annexed into the city limits of the City of Shavano Park. All Owners shall comply with all conditions or restrictions imposed in connection with such annexation. No Owner will withdraw the request for annexation submitted to CSP without Declarant's prior written approval.

7. **EASEMENTS**.

(a) **Reserved Easements**. All dedications, limitations, restrictions and reservations shown on a plat of the Property or any part thereof or in any other instrument heretofore or to be recorded in the Deed and Plat Records and/or Real Property Records of Bexar County, Texas, and the easements, rights-of-way, restrictions, and related rights referenced therein are incorporated herein by reference and made a part of this Declaration for all purposes, as is 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 any part of the Property.

(b) **Drainage Easements**. Declarant hereby creates, declares, grants and reserves for the benefit of Declarant, Bexar County, the City, and each owner of all or any part of

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the Shavano Creek Commercial Properties, and any public or private providers of utility services to the Property and/or the Shavano Creek Commercial Properties, and their respective successors and assigns, nonexclusive easements for drainage on, over, under and across (i) all areas within ten (10) feet of the center line of all natural drainage courses on the Property, and (ii) the Property for the acceptance of stormwater drainage from the Property and the Shavano Creek Commercial Properties, before and after development thereof (collectively, the "Drainage Easements"). Each Owner shall, upon request by Declarant or other easement holder, or their respective successors or assigns, execute and deliver to the requesting party such instruments in recordable form necessary or desirable to further evidence and/or more specifically identify the as-built or designated location of the Drainage Easements. No Owner may perform or cause to be performed any act which would alter or change the course of the Drainage Easements in a manner that would divert, increase, accelerate or impede the flow of water over and across the Drainage Easements. More specifically, and without limitation, no Owner may:

(i) Alter, change or modify the existing natural vegetation or design of the Drainage Easements in a manner that changes the character of the design or original environment of such Drainage Easements; or

(ii) Alter, change or modify the existing configuration of the Drainage Easements, or fill, excavate or terrace such easements or remove trees or other vegetation therefrom without the prior written approval of Declarant; or

(iii) Construct, erect or install a fence or other structure of any type or nature within or upon the Drainage Easements; provided, however, that fences may be permitted in the event the proper openings are incorporated therein to accommodate the flow of water over the affected Drainage Easement as determined by a qualified engineer and the applicable Governmental Authority authorizes the construction; or

(iv) Permit storage, either temporary or permanent, of any type upon or within the Drainage Easements; or

(v) Place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the Drainage Easements, either on a temporary or permanent basis.

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Declarant may, from time to time, prepare or require the preparation of a grading plan for the Property. A copy of the grading plan shall be maintained by the Declarant. By acceptance of a deed to all or any part of the Property, each Owner covenants and agrees to ensure compliance that the Property is graded and maintained in accordance with the grading plan to the extent that compliance can be achieved without materially damaging or compromising the integrity of Improvements on the Property, and that the

drainage of the Property is maintained in accordance with a grading plan prepared by a professional engineer in connection with the construction of any Improvements on the Property.

(c) **Utility Easements.** Easements for installation and maintenance of utilities, cable television, and other utility facilities to service the Property and the Shavano Creek Commercial Properties have been reserved as shown on the plats and/or as provided by instruments of record. Declarant hereby creates, declares, grants and reserves for the benefit of Declarant, Bexar County, the City, and each owner of all or any part of the Shavano Creek Commercial Properties, and any public or private providers of utility services to the Property and/or the Shavano Creek Commercial Properties and their respective successors and assigns, nonexclusive easements for utility purposes over, under, within and upon the Property for the purposes of constructing, installing, inspecting, maintaining, repairing and replacing from time to time any and all utility lines, systems and facilities (including, without limitation, sanitary sewer, electric, gas, water, cable television and other utility services) from time to time deemed reasonably necessary or appropriate by Declarant for development of the Property and/or the Shavano Creek Commercial Properties. Each Owner shall upon request by Declarant or other easement holder, or their respective successors or assigns, execute and deliver to the requesting party such instruments in recordable form necessary or desirable to further evidence and/or more specifically identify the as-built or designated location of the easements reserved herein. All utility facilities on the Property shall be underground, except for necessary above-ground appurtenances to such facilities required by applicable Governmental Authority. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers and for paving of driveways, unless otherwise specifically prohibited by the plat or any other recorded easement. The easement area of the Property, if any, and all improvements in such easement area shall be maintained continuously by the Owner, except for those improvements for which Governmental Authority or any utility or private company is responsible.

(d) **Certain Other Easements.** There is hereby created in favor of the easement holders, the Declarant, and their respective successors and assigns, a right of ingress or egress across, over, and under the Property for the purpose of installing, replacing, repairing, and maintaining all facilities for utilities, including, but not limited to, water, sewer, telephone, electricity, gas, and appurtenances thereto, and to construct, reconstruct, repair, correct, replace, or maintain any wall, fixture, light, or other structure or item required to be constructed or maintained under the terms hereof or to correct or remove any condition prohibited to be maintained under the terms hereof; provided, however that all such activities shall be conducted in such a way as to minimize any impact on the business operated on the servient property and that once such activities are completed all Improvements including landscaping within the affected portion of the easement shall be restored at the sole cost and expense of the easement owner.

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(e) **Maintenance of Easements**. By acceptance of a deed to all or any part of the Property, each Owner covenants and agrees to keep and maintain, in a neat and clean condition, any easement which may traverse any portion of the Property, including, without limitation, removing weeds, mowing grass and trimming shrubbery and trees, if any, within such easement area.

(f) **Damages**. Declarant shall not be liable for any damages done by any utility company or their assigns, agents, employees or servants, using any easements now or hereafter in existence, whether located on, in, under or through the Property, to persons or to property, including, without limitation, fences, shrubbery, trees or flowers or other property now or hereinafter situated on, in, under, or through the Property. No provision hereof related to placement or the nature of structures or conditions on the Property, nor the approval thereof, express or implied, by the Declarant shall affect the rights of easement owners nor enlarge the rights of Owner with regard to the construction or maintenance of Improvements or conditions within the easement area.

8. **ENFORCEMENT.**

(a) **General**. Declarant and each Owner shall have the right, but not the obligation, to enforce all restrictions and covenants imposed by this Declaration. Failure to enforce any covenant or restriction shall not be deemed a waiver of the right. The reservation of the right of enforcement shall not create an obligation of any kind to enforce same. Any court action brought to enforce any obligation or restriction hereunder shall, if successful, entitle the prevailing party in such action to the award of costs and attorney's fees.

(b) **Declarant's Remedies**. If any Owner fails to construct, landscape or maintain its Property, as specified herein, Declarant shall have the right, but not the obligation, to proceed as follows:

(i) Give the Owner written notice of such failure whereupon the Owner must stop work immediately, submit a plan for remedy within thirty (30) days, and perform the required remedy in a reasonable time as identified by Declarant.

(ii) Should the Owner fail to fulfill his duty within thirty (30) days, then Declarant shall have the right, but not the obligation, to perform such remedy without any liability for damages or wrongful entry or trespassing.

(iii) The defaulting Owner or occupants (including lessees) of any part of the Property in which such work is performed shall jointly and severally be liable for the cost of such work and shall promptly reimburse Declarant for such cost.

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(iv) Should the Owner or occupant fail to reimburse Declarant within thirty (30) days after receipt of its statement, then the debt shall be a debt of all such persons, jointly and severally, and shall constitute a lien against that portion of the Property on which the work was performed.

(v) The liens created shall be subordinate and inferior to any and all mortgages and/or deeds of trust filed of record prior to filing of the lien affidavit by Declarant.

(vi) Failure to pay on time will result in the over-due amount bearing interest at the highest, per annual, legal rate of interest permitted and the Owner shall additionally be obligated to pay reasonable attorney's fees incurred by Declarant and such sums shall be subject to the liens of Declarant.

(vii) Declarant shall have the right to enter the grounds of any lot or tract within the Property, at any time for the purposes of inspecting the Property and determining the adequacy of the Owner's maintenance without any liability for damage, wrongful entry or trespassing.

(c) **Easement Holders**. Declarant, the owners of all or any part of the Shavano Creek Commercial Properties, and all other holders of the easements referenced in Section 7 herein shall have the right to enforce all restrictions, covenants and provisions with respect to the easements as set forth in Section 7 herein. Failure to enforce any such provision shall not be deemed a waiver of the right of enforcement. Any court action brought to enforce any obligation or restriction pursuant to Section 7 shall, if successful, entitle the prevailing party in such action to the award of costs and attorney's fees.

9. **PROPERTY CONDITION**.

(a) **Proximity to Quarries**. The Property is located approximately one-half (1/2) mile southeast of the Vulcan Materials stone quarry and approximately two and one-half (2½) to three (3) miles southwest of the Martin Marrietta (Beckman Quarry East and Beckman Quarry West) stone quarry, as depicted on Exhibit E attached hereto and incorporated herein (collectively, the "Quarries").

EACH PROSPECTIVE PURCHASER IS ADVISED THAT DIVERSE MATERIAL EXTRACTION AND PROCESSING HAVE AND WILL OCCUR ON THE QUARRY PROPERTIES, AND MAY INCLUDE, WITHOUT LIMITATION, MINING, BLASTING, EXTRACTION, PROCESSING, HANDLING, CRUSHING, WASHING, SCREENING, SORTING, STOCKPILING, AND/OR THE PRODUCTION, PACKAGING, DISTRIBUTION AND TRANSPORTATION OF AGGREGATE, CONCRETE AND CONCRETE PRODUCTS, INCLUDING ACTIVITIES REQUIRED FOR THE SUPPORT OF SUCH OPERATIONS, SUCH AS VEHICLE MAINTENANCE AND REPAIR FACILITIES, OFFICE AND DISPATCH FACILITIES, OUTSIDE STORAGE OF

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MATERIALS, AND OTHER OPERATIONS INCIDENTAL TO QUARRY OPERATIONS. COMPLETE INFORMATION ON THE QUARRY OPERATIONS, INCLUDING BLAST LEVELS AND SCHEDULES, OPERATING HOURS AND OTHER INFORMATION SHOULD BE OBTAINED FROM THE QUARRY OPERATORS, MARTIN MARIETTA MATERIALS SOUTHWEST, INC., 17910 IH-10 WEST, SAN ANTONIO, TEXAS 78257, TELEPHONE 210-696-8500, AND VULCAN MATERIALS COMPANY, 800 ISOM ROAD, SAN ANTONIO, TEXAS 78216, TELEPHONE 210-524-3500.

Declarant makes no warranties, representations or covenants with respect to the effect on the Property or the value thereof of the blasting or other quarry operations at the Quarries. By completing the purchase of all or any part of the Property, each Owner acknowledges and agrees that it has been afforded full access to, and has fully and completely inspected and investigated all aspects of the Property to its satisfaction, including the proximity of the Property to the Quarries and the operations at the Quarries, and has made an independent determination of the suitability of the Property for Owner's intended use. **BY PURCHASING ALL OR ANY PART OF THE PROPERTY, EACH OWNER AGREES (i) TO WAIVE, ACQUIT AND RELEASE DECLARANT, AND (ii) NOT TO INSTITUTE SUIT AGAINST DECLARANT WITH RESPECT TO THE PROPERTY ARISING OUT OF THE PROXIMITY OF THE PROPERTY TO THE QUARRIES AND THE OPERATIONS OF THE QUARRIES.**

(b) **Indemnification and Release. EACH PROSPECTIVE PURCHASER IS RESPONSIBLE FOR THOROUGHLY INSPECTING AND EXAMINING THE PROPERTY AND FOR CONDUCTING SUCH INVESTIGATIONS OF THE PROPERTY AS IT DEEMS NECESSARY TO EVALUATE ITS PURCHASE. BY COMPLETING THE PURCHASE OF ALL OR ANY PART OF THE PROPERTY, EACH PROSPECTIVE PURCHASER IS ACKNOWLEDGING THAT IT IS PURCHASING THE PROPERTY ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS.**

BY PURCHASING ALL OR ANY PART OF THE PROPERTY, EACH OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS AND TO UNCONDITIONALLY RELEASE DECLARANT, ITS PARTNERS, OFFICERS, DIRECTORS, CONTRACTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY CLAIMS, COSTS, FEES, EXPENSES, DAMAGES OR LIABILITIES THAT AN OWNER, HIS FAMILY, EMPLOYEES, GUESTS, TENANTS, CONTRACTORS AND ANY OTHER INVITEES MAY SUFFER OR INCUR AS A RESULT OF, ARISING OUT OF, OR RELATED TO ANY CONDITION ON, IN OR UNDER ALL OR ANY PART OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, CAVES, SINKHOLES, STREETS, TREES WITHIN OR NEAR THE STREET RIGHTS-OF-WAY, DRAINAGE FACILITIES, AND OTHER DANGEROUS OBJECTS OR CONDITIONS OF WHICH DECLARANT HAS NO ACTUAL KNOWLEDGE AS OF THE DATE OF RECORDING OF THIS INSTRUMENT OR AS TO WHICH DECLARANT HAS MADE A WRITTEN DISCLOSURE TO OWNER.

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10. **GENERAL PROVISIONS**.

(a) **Severability**. Invalidation of any one of the provisions, covenants or restrictions set forth in this Declaration by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

(b) **Term**. The foregoing covenants are made and adopted to run with the land, and shall be binding upon the undersigned and all parties and persons claiming through and under the undersigned until December 31, 2026, at which time said covenants will be automatically extended for successive periods of twenty-five (25) years, unless an instrument signed by Declarant and the then record Owners in the aggregate of 2/3rds or more of the gross land area of the Property has been recorded agreeing to terminate or change said covenants in whole or in part.

(c) **Assignment by Declarant**. Notwithstanding any provision in this Declaration to the contrary, Declarant may in writing filed of record expressly assign, in whole or in part, any of the privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder. Upon assignment by Declarant of any or all of such rights, such Declarant shall no longer be liable for performance of such assigned rights provided that the assignee expressly assumes in the recorded assignment the obligations of Declarant that are assigned.

(d) **Amendment**. This Declaration may be amended by written instrument executed by the then Owners in the aggregate of 2/3rds or more of the gross land area of the Property and the Declarant, upon recording of such written instrument in the Real Property Records of Bexar County, Texas. Notwithstanding the foregoing, Declarant shall have the right to file an amendment to this Declaration, without the necessity of joinder by Owner, for the limited purposes of correcting a clerical error.

(e) **Singular Includes Plural**. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(f) **Captions**. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs or sections hereof.

(g) **Notice**. Whenever written notice to an Owner is permitted or required hereunder, such notice shall be given by mailing such notice to the address of such Owner appearing on the records of the Declarant, unless such Owner has given written notice to the Declarant of a different address, in which event such notice shall be sent to the Owner at the address so designated. Such notice shall conclusively be deemed to have been given as of the date such notice is deposited in the United States Mail,

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certified mail, return receipt requested, properly addressed, whether actually received by the addressee or not.

(h) **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Bexar County, Texas.

(i) **Counterparts.** This Declaration may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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DECLARANT:

SHAVANO CREEK COMMERCIAL PARTNERSHIP UNIT 1, LTD., a Texas limited partnership

By Its General Partner:

BITTERBLUE, INC., a Texas corporation

By: _____
Wm. E. Powell
Chief Executive Officer

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on October 22, 2001, by Wm. Eugene Powell, Chief Executive Officer of Bitterblue, Inc., a Texas corporation, as the General Partner of Shavano Creek Commercial Partnership Unit 1, Ltd., a Texas limited partnership, on behalf of said corporation and limited partnership.

_____
Notary Public, State of Texas

MELANIE L. KENWORTHEY
NOTARY PUBLIC
STATE OF TEXAS
My Comm. Exp. 02-13-2005

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AFTER RECORDING, RETURN TO:
Ms. Jamie M. Wilson
Kerr, Wilson & Negrón, P.C.
750 E. Mulberry, Suite 510
San Antonio, Texas 78212

Exhibits:
Exhibit A – Property
Exhibit B – Shavano Creek Commercial Properties
Exhibit C - Cooke Plans
Exhibit D – Restricted Area
Exhibit E – Location of Quarries

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EXHIBIT A

FIELD NOTES

FOR

A 1.838 acre, or 80,050 square feet tract of land being out of Lot 1400 of the Shavano Park Unit 16A Subdivision recorded in Volume 9509, Page 209-212 of the Deed and Plat Records of Bexar County Texas, out of the McRae Survey No. 391, Abstract 482, County Block 4782 of Bexar County Texas. Said 1.838 acre tract being more fully described as follows:

COMMENCING At a found ½" iron rod at the most easterly return of the intersection of the northwest right-of-way line of Huebner Road and the northeast right-of-way line of Lockhill-Selma Road, the Southeast corner of the said Lot 1400;

THENCE: N 41°50'46"E, along and with the northwest right-of-way line of said Huebner Road and the southeast line of said Lot 1400, a distance of 410.00 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson" at the POINT OF BEGINNING;

THENCE: N 48°09'14"W, departing the northwest right-of-way line of said Huebner Road, a distance of 204.21 feet to a set ½" iron rod with yellow cap marked "Pape-Dawson" for an interior angle within said Lot 1400;

THENCE: S 41°50'46"W, a distance of 214.67 feet to a point;

THENCE: N 48°16'11"W, a distance of 260.73 feet to a point on the northwest line of said Lot 1400, being in the southeast line of Lot 1404 of the aforementioned Shavano Park Unit 16A Subdivision;

THENCE: N 47°42'29"E, along and with the northwest line of said Lot 1400 and the southeast line of said Lot 1404, at 121.73 feet passing the common corner of said Lot 1404 and Lot 1405 of the Shavano Park Unit 16A Subdivision, and a total distance of 276.64 feet to a found ½" iron rod at the northernmost corner of said Lot 1400 and the easternmost corner of said Lot 1405, also being at a corner on the southwest line of Lot 1417 of said Shavano Park Unit 16A Subdivision;

THENCE: S 48°09'14"E, along and with the northeast line of said Lot 1400 and the southwest line of said Lot 1417, at 186.94 feet, passing the common corner of Lot 1417 and Lot 1418 of said Subdivision, and a total distance of 436.22 feet to a found ½" iron rod on the northwest right-of-way line of the aforementioned Huebner Road;

THENCE: S 41°50'46"W, along and with the northwest right-of-way line of said Huebner Road a distance of 60.00 feet to the POINT OF BEGINNING and containing 1.838 acres in Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc..

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: June 12, 2001
JOB No.: 9556-01
DOC.ID.: n:\survey01\1-9600\9556-01\Fnotes.doc

6-12-2001

STATE OF TEXAS
REGISTERED
JOHN NOEL NICHOLLS
4402
PROFESSIONAL
LAND SURVEYOR

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PAPE-DAWSON ENGINEERS, INC.

555 East Ramsey | San Antonio, Texas 78216 | Phone: 210.375.9000 | Fax: 210.375.9010 | info@pape-dawson.com

EXHIBIT B

SHAVANO CREEK COMMERCIAL PROPERTIES

Lot 1400, Shavano Park Unit 16A, in Bexar County, Texas, according to plat thereof recorded in Volume 9509, Page 209, Deed and Plat Records of Bexar County, Texas, **SAVE AND EXCEPT** the 1.838 acre tract of land described in Exhibit A attached to this Declaration.

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EXHIBIT C

COOKE PLANS

Grading Plan: Grading Plan for Huebner Road project, prepared by G.E. Reaves Engineering, Inc., Robert Thornber, P.E. #83416, Job No. 01-0928, dated 9-4-01, Sheet C1.0.

Building Plans: A new building for Luv – N – Care Child Development Centers, Huebner Road at Lockhill-Selma Road, San Antonio, Texas, prepared by Tschoepe & Associates, consisting of the following:

Architectural:
A0 Cover Sheet
A1 Floor Plan
A2 Interior Elevations
A3 Exterior Elevations
A4 Reflected Ceiling Plan
A5 Building Sections
A6 Roof Plan and Details
A7 Wall Sections and Details
A8 Schedules

Structural:
S1 Foundation and Roof Framing Plans
S2 Building Sections and Details
S3 Sections and Details
S4 Retention Tank Plans and Details

Mechanical:
M1 First Floor – H.V.A.C.
M2 Attic and Pool House – H.V.A.C.
M3 Mechanical Details and Schedules

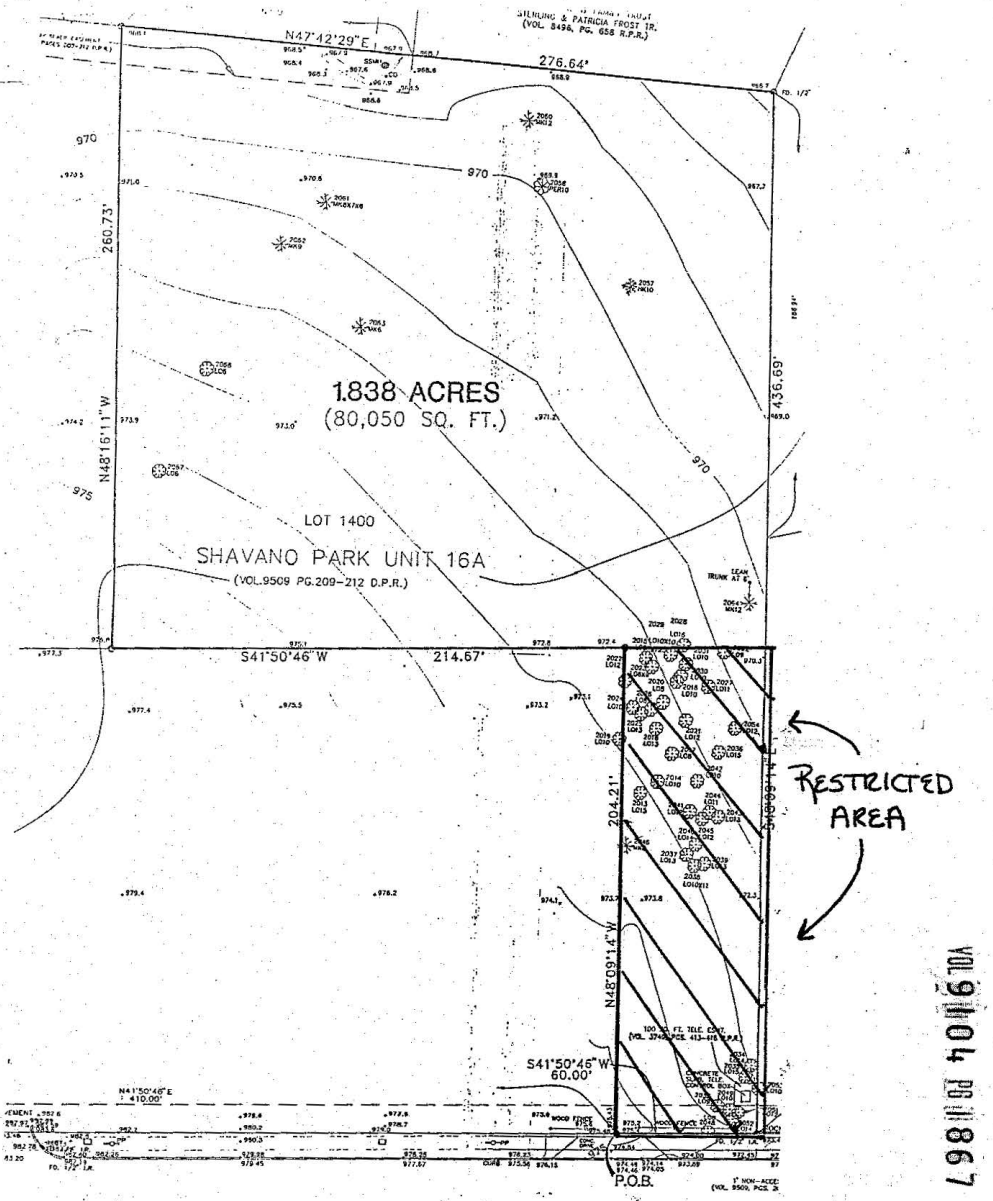
Electrical:
E1 First Floor – Lighting Plan
E2 First Floor – Power Plan
E3 Attic and Pool House – Lighting Plan
E4 Attic – Power Plan
E5 Riser Diagram and Schedules

Plumbing:
P1 First Floor Plumbing
P2 Pool House Plumbing
P3 Plumbing Details
P4 Plumbing Schedules

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EXHIBIT D

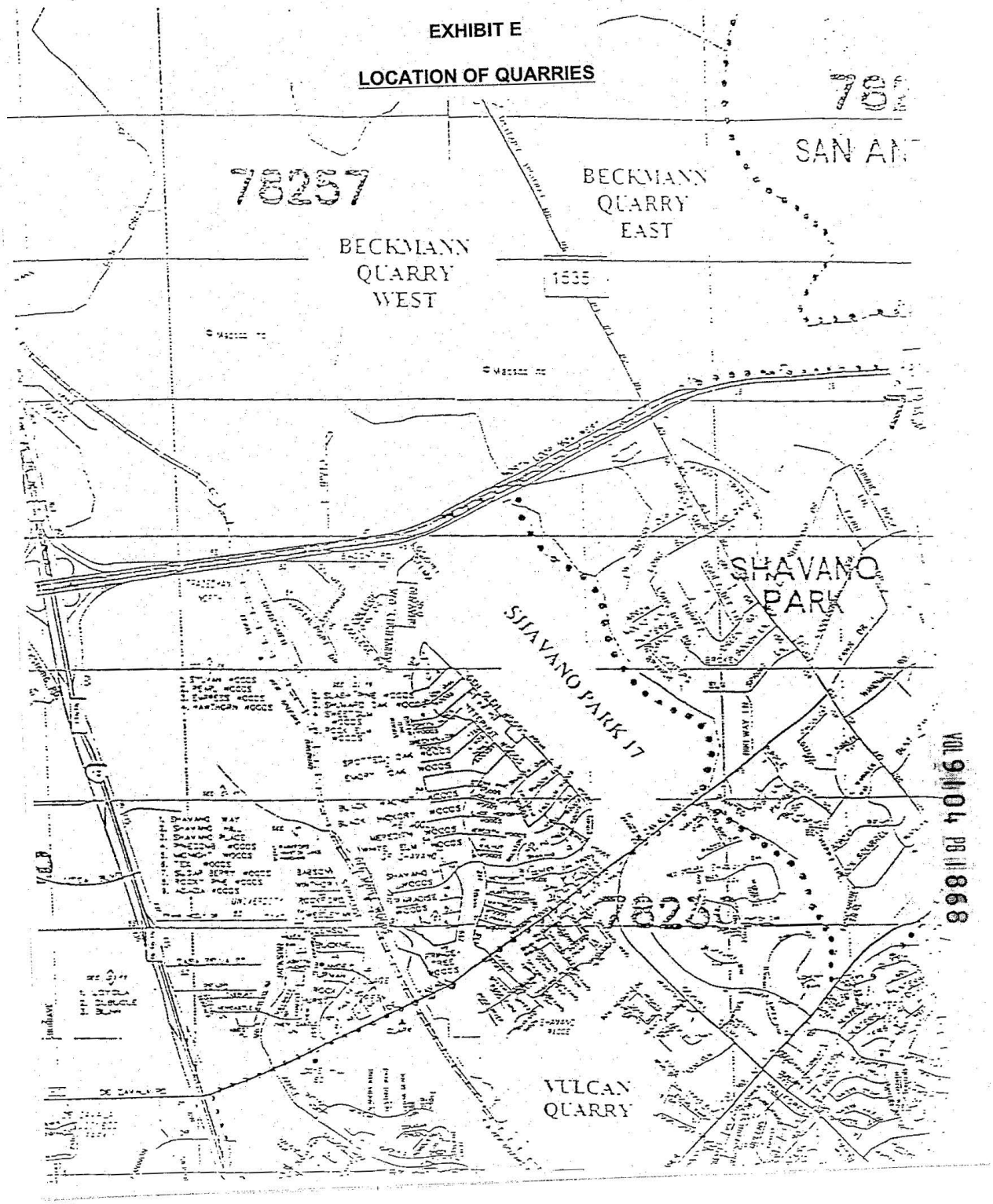
RESTRICTED AREA



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EXHIBIT E

LOCATION OF QUARRIES



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RECORDER'S MEMORANDUM

AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law
STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

OCT 25 2001

COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20010188420
Pages 34
10/25/2001 02:48:26 PM
Filed & Recorded in
Official Records of
BEXAR COUNTY
GERRY RICKHOFF
COUNTY CLERK
Fees $75.00

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