

RESTRICTIVE COVENANTS & CONDITIONS (Pontotoc)

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MASON §

Be it known that Rolling Vistas, Ltd., a Texas limited partnership (“Declarant”), for the purpose of attaching these Restrictions & Conditions (“Restrictions”) upon the Tract(s), as set out below and any other property added to the Tract(s) in the future (as described in Section 18.03), does hereby adopt and impose on behalf of itself, its legal representatives, successors and assigns, the following Restrictions, conditions and use limitations upon the Tract(s). All these Restrictions, conditions, and use limitations set forth herein shall become part of all contracts of sale, contracts for deed, deeds, and other legal instruments whereby the title or possession of any part or portion of the Tract(s) is hereafter conveyed or transferred.

DEFINITIONS:

As used in these Restrictions, the terms set forth below have the following meanings:

Auxiliary Structure- a building of any type other than a Residential Dwelling that is constructed or placed on a Tract, whether or not it is affixed to the land, including but not limited to a garage, barn, storage building, greenhouse, and other building constructed or placed on any part of a Tract. Living quarters may be included in an Auxiliary Structure that is constructed on the Tract, but such structure is not considered a Residential Dwelling for the purpose of these Restrictions unless, at Owner’s option, the Owner declares the said Auxiliary Structure with living quarters to be a Residential Dwelling and said structure meets all criteria for a Residential Dwelling. Manufactured Home(s) as defined below shall not be considered an Auxiliary Structure for the purposes of these Restrictions.

Barndominium(s)- a Residential Dwelling or Auxiliary Structure which includes habitable living quarters and exterior aesthetics which blend a typical residential home design with a barn design. Barndominiums must comply with the requirements of Article III below.

Builder- a person or entity other than Declarant who either purchases a Tract(s) for the purpose of constructing a Residential Dwelling or Auxiliary Structure thereon for sale or is engaged by the Owner of a Tract for the purpose of constructing a Residential Dwelling or Auxiliary Structure on the Tract.

Declarant- Rolling Vistas, Ltd., a Texas limited partnership, its successors or assigns.

Guest House- a structure with living quarters for residential purposes constructed on the Tract after the primary residential structure has been completed.

Manufactured Home(s)- a mobile home, manufactured home, modular home, or other similar structure that is not a site-built residence permanently affixed to the land. Manufactured Home(s) shall not be considered an Auxiliary Structure. **Manufactured Home(s) shall not be allowed.**

Owner or Owners- any person, firm, corporation or other entity or any combination thereof that is the record Owner of fee simple title to a Tract, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Residential Dwelling- the primary residential structure on a Tract for single-family residential use meeting the minimum square footage requirements as described in Section 3.01.

TCEQ- the Texas Commission on Environmental Quality.

Tract or Tract(s)- shall mean and refer to each tract or parcel of land described as Tracts 1 – 14 on Exhibits “A-N” attached hereto and incorporated herein by reference. In the event any Tract is subdivided as allowed in accordance with these Restrictions, the resulting parcel(s) shall then each also

be referred to as a Tract. Should any property be added to these Restrictions in accordance with Section 18.03 the additional property shall then each also be referred to as a Tract(s).

Travel Trailer- A commercially built non-self-propelled recreational vehicle with wheels designed to be used as a piece of camping equipment, pulled by a motor vehicle. Unit must include living quarters, and provide cooking, eating, sleeping and bathroom facilities. A structure built on a movable trailer frame shall not be considered a Travel Trailer for the purposes of these restrictions.

I. GENERAL

I.1. LIMITATIONS: The Tract(s) will be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in these Restrictions, which run with the land.

I.2. UTILITY EASEMENTS: Declarant retains the non-exclusive right to create or allow for the creation of utility and drainage easements running thirty feet (30') along the outside of any public road right-of-way (ROW), along with any additional easements necessary for guy wires and anchors. This right is being retained to assist utility companies with installation of utilities or necessary guy wires and anchors on the Tract(s) in the event the utility company or County Commissioners need such an easement to comply with Texas Utilities Code Sec. 181.044, Texas Water Code Section 49.220, or other applicable statutes providing for placement of utilities along the ROW. In addition to the above:

- (a) There shall be a twenty foot (20ft) wide utility easement centered along all existing electrical lines presently installed on the Tracts described in the Exhibits, unless a utility easement of greater size is already of record.
- (b) If utility lines are installed and present within the utility easements described in Section 1.02 at any time, said utility easements may only be amended or revised with the joinder of each utility company which has a utility line installed on that portion of the easement to be amended or revised.
- (c) The installer of any utilities shall reasonably restore any damage to driveways and gates that arises from the installation of such utilities.

I.3. DECLARANT AND UTILITY COMPANY RIGHTS: Declarant specifically reserves the non-exclusive right to use, clean, and maintain said easements contained with Section 1.02 for itself, its' successors and assigns. Additionally, the easements contained in Section 1.02 may also be used, cleaned, and maintained by any utility company providing utility services to one or more Tracts covered herein. (Remove on most)

II. USE RESTRICTIONS

II.1. BUSINESS & COMMERCIAL USE: No Tract may be used for commercial use. Agricultural and ranching operations shall not be considered a commercial use, trade or business for the purposes of these Restrictions; provided that no commercial feed lots, commercial bird operations, racing or betting operations, or similar commercial enterprises shall occur on a Tract. Agricultural and ranching operations must be typical for the area and quality agri-management practices must be utilized.

II.2. INCIDENTAL BUSINESS USE: No trade or business may be conducted in or from any Tract, except such use within a Residential Dwelling or Auxiliary Structure (or another suitable building as appropriate for the purposes of this paragraph, and any such Residential Dwelling or Auxiliary Structure or suitable building shall be referred to collectively as "Building" for the purposes of this Section) where:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Building;

- (b) the business activity conforms to all zoning requirements and other Restrictions applicable to the Tract(s);
- (c) the business activity does not involve substantial visitation to the Building or Tract by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Tract(s), other than incidental mail delivery and other incidental delivery services; and
- (d) the business activity is consistent with the rural-residential character of the Tract(s) and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Tract(s).
- (e) The uses set out in the preceding (a) through (d) shall be referred to singularly or collectively as an “Incidental Business Use.” The terms “business” or “trade” as used in this Section shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the manufacture or providing of goods or services for or to persons other than the provider’s family, regardless of whether:
 - (i) such activity is engaged in full or part-time;
 - (ii) such activity is intended to or does not generate a profit; or
 - (iii) a license is required therefor.
- (iv) Notwithstanding the above, the leasing of a Residential Dwelling or Tract shall not be considered a commercial use, or trade or business within the meaning of this Section.

II.3. GARAGE SALES: One garage sale, attic sale, estate sale, moving sale, or yard sale (or any similar vending of merchandise) will be allowed once per year on each Tract.

II.4. DECLARANT EXEMPTION: This Article does not apply to any activity conducted by the Declarant, or by a Builder with approval of the Declarant, with respect to its development and sale of any part of the Tract(s).

III. STRUCTURES

III.1. TYPES: Each Residential Dwelling shall contain not less than 1,200 square feet of heated living area, exclusive of open porches, breezeways, carports, and garages, except that Manufactured Homes shall have the minimum square footage requirements referenced in Section 10.01.

III.2. QUANTITY & STYLE: Only one Residential Dwelling is allowed for every five (5) acres, with a maximum of two (2) Residential Dwellings per Tract. In addition to an allowed Residential Dwelling, a reasonable number of Auxiliary Structures is permitted; however, only one such Auxiliary Structure may contain and utilize living quarters on each Tract. (Examples of Auxiliary Structures that may contain and utilize living quarters include garage apartments, barns with living quarters, and guest house.) Additionally:

- (a) Residential Dwellings shall be built of materials and by practices considered reasonably standard and acceptable to the area. All structures and surrounding premises shall be kept in good repair and in a reasonably clean and orderly condition by their respective Owners.
- (b) Only a Residential Dwelling and Auxiliary Structure with living quarters referenced in this Section shall be used as residences.
- (c) A Residential Dwelling must be completed and in-use prior to any Auxiliary Structure with living quarters being used as a residence.
- (d) An Auxiliary Structure containing living quarters must have a total square footage of 1,000 square feet with a minimum of 600 square feet of heated living area exclusive of open porches, breezeways, carports, and garages.
- (e) If a second Residential Dwelling is constructed on a tract per the one Residential Dwelling per five (5) acre allotment herein, the second Residential Dwelling shall be built on the rear one half of the tract if the first Residential Dwelling was built on the front half of the tract.

III.3. SETBACKS: All Residential Dwellings, Auxiliary Structures, buildings, garages, barns and other buildings constructed or placed on any part of any Tract must be set back at least one hundred feet (100’) from any property line fronting any ROW, and at least fifty feet (50’) from

any side or rear property line. No side or rear set back lines shall exist for property lines that do not join another Tract(s).

III.4. COMPLETION OF CONSTRUCTION: Any Residential Dwelling, Auxiliary Structure or other improvement shall be constructed and completed within eighteen (18) months of the earliest to occur of:

- (a) the placement of building materials on the Tract, or
- (b) the commencement of foundation work, or
- (c) the commencement of on-site work for the structure or improvement itself.

IV. ANIMALS:

IV.1. SWINE: No hogs or pigs will be allowed on any tract, except that one hog or pig per child residing on said Tract shall be allowed to be kept for FFA (or similar organization) project so long as said animal is kept in a reasonably sanitary manner at least one hundred fifty feet (150') from any property line joining another Tract(s) and at least two hundred feet (200) from any property line fronting any ROW.

IV.2. NUMBER & TYPE OF ANIMALS: The number and type of animals kept on each Tract must be controlled so as not to create a substantial visual, noise, odor, or safety nuisance to the users of the surrounding Tracts and so as not to endanger the condition of each Tract by overgrazing.

IV.3. LOCATION OF ANIMALS: All animals (except domestic cats) shall not be allowed to roam beyond the perimeter of the Tract.

IV.4. CANINES: A maximum of one outside dog per two and a half (2.5) acres shall be allowed to be kept on each Tract.

V. MAINTENANCE

V.1. Each Tract Owner will be responsible for the maintenance, repair and upkeep of their respective Tracts and any and all Residential Dwellings, Auxiliary Structures, buildings, and improvements thereon.

VI. SIGNS

VI.1. SIGN TYPES: No sign, billboard, or advertising device may be displayed on any Tract which is within the public's view except the following:

- (a) Signs advertising a Tract for sale provided that it does not exceed five (5) square feet in size.
- (b) Signs used for the initial development, construction and/or sale of the Tracts by the Declarant or by a Builder.
- (c) A reasonable number of typical small, four (4) square feet or less, "no trespassing" signs
- (d) One typical, four (4) square feet or less sign indicating the address of the Tract.

VII. VEHICLES

VII.1. Two or more vehicles in disrepair placed on any Tract for more than two (2) weeks shall constitute a junk yard, and is hereby prohibited, unless said vehicles are kept in a completely enclosed structure. Any vehicle not possessing a current license plate and/or inspection sticker, or which is not in drivable condition, shall be considered in disrepair.

VIII. STORAGE

VIII.1. Materials or equipment of any kind stored outside on any Tract shall be arranged in an orderly manner on the rear one half of the Tract and no closer than fifty feet (50') from any property line that joins another Tract(s).

IX. CAMPING

- IX.1. Camping on any Tract is limited to twelve (12) weeks per calendar year. Any camping facilities (ie. tents, camping trailers, RVs, etc.) shall be located at least one hundred feet (100') from any property line that joins another Tract(s) and at least three hundred feet (300') from any property line fronting any ROW. Camping facilities shall not be left on the property except during the six-week period provided for herein unless contained within a fully enclosed building or placed where said camping facilities are not visible from an adjoining Tract.

X. MANUFACTURED HOME(S)

- X.1. ALLOWED TYPE: **Manufactured Home(s) are not allowed.**

XI. NUISANCE AND ANNOYANCE

- XI.1. TYPES: No activity of any type shall be allowed that would create an unreasonable noise, visual, odor, safety concern involving an unreasonable risk, or other nuisance to the users of the Tract(s). No portion of the Tract(s) shall be used, in whole or in part, in a way that creates a nuisance. Activities or conditions constituting a nuisance are incapable of exhaustive definition which will fit all cases, but they can include those activities and conditions that endanger life or health, give unreasonable offense to senses, or obstruct reasonable use of property. In addition:
- (a) No substance, thing, animal, or material shall be kept upon any portion of the Tract(s) that will emit foul or obnoxious odors or that will cause any noise or other condition that will substantially disturb the peace, quiet, comfort, or serenity of the Owners and/or occupants of the Tracts.
 - (b) Unless otherwise specifically authorized herein, no noxious, illegal, or offensive activity shall be carried on upon any portion of the Tract(s), nor shall anything be done to cause a nuisance.
 - (c) There shall not be maintained any plants, animals, device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Tract(s).
 - (d) No part of any Tract shall be used or maintained as a dumping ground for rubbish, debris or junk.
 - (e) No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for residential monitoring purposes, shall be installed or operated on the Tract(s), unless required by federal, state or local regulation.
 - (f) The use and discharge of firecrackers and other fireworks is prohibited on the Tract(s).
- XI.2. HEIGHT NUISANCE: An improvement of any kind that exceeds forty feet (40') in height is considered a nuisance pursuant to this Section.

XII. WATER WELLS AND SEPTIC SYSTEMS

- XII.1. Sanitary control easements must be maintained by the Owner of each Tract around any water wells in compliance with TCEQ Standards. Water wells must be placed in accordance with State law, any Groundwater Conservation District, any greater requirements of the TCEQ or the county in which the Tract is located. An Owner must adhere to the requirements of any applicable water district or county for water wells and septic systems.
- XII.2. No outdoor toilets shall be erected on any Tract (other than for temporary construction use not to exceed three (3) months). A private sewage system shall be installed prior to the habitation of any structure on the Tract(s). An Owner shall comply with all requirements of the applicable county and the TCEQ before installing a private sewage system and for so long as one is operated.

XIII. GROUNDWATER AND WATER SUPPLIES

- XIII.1. Any groundwater arising from a Tract or originating from a well on such Tract must be used in a reasonable manner. No amount of groundwater may be withdrawn from a well on a Tract that

would substantially deplete the groundwater on any other Tract. As the groundwater originating on each Tract is primarily intended for use on said Tract, no more than an incidental amount of groundwater may be removed beyond the perimeter of each Tract. Normal household water is anticipated to be obtained through use of water wells.

- (a) Only Exempt water wells (as defined by the State of Texas) are allowed on a Tract.
- (b) Each Tract may have a maximum of one water well per six (6) acres unless the applicable groundwater conservation district will only allow a lesser number.

XIV. FIREARMS AND HUNTING

XIV.1. USE: The use of firearms on the Tract(s) is not barred unless prohibited by law; however, anyone who discharges a firearm must comply with all local, state, and federal laws and is liable for any resulting property damage or injury. Extreme caution must be used when discharging any firearm.

XIV.2. LIMITATIONS: The recreational discharge of firearms, except game hunting, (ie. “sport” shooting/target practice) shall be conducted during daylight hours only and shall not exceed four (4) hours of cumulative noise generation during any 7-day period. Additionally, any recreational discharge of firearms shall be setback a distance of at least 300ft from any Residential Dwelling on a Tract, unless written permission is granted by an Owner otherwise.

XV. SUBDIVISION OF TRACTS

XV.1. BY OWNERS: No Tract will be further subdivided into a Tract of less than 10.01 acres without the joinder of the Owners representing at least sixty-seven percent (67%) of all the Tract(s), evidenced by the signature of at least one Owner of each Tract (county approval may be required on any subdivided Tracts – Tract Owners shall also comply with all current county requirements before subdividing).

XV.2. BY DECLARANT: Declarant reserves the right to combine tracts and re-subdivide Tracts, without Owner approval, for so long as Declarant owns any portion of the Tract(s).

XVI. FLOODPLAIN/LOW-LYING AREAS

XVI.1. A portion of the Tract(s) may lie in a floodplain or low-lying areas that are subject to flooding or water saturation and may constitute wetland areas. The Owner of each Tract must use caution and conservative judgment when installing any improvements in or near the flood plain, wetland, or low-lying areas. An Owner is solely responsible for determining the location of such floodplain, wetland, or low-lying areas, any floodplain elevations that are pertinent to an Owner’s plans and deciding at what elevation and location improvements will be constructed.

XVII. TEXAS 811

XVII.1. Before performing any construction, excavation, or soil disturbance on a Tract, an Owner or prospective Owner, or a representative on his behalf should contact Texas 811, at (800) DIG-TESS (344-8377), or its successor.

XVIII. AMENDMENT, DURATION, AND ANNEXATION

XVIII.1. AMENDMENT:

- (a) By Declarant: Declarant retains the right to execute amendments to and grant variances from these Restrictions without the joinder of any Owners so long as Declarant owns any portion of the Tract(s). Any such amendment or variance must be evidenced in writing and must be signed by the Declarant. Further, such amendment or variance may not adversely impact an Owner’s legitimate existing use already in effect when said variance or amendment is made and said use will be grandfathered as to that Owner.

- (b) By Owners: These Restrictive Covenants may be amended, altered, or cancelled by the affirmative vote of the Owners representing sixty-seven percent (67%) of the total Tracts (one vote per Tract, and any one Owner may cast the vote for a Tract). Such amendment, alteration, or cancellation of any of the above must be in writing and must be filed of record in the Official Public Records of Mason County, Texas to be valid and effective. Provided however, if the Declarant owns any portion of the Tract(s), any amendment, alteration, or cancellation of these Restrictions requires the joinder of the Declarant.
- (c) Challenge: Any challenge to the validity of an amendment or variance must be asserted within two (2) years of the recordation of such amendment.

XVIII.2.DURATION: These Restrictions are to run with the Tract(s) until December 31, 2041, and shall extend automatically for additional periods of five (5) years each unless the Owners of Tracts representing at least sixty-seven percent (67%) of the total Tract(s) determine to terminate these Restrictions at the eve of any of said additional five (5) year periods (any one Owner may cast the vote for a Tract) through a duly recorded written instrument terminating these Restrictions.

XVIII.3.ANNEXATION: Other land not originally referenced as "Tract(s)" in this instrument may be added to this instrument to become part of the "Tract(s)" by the recording of an instrument adding said land and said instrument shall be executed by the Declarant and any other Owner of said additional land being added herein. Any such land that is added shall become a part of these Restrictions to the same extent as if it had been originally included.

XIX. MISCELLANEOUS

XIX.1. ENFORCEABILITY: The Restrictions constitute covenants running with the land and inure to the benefit of the undersigned and its successors and assigns, the County in which the property is located, as well as each and every Owner of a Tract, their heirs, successors, and assigns. Any one of said beneficiaries shall have the right to enforce these Restrictions in equity or at law. Provided however, if a property owners association is formed, such property owners association shall have the sole and exclusive right to collect assessments except for any road maintenance fees provided for otherwise in a separately recorded document affecting the Tract(s), unless those road maintenance fees are taken over by such property owners association during the term of existence of any such property owners association.

- (a) Additionally, Tract Owners, County officials acting in their official capacity, and the Declarant are empowered to enforce the covenants, conditions and restrictions contained in these Restrictions. Enforcement of these Restrictions may be by proceedings at law or in equity against any person or persons violating or attempting to violate these Restrictions, either to restrain or prevent such violation or proposed violation, or obtain any other relief authorized by law. Such enforcement may be by the Owner of any Tract, the County in which the property is located, or by the Declarant, or their heirs, successor or assigns. The violation of the Restrictions will never at any time work an estoppel upon any person entitled to claim benefits of these Restrictions. In the event of litigation enforcing any Restrictions, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs.

XIX.2. SEVERABILITY: If one or more of such provisions contained in the Restrictions shall be held invalid, none of the others shall be affected or impaired by such holding, but shall remain in full force and effect.

XIX.3. NO WAIVER: Failure at any time to enforce these Restrictions, whether any violations thereof are known or not, shall not constitute a waiver or estoppel of the right to do so from time to time thereafter. The Declarant, its partners, employees, affiliates, successor and assigns shall have no liability for the applicability, validity, or non-enforcement of any of the restrictive covenants, amendments, variances, and documents referenced in these Restrictions.

XIX.4. CONFLICTS: Should any conflict arise between these Restrictions and any earlier, recorded, valid restrictive covenants still in effect, these Restrictions will be deemed to control and govern land use for the Tract(s).

XIX.5. INTERPRETATION: These Restrictions must be liberally construed to effect their purposes and intent.

XIX.6. ARTICLES & SECTIONS: Article and Section headings in these Restrictions are for convenience of reference and do not affect the construction or interpretation of these Restrictions. Unless the context otherwise requires, references herein to articles and sections are to articles and sections of these Restrictions.

XIX.7. NUMBER AND GENDER: Pronouns, whenever used herein, and of whatever gender, include natural persons and corporations, entities and associations of every kind and character, and the singular includes the plural, and vice versa, whenever and as often as may be appropriate.

XX. SECURITY

XX.1. NEITHER THE DECLARANT, ITS PARTNERS, DIRECTORS, OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES, NOR ANY SUCCESSOR DECLARANT (“DECLARANT PARTIES”) SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE TRACT(S) NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. EACH OWNER AND OCCUPANT OF ANY TRACT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT PARTIES ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY TRACT, OR OWNER OR USER OF AN IMPROVEMENT ON THE TRACT(S), ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO STRUCTURES AND IMPROVEMENTS AND TO THE CONTENTS OF STRUCTURES AND IMPROVEMENTS ON THE TRACT(S).

Executed this ____ day of _____, 20____, to be effective the ____ day of _____, 20____.

ROLLING VISTAS, LTD.

By: _____
Creekside Rural Investments, Inc.
General Partner
BY: Jay Dickens, President

THE STATE OF TEXAS §

COUNTY OF _____ §

 This instrument was acknowledged before me on this the ____ day of _____ 20__, by Jay Dickens, President of Creekside Rural Investments, Inc., a Texas corporation, on behalf of said corporation, and the corporation acknowledged this instrument as general partner on behalf of Rolling Vistas, Ltd., a Texas limited partnership.

Notary Public - State of Texas

RETURN TO:
Rolling Vistas, Ltd.
3030 W Beauregard Ave
San Angelo, Texas 76901