

DALE A. CRENWELGE

TO

THE PUBLIC

DECLARATION OF ROAD MAINTENANCE AGREEMENT,
ROADWAY EASEMENT, AND UTILITY EASEMENT OF SCENIC OAKS
DEVELOPMENT

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GILLESPIE §

THAT, DALE A. CRENWELGE, is the owner of those certain tracts of land known as SCENIC OAKS DEVELOPMENT (hereinafter referred to as the "Subdivision"), an unplatted subdivision situated in Gillespie County, Texas, comprising approximately 418.69 acres part of the following surveys: B.F.I. & M. Co. Survey No. 175, Abstract No. 761, the C. Schreiner Survey No. 102, Abstract No. 1261, the Rusk Transportation Survey No. 101, Abstract No. 609, the G.B. & C.N.G.R.R. Co. Survey No. 177, Abstract No. 775, the A.B. & M. Survey No. 897, Abstract No. 14, and the C. Schreiner Survey No. 898, Abstract No. 1262; said 418.69 acre tract of land is described in the aggregate by metes and bounds on **Exhibits "1-17"** attached hereto and incorporated herein by reference, the "Property", as such, desiring to create and carry out a uniform plan for the improvement, development, and sale of the subdivided tracts situated within the Property, does hereby adopt and establish the following easements, restrictions, covenants and conditions ("Protective Covenants") to run with the land and to apply in the use, occupancy, and conveyance of the aforesaid described Property therein, which easements, restrictions, covenants and conditions shall be binding on all parties having a right, title or interest in or to the above described Property or any part thereof, and their heirs, successors and assigns, and which easements, restrictions, covenants and conditions shall inure to the benefit of each owner thereof; and each contract or deed which may be executed with regard to any of such property shall be conclusively held to have been executed, delivered and accepted, subject to the following restrictions and covenants (the headings being employed for convenience only and not to be controlling over content):

ARTICLE I.

DEFINITIONS

"Declarant" shall mean and refer to DALE A. CRENWELGE, his successors and assigns, if successors or assigns should acquire substantially of the undeveloped and unsold lots or acreage from the Declarant for the purpose of development.

"Declaration" shall mean this instrument as it may be amended from time to time.

"Managing Owner" shall mean DALE A. CRENWELGE or such other Owner who, pursuant to the terms and provisions of Article IV of this Agreement (dealing with Managing Owner) becomes a successor person or entity charged with the rights, privileges, duties,

obligations, and liabilities assigned to the Managing Owner in this Agreement.

"Owner" shall mean and refer to the record owner, whether one or more persons of a fee simple title to any Tract, or any subdivision of a Tract, including contract Sellers, but excluding those having such interest merely as security for the performance of an obligation, and their heirs, successors and assigns.

"Property" shall mean and refer to that certain unplatted subdivision known as SCENIC OAKS DEVELOPMENT (hereinafter referred to as the "Subdivision"), situated in Gillespie County, Texas, comprising approximately 418.69 acres part of the following surveys: B.F.I. & M. Co. Survey No. 175, Abstract No. 761, the C. Schreiner Survey No. 102, Abstract No. 1261, the Rusk Transportation Survey No. 101, Abstract No. 609, the G.B. & C.N.G.R.R. Co. Survey No. 177, Abstract No. 775, the A.B. & M. Survey No. 897, Abstract No. 14, and the C. Schreiner Survey No. 898, Abstract No. 1262; said 418.69 acre tract of land is described in the aggregate by metes and bounds on **Exhibits "1-17"** attached hereto and incorporated herein by reference.

"Tract" shall mean any subdivision of the Property resulting in parcels out of the Property. A preliminary plat of the proposed division of the property into 17 tracts is attached hereto as **Exhibit "A"** attached hereto and made a part hereof for all pertinent purposes. The proposed division is not binding upon Declarant and the property may be subdivided into more or less tracts of different dimensions and acreage.

ARTICLE II.

ADDITION OF LAND

Section 1. Addition of Land. Declarant hereby reserves to itself and shall hereafter have the right, but not the obligation at any time and from time to time, in its sole and absolute discretion, and without notice to or the approval of any party or person whomsoever or whatsoever, to impose this Declaration or a substantially similar Declaration upon additional property adjacent, contiguous or nearby to the Property (the "added Property"). Declarant may, at any time and from time to time, add any other lands to the Property, and upon such addition, this Declaration and the covenants, conditions, restrictions, obligations, utility and roadway easements set forth herein shall apply to and inure to the benefit of the added land, and the rights, privileges, duties and liabilities of the persons subject to the Declaration shall be the same with respect to the added land as with respect to the lands originally covered by this Declaration, unless such supplemental Declaration shall provide for changes to the Declaration to deal with the unique character of Declarant's overall development plans for the added property. In order to add lands to the Property hereunder, Declarant shall be required only to record in the Official Public Records of Gillespie County, Texas, a notice of addition of land (in the form of a Supplemental Declaration) containing the following provisions:

(a) A reference to this Declaration, which reference shall state the book and page numbers of the Official Public Records wherein this Declaration is recorded;

- (b) A statement that the provisions of this Declaration shall apply to the added land;
- (c) A legal description of the added land;
- (d) A conveyance of an access easement over the roadway or roadways; and
- (e) Any covenants, conditions, or restrictions that are different or unique to the added land.

ARTICLE III.

ROADWAY EASEMENTS

3.01 Attached hereto as **Exhibit "B"** and incorporated herein is a centerline description of a sixty (60) foot wide tract of land ("roadway tract").

3.02. Declarant will construct the streets and roads over the roadway tract which provide ingress, egress and regress to the Properties (the "Roadway or Roadways"). Declarant hereby dedicates the Roadways for the common use of all Owners, and does hereby grant to all such Owners, their heirs, successors and assigns, and their agents, licensees, guests, tenants, invitees and permittees, the free nonexclusive and uninterrupted use, liberty, privilege and easement of passage in and along the Roadways, together with free ingress, egress and regress, over and across the same, at all times and seasons forever, in, along, upon and out of said way (the "Roadway Easement"). The right to use and enjoy the Roadway Easement shall exist in favor of and shall inure to the benefit of the Owners, and each of them, and each of their respective heirs, successors and assigns, and their respective agents, licensees, tenants, guests, invitees and permittees in common with each other, the Declarant, the Declarant's successors and assigns, and their respective agents, licensees, tenants, guests, invitees and permittees. The Roadway Easement shall further be deemed an easement appurtenant to the Property, and the added Property and each and every portion thereof. The right of ingress and egress provided by the Roadway Easement may be exercised by any reasonable means, whether now in existence or known or whether by a means which may come into existence in the future, and regardless of any increased burden which may result from such use.

3.03 THE ROADWAY CONSTRUCTED UPON THE ROADWAY TRACT WILL BE MAINTAINED AND REPAIRED BY MAINTENANCE ASSESSMENTS WHICH ARE COLLECTED FROM OWNERS OF TRACTS WITHIN THE PROPERTY.

3.04 ALL ROADWAYS PROVIDING ACCESS TO THE SCENIC OAKS DEVELOPMENT, AN UNPLATTED SUBDIVISION IN GILLESPIE COUNTY, TEXAS, (THE "SUBDIVISION") SHALL BE PRIVATELY MAINTAINED BY THE OWNERS OF TRACTS IN THE SUBDIVISION. GILLESPIE COUNTY, TEXAS SHALL NOT BE

RESPONSIBLE FOR THE MAINTENANCE AND REPAIR OF THE ROADWAY. THE ROADWAY FOR ACCESS TO THE SUBDIVISION WILL BE MAINTAINED AND REPAIRED BY MAINTENANCE ASSESSMENTS WHICH ARE COLLECTED FROM OWNERS OF TRACTS WITHIN THE SUBDIVISION. BY ACCEPTANCE OF A DEED TO A TRACT WITHIN THE SUBDIVISION, EACH OWNER OF SUCH TRACT COVENANTS AND AGREES TO WAIVE ANY RIGHT SUCH OWNER MAY HAVE TO DEMAND OR COMPEL THE MAINTENANCE OR REPAIR OF THE ROADWAYS OF THE SUBDIVISION BY GILLESPIE COUNTY, TEXAS AND IS ESTOPPED FROM DOING SO.

3.05 Each Owner agrees that no Owner may impede, block, obstruct or otherwise interfere with the use of the roadway easement by any other Owner.

ARTICLE IV.

MAINTENANCE AGREEMENT

4.01 Each Owner agrees to pay all assessments which may be made on their respective Tract for the purpose of maintaining, repairing and replacing a roadway upon the roadway tract. These expenses (herein "maintenance expenses") may include, but shall not be limited to, (1) the reconstruction, repair, maintenance, upkeep or replacement of the roadway, shoulders, drainage ditches, proposed concrete slab and culverts as an all-weather roadway, and (2) the costs of professional and other outside services, labor, equipment, and materials necessary to carry out the purpose as set out herein.

4.02 Beginning January 1, 2021, the Owner of each Tract of land out of the Property shall pay to the Managing Owner \$300.00 per year (the annual maintenance assessment) without deductions, set off or prior demand, as its contribution to costs and expenses for the repair, maintenance, restoration and improvement of the roadway.

4.03 If any of the Tracts are divided by an Owner of a Tract, the maintenance assessment shall be a charge upon each of the resulting tracts after the division.

4.04 In the event the Managing Owner has obtained proposals and bids for repair, maintenance and improvement of the roadway which will exceed the annual maintenance assessments (extraordinary maintenance expense), notice shall be given to each owner in writing at their mailing address for receipt of tax statements from the Gillespie Central Appraisal District, fifteen (15) days prior to the proposed date of a meeting to consider proposed extraordinary maintenance expenses, together with a notification of the place of meeting which shall be in Gillespie County, Texas. A quorum for the purpose of approving a proposal for an extraordinary maintenance expense expenditure shall be the attendance of Owners, or their agents acting by written proxy, owning at least 50% of the acreage within the Property. Approval by Owners, or their agents acting by written proxy, representing more than 50% of the acreage in the Property in attendance at a quorum shall be required for the approval of an

extraordinary maintenance assessment.

4.05 Any Owner who shall fail to deliver their annual maintenance assessment or their extraordinary maintenance assessment to the Managing Owner, within thirty (30) days of the date of receipt of notice of assessment, shall be in default. In the event any Owner shall advance the amount which is due by the defaulting Owner for the payment of the defaulting Owner's maintenance assessment, the advancing Owner shall be entitled to recover from the defaulting Owner the amount in default, interest at the rate of 10.00% per annum from and after the date that the defaulted amount is advanced by the advancing Owner, together with court costs and reasonable and necessary attorney's fees incurred in collection. The maintenance assessments, together with interest, court costs and reasonable and necessary attorney's fees shall be a charge on the defaulting Owner's Tract and shall be secured by a continuing lien upon the Tract provided a notice of lien has been filed in the Official Public Records, Gillespie County, Texas. The inception date of the lien shall be the date of its filing. The lien to secure the payment of maintenance assessments shall be subordinate to the lien of any home equity, purchase money or improvement lien made upon the tract. The validity, enforcement, and priority of the lien shall be subject to the filing of a notice of default in the payment of maintenance assessments in the Official Public Records of Gillespie County, Texas.

ARTICLE V.

MANAGING OWNER

5.01 Term of Office. Except as otherwise provided in this Article IV, the term of office for the Managing Owner shall commence upon the effective date of this Agreement and shall end upon the earliest of the following dates:

Two (2) years from commencement of the term of office, the date of death of the Managing Owner, the effective date of the resignation of the Managing Owner, the date of removal from office in accordance with the terms and provisions of Section 4.02, or the expiration of the maintenance term of this Agreement.

5.02 Resignation or Removal From Office. The Managing Owner, in the sole and absolute discretion of the Managing Owner, may resign effective as of thirty (30) days next following written notice to all other Owners. The Managing Owner may be removed from office without cause by the Owners representing at least two-thirds (2/3rds) of the total acreage within the Property.

5.03. Election of Successor of Managing Owner. Upon expiration of the term of office or the resignation or removal from office of the Managing Owner, any Owner may, upon ten (10) calendar days written notice to all other Owners, call a meeting of Owners for the purpose of appointing a successor Managing Owner. The successor Managing Owner must be an Owner and the appointment of a successor Managing Owner shall require approval of the Owners representing more than fifty percent (50%) of the total acreage of the Property.

5.04. Accounting. On or before January 31 of each calendar year, the Managing Owner shall provide an accounting in writing to all of the Owners of the receipts and expenses for the prior calendar year, supported by evidence of the source of the receipt and the statement and/or invoice for any expense incurred.

ARTICLE VI.

EASEMENTS – UTILITY

Section 1. Reservation of Utility Easements. Declarant reserves unto Declarant and its successor and/or assigns, perpetual easements (the “Utility Easements”) for the installation and maintenance of underground utilities and all necessary appurtenances thereto, along and within, (i) the Roadway Easement, (ii) ten (10) feet along and outside of all boundaries of the Roadway Easement, (iii) ten (10) feet of the rear, front and side boundary lines of all Tracts, and (iv) twenty (20) feet along the entire perimeter boundary of the Subdivision; with the authority to place, construct, operate, maintain, relocate and replace underground utility lines, systems and equipment thereon for electrical, cable TV, fiber optic, internet, telephone and other forms of communications and services. Nothing shall be placed or permitted to remain within the easement areas which may damage or interfere with the installation and maintenance of utilities. Utility providers shall have all of the rights and benefits necessary and convenient for the full enjoyment of the rights herein granted, including, but not limited to the free right to ingress to, and egress from, easement areas, and the right from time to time to cut and trim all trees, undergrowth and other obstructions that may injure, endanger or interfere with the installation, operation or maintenance of utilities. Declarant shall have the right, without the necessity of joinder by any Owner, to execute and deliver any and all instruments that may be required by any provider of such utilities in order to grant or assign such provider the right to utilize the easement reserved hereby to provide such utilities.

Section 2. Changes, Additions, and Reservations. Declarant reserves the right to make changes in and additions to the easements described in this Article IV for the purpose of more efficiently and economically installing any Improvements. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, (i) to grant, dedicate, reserve or otherwise create easements for utility purposes, (including, without limitation, water, sewer, gas, electricity, telephone, cable television, internet, and fiber optic) in favor of any person or entity furnishing or to furnish utility services to the Property, but only to the extent reasonably necessary and appropriate, and (ii) to execute and deliver any and all instruments and documents in connection therewith, including, without limitation, any and all instruments and documents that may be required by any provider of such utilities.

ARTICLE VII.

TERM

The covenants and conditions set forth in this Declaration 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 them until January 1, 2051, at which time said covenants and conditions shall be automatically extended for successive periods of ten (10) years unless and until an instrument executed by Owners owning at least two-thirds (2/3rds) of the total acreage in the Property has been recorded agreeing to terminate said covenants and conditions in whole or in part.

ARTICLE VIII.

ENFORCEMENT

Any Owner, shall have the right to enforce, by proceedings at law or in equity, the terms, provisions, covenants, restrictions, and conditions of this Declaration. Failure of any Owner to take any action upon any breach or default shall not be deemed a waiver of their right to take action upon any subsequent breach or default.

ARTICLE IX.

PARTIAL INVALIDITY

The invalidation of any of the terms, provisions, covenants, restrictions, or conditions contained in this Declaration, by judgment, court order, operation of law or otherwise, shall in no way affect the validity any of the other terms, provisions, covenants, restrictions, or conditions hereof, which shall remain in full force and effect.

ARTICLE X.

AMENDMENT

The Owners (but expressly excluding their respective mortgagee's, if any) of at least 80% of the acreage in the Property may amend this Declaration by executing and filing an instrument containing such amendment, in the office of the County Clerk of Gillespie County, Texas.

ARTICLE XI.

WAIVER AND LACHES

The obligation to abide by the provisions contained in this Declaration shall be deemed to be of a continuing and continual basis. Each and every day an Owner allows a condition to exist on such Owner's Tract which is not in compliance with the requirements contained herein shall constitute a separate and individual violation hereof, and shall give rise to a new cause of action for such breach. The intended effect and express purpose of this provision shall be that every Owner, by accepting title to a Tract, hereby waives the affirmative defenses of the statute of limitations, waiver and laches with respect to covenant violations.

ARTICLE XII.

BINDING EFFECT

This Agreement shall inure to the benefit of and be binding upon the Managing Owner, the Owners and their respective heirs, successors and assigns.

EXECUTED this _____ day of _____, 2020.

DALE A. CRENWELGE

THE STATE OF TEXAS §

COUNTY OF GILLESPIE §

This instrument was acknowledged before me on this the _____ day of _____, 2020, by DALE A. CRENWELGE.

Notary Public, State of Texas