

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration is made on the date last entered by SKY ISLAND PARTNERSHIP, LTD., a Texas Limited Partnership ("Declarant"), and is as follows:

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located in El Paso, El Paso County, Texas, and more particularly described as follows:

Sky Island, being a portion of Tract 1A4 and 1B8, A.F. Miller, Survey No. 216, City of El Paso, El Paso County, Texas, according to the map thereof on file in Book _____, Page _____, Plat Records of El Paso County, Texas ("Property"):

NOW THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I.
DEFINITIONS

Section 1. "Association" shall mean and refer to SKY ISLAND HOME OWNERS ASSOCIATION, a Texas nonprofit corporation, its successors and assigns.

Section 2. "Board of Directors" shall mean the Directors named in the Articles of Incorporation of the Association and their duly elected successors.

Section 3. "Builder" shall mean any person or entity, including an Owner, who constructs a Residence or any other improvement on the Property, or who remodels by adding to or subtracting from an existing residence or other improvement, for either personal use, profit, or for the assistance of another party. No distinction shall exist between construction performed under the contract or performed for the purpose of speculation.

Section 4. "Common Area" shall mean all real and personal property which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Exclusive Common Area, as defined below.

Section 5. "Common Use Open Space" shall be defined as presently provided in Section 20.02.548 of the El Paso City Code. The Common Use Open Space consists of the canyon areas labeled on the Plat as Lot 36, Block 1. Common Use Open Space is part of the Common Area.

Section 6. "Declarant" shall mean and refer to SKY ISLAND PARTNERSHIP, LTD., its successors and assigns if such successors or assigns should acquire the remaining Lots owned by Sky Island Partnership, Ltd. for the purpose of sale and/or development.

Section 7. "Estates at Sky Island" shall mean Lots 21 through 34 on the Plat.

Section 8. "Exclusive Common Area" shall mean portions of the Common Area the use of which are restricted to Owners of Lots in a specific Residential Area. Until otherwise designated by the Declarant, or through amendment of this Declaration, the Exclusive Common Area in the Retreat at Sky Island is Lot 20, Block 1; Lots 4,5 and 6, Block 2. The Exclusive Common Area in the Estates at Sky Island is Lot 35, Block 1 and Lots 1,2 and 3, Block 2

Section 9. "Improvements" shall mean all buildings or other improvements on a Lot, of any kind whatsoever, whether above or below grade, including, but not limited to residences, utility installations, storage, parking facilities, walkways, driveways, site lighting, site grading, landscaping, exterior additions and alterations and change thereto.

Section 10. "Lot" shall mean those plots of land numbered 1 through 19 and 21-34, Block 1 on the recorded subdivision map of the Property.

Section 11. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including any purchaser under Contract of Sale, but excluding those having such interest merely as security for the performance of an obligation.

Section 12. "Plat" shall mean the subdivision plat of Sky Island filed in the Plat Records of El Paso County, Texas.

Section 13. "Private Streets" shall mean the privately owned access-ways within the Retreat at Sky Island and the Estates at Sky Island for which the Association assumes full responsibility for maintenance and control and which has not been dedicated to the use of the public. The private streets to be owned by the Association are Lot 1, Block 2 and Lot 5, Block 2.

Section 14. "Property" shall mean the real property described on the Plat and such other real property as may hereafter be brought within the jurisdiction of the Association.

Section 15. "Residence" shall mean an improvement on a Lot which is designed to be used for single family residential occupancy and all attachments thereto but shall not include recreational vehicles, motor homes, trailers or mobile homes, whether with or without permanent foundations.

Section 16. "Residential Areas" shall mean the Retreat at Sky Island or the Estates at Sky Island or any other real property annexed as provided herein.

Section 17. "Retreat at Sky Island" shall mean Lots 1 through 19 on the Plat.

Section 18. "Subdivision Improvement Plans" shall mean those plans required by the El Paso Subdivision Ordinance to be prepared and approved by the City Engineer in connection with the development of Sky Island. The Subdivision Improvement Plans generally consist of Street, Grading and Drainage Plans.

Section 19. "Variance" shall mean and refer to any duly authorized written determination of the Architectural Review Committee which modifies the Architectural Guidelines.

ARTICLE II PROPERTY RIGHTS

Section 1. Every Owner shall have a right and easement of enjoyment in and to the Common Area and the Common Use Open Space which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use and maintenance of the Common Use Open Space.

(b) So long as this Declaration is effective, the Association shall maintain the Common Use Open Space, the private parks and hiking trails constructed thereon and shown in Exhibit "A", in a state of good condition, repair and cleanliness, and shall take such steps as are reasonably possible to maintain the native plants growing thereon in good condition.

(c) The right of the Association to suspend the voting rights and right to use the Common Use Open Space by an Owner for any period during which any assessment against his Lot(s) remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) The right of the Association to dedicate or transfer ownership and/or maintenance of all or any part of the Common Use Open Space and/or Private Street to any consenting public agency, authority or utility. Such dedication or transfer shall not be effective unless an instrument agreeing to such dedication or transfer has been signed by two-thirds of each class of members and has been recorded.

Section 2. Any Owner may delegate his right of enjoyment to the Common Use Open Space to the members of his immediate family, his tenants or contract purchasers who reside on the Property.

Section 3. Certain portions of the Common Area may be designated by Declarant as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners of Lots within a particular Residential Area. By way of illustration and not limitation, Exclusive Common Areas may include entry features, parks, landscaped medians, cul-de-sacs, and other portions of the Common Area within a particular Residential Area. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be assessed against the Owners of Lots in those Residential Areas to which the Exclusive Common Area is assigned.

The Declarant shall designate any Exclusive Common Area in the deed conveying the Common Area to the Association or on the plat of survey relating to such Common Area and shall reserve the exclusive use thereof to the Owners of Lots within a particular Residential Area; provided, any such designation and reservation shall not preclude the Declarant from later expanding the reservation of the same Exclusive Common Area to additional Lots, so long as the Declarant has a right to annex additional property and make it subject to this Declaration pursuant to Article X.

Even after the Declarant no longer holds voting control the Association, as long as the Declarant owns one Lot for development and/or sale, any change to or modification of the Exclusive Common Area shall also require the Declarant's consent.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS AND GOVERNANCE

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

a. Class A. Class A members shall be Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members.

The vote for such Lots shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

b. Class B. Class B member shall be Declarant and it shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership when the Declarant owns no more than 2 Lots in Sky Island.

Section 3. The Association shall be governed by a Board of Directors who shall be elected and shall perform their duties as provided in the Bylaws adopted by the Declarant. The Bylaws shall contain a quorum requirement identical to that provided in Article IV, Section 6. So long as Declarant owns more than 8 Lots in Sky Island, any amendment to the Bylaws shall require Declarant's prior written consent before it becomes effective.

ARTICLE IV **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (a) Annual Assessments or charges; and (b) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided. Annual and Special Assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person or persons who are or were the Owner or Owners of such Lot at the time when the Assessment fell due. The personal obligation of an Owner for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all Owners, for the repair and replacement of the Private Streets, for the improvement and maintenance of the Common Use Open Space, for the maintenance of the landscaping within that portion of Stanton street right-of-way in front of the Property, for the maintenance of any private drainage or sewer structures shown on the Plat or the Subdivision Improvement Plans, and for the payment of utilities, ad valorem real property taxes and general liability/property damage insurance premiums on the Common Use Open Space and the Private Streets and for the care and maintenance of any other property owned by the Association. The Association hereby covenants to at all times maintain the Common Use Open Space and the hiking trails thereon, the Private Parks and the Private Streets in neat and clean condition and in a state of good condition and repair.

Section 3. Maximum Annual Assessment. Prior to January 1, 1999, the Declarant shall set the maximum Annual Assessment at a uniform amount from \$100 per lot to \$500.00 per Lot for each Residential Area. After January 1, 1999, the maximum Annual Assessment may be increased each year up to but not more than five (5%) above the maximum Assessment for the previous year without a vote of the membership. After January 1, 1999, the maximum Annual Assessment may be increased by more than five (5%) above the maximum Assessment for the previous year by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment year, a Special Assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of the Private Street, Common Use Open Space, and median improvements, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class or member who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notwithstanding anything to the contrary contained herein, assessments (regular or special) for costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be assessed only against the Lots in those Residential Areas to which the Exclusive Common Area is assigned.

Section 6. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Rates of Assessment. Both Annual and Special Assessments may be fixed at different rates for Lots in each Residential Area. To determine the actual rate for a particular Residential Area, the Association shall first determine the costs and expenses which primarily or exclusively benefit a particular Residential Area. These costs shall be allocated to the Residential Area primarily or exclusively benefitted. The Association shall then determine the costs and expenses which benefit both Residential Areas more or less equally. These costs shall be allocated equally to Residential Areas. Finally, the Association shall determine the costs and expenses which relate to Exclusive Common Areas. These costs shall be allocated to the Lots in those Residential Areas to which the Exclusive Common Area is assigned.

Section 8. Date of Commencement of Annual Assessments and Due Dates.

The Annual Assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Use Open Space. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. The Association shall also be entitled to collect a late charge in such amounts and upon such conditions as the Board of Directors may from time to time determine.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association.

Any Assessments which are not paid when due shall be delinquent. If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum and shall constitute a lien or charge against the Lot which has been assessed. The Association may bring an action of law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot. Interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such Assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the SKY ISLAND HOME OWNERS ASSOCIATION or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as provided in a deed of trust with power of sale and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners.

The Association acting on behalf of the Lot Owners, shall have the power to bid in the interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. No owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Use Open Space or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien for Assessments provided for herein shall be subordinate to any purchase money first Deed of Trust lien on a Lot. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to a superior purchase money Deed of Trust Trustee's Sale shall extinguish the lien for such Assessments as to payments which became due prior to such sale or transfer. Otherwise, no sale or transfer shall relieve such Lot from the lien thereof.

Section 11. Exempt Property. All properties dedicated to and accepted by a local public authority, the Common Use Open Space and Private Street shall be exempt from the Assessments created herein.

Section 12. Management Agreements. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be canceled by an affirmative vote of the majority of votes of members of the Association at a meeting at which a quorum is present. In no event shall such management agreement be canceled prior to the effecting by the Association or its Board of Directors of a new management agreement with a party or parties, which new management agreement will become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management contract. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type. This paragraph shall not be construed to mean that the Association is obligated to engage a manager. The Association may manage its affairs through its members on such terms as the Association may determine.

Section 13. Insurance. The Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for any improvements owned by the Association against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement of such improvements in the event of damage or destruction from insured risks, and shall also obtain a public liability insurance policy covering the Association, in amounts of not less than \$1,000,000 per occurrence for injury or death to persons and \$100,000 for damage to property. Said insurance may include coverage against vandalism. Premiums for all such insurance coverage shall be written in the name of the Association. It shall be the individual responsibility of each Owner at his own expense, to provide, as he sees fit, hazard insurance, homeowner's liability insurance, theft and other insurance covering real and personal property damage and loss.

In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Board of Directors, shall with the concurrence of its mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution the accounts of which bank or institution are insured by a Federal governmental agency, with the provisions agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two (2) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall advertise for sealed bids with licensed contractors and then may negotiate with any contractor who may be required to provide a full performance and payment bond

for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a Special Assessment against all Owners, as established by Article IV, Section 4, above, to make up any deficiency for repair or rebuilding of the Common Use Open Space, Private Street and Private Sewer Line.

Section 14. Indemnification. The Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall procure a policy of directors' liability insurance to fund this obligation, if such insurance is reasonably available and the premiums therefor are reasonably priced.

Section 15. Security. The Association may but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. **NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CAN NOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, IT'S BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO**

PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS RESULTING FROM ACTS OF THIRD PARTIES.

ARTICLE V
ARCHITECTURAL REVIEW

Section 1. No Residence, improvements, building, fence, wall or other structure shall be commenced, erected, maintained or altered on any Lot nor shall any exterior addition to or change or alteration therein be made or undertaken, until the Construction Documents and the landscape plan required by the Architectural Guidelines referenced in Section 8 shall have been submitted to and approved in writing by the Architectural Review Committee as being in compliance with the Architectural Guidelines.

Section 2. If all of the Construction Documents required by the Architectural Guidelines referenced in Section 8 are submitted to the Architectural Review Committee, or all of the landscape plan documents required by the Architectural Guidelines referenced in Section 8 are submitted to the Architectural Control Committee, and it fails to either approve or reject such Construction Documents or landscape plan documents for a period of twenty (20) days following the date of such submission, then such Construction Documents or landscape plan documents shall be deemed approved.

Section 3. The initial Architectural Review Committee shall be Willis G. Schoemaker, Amy B. Schoemaker and Teri L. Froetschel. A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. None of the members of the Committee or their designated representative shall be entitled to any compensation for service performed pursuant to this Covenant. At any time the Owners of a majority of the Lots shall have the power through a duly written recorded instrument to change the membership of the Committee or reduce or restore to it any of its powers and duties.

Section 4. Notwithstanding the foregoing subparagraph, after Residences have been built upon all Lots in Sky Island, initial membership of the Architectural Review Committee, if not already terminated, shall automatically terminate without further notice. The resulting vacancies shall be filled by a vote of the majority of the record Owners of Lots in Sky Island at a meeting at which a quorum is present. Successors to Memberships in the Architectural Review Committee shall be named in an instrument executed and acknowledged by the chairman of the Architectural Review Committee who shall be elected by a majority of its then members. Such instruments shall be recorded in the Public Records of El Paso County, Texas.

Section 5. Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of:

- (a) the approval or disapproval of any plans and specifications, whether or not defective, so long as such approval or disapproval was not strictly arbitrary;
- (b) the construction or performance of any work, whether or not pursuant to approval of plans and specifications;
- (c) the development or manner of development of any Lot;
- (d) the written notification of approval or disapproval whether or not the facts therein are correct.

Without in any way limiting the generality of the foregoing, the Architectural Review Committee or any member thereof, may, but is not required to, consult with or hear any Owner or Builder with respect to any plans and specifications, or any other proposal submitted to the Architectural Review Committee. This paragraph shall not be construed to permit or authorize the Architectural Review Committee to arbitrarily fail or refuse to review and either approve or disapprove plans and specifications.

Section 6. Written action of Architectural Review Committee. The Architectural Review Committee shall issue written approvals or disapprovals of the construction documents required by the Architectural Guidelines referenced in Section 8. To apply for approval of the Construction Documents required by the Architectural Guidelines referenced in Section 8, an Owner shall follow the steps set forth below:

- (a) If an Owner or Builder desires to obtain approval of a conceptual plan he shall provide the information and Construction Documents described in Approval Process section of the Architectural Guidelines. Approval of a conceptual plan shall not be a prerequisite to final approval. Preliminary approval shall be by one of two members if only two members attend a meeting and two of three members if all three members attend a meeting. The determination of whether a conceptual plan will be preliminarily approved shall be made within ten (10) working days after the Architectural Review Committee has received a conceptual plan drawn to scale, a site plan, a floor plan and a front elevation.
- (b) When an Owner or Builder desires to obtain final approval of his documents, he shall provide the information and Construction Documents described in Approval Process section of the Architectural Guidelines. Every Owner or Builder shall obtain final approval of his Construction Documents. Final approval shall be by one or two members if only two members attend a meeting and two of three members if all three members attend a meeting. The determination of whether plans and specifications will be finally approved shall be made within ten (10) working days after the Architectural Review Committee has received all Construction Documents and information required by the Architectural Guidelines.

In order to be approved, the Construction Documents shall comply with not only the Architectural Guidelines but also all laws, ordinances, codes and rules and regulations of the City of El Paso, County of El Paso, State of Texas and other governmental authority having jurisdiction over the Property and the construction of improvements thereon.

(c) When an Owner or Builder desires to obtain final approval of his landscape plan, he shall provide the information and documents described in the Approval Process section of the Architectural Guidelines. Every Owner or Builder shall obtain final approval of his landscape plan. Final approval shall be by one or two members if only two members attend a meeting and two of three members if all three members attend a meeting. The determination of whether plans and specifications will be finally approved shall be made within ten (10) working days after the Architectural Review Committee has received all documents and information required by the Architectural Guidelines. In order to be approved, the documents shall comply with not only the Architectural Guidelines but also all laws, ordinances, codes and rules and regulations of the City of El Paso, County of El Paso, State of Texas and other governmental authority having jurisdiction over the Property and the construction of improvements thereon.

(d) The Architectural Review Committee shall notify, in writing, the Owner or Builder who applied for conceptual or final approval within twenty (20) working days after plans and specifications have been received by the Architectural Review Committee. Such notice shall be served by United States mail, postage prepaid, return receipt requested, and shall be deemed given when deposited in the United States mail. If the Architectural Review Committee fails or refuses to notify the Owner or Builder of approval or disapproval within the twenty (20) working day period, such plans and specifications shall be deemed approved by the Architectural Review Committee. The Architectural Review Committee may, however, extend the approval period by mutual agreement of the Architectural Review Committee and the Owner or Builder.

(e) Until otherwise notified, all Owners or Builders shall submit plans and specifications to the Architectural Review Committee, Sky Island Partnership, Ltd. c/o Willis Construction Company, 600 Sunland Park Drive, Building 6, Suite 300, El Paso, Texas 79912. When and if the plans and specifications contain all information required by the Architectural Guidelines, Willis Construction Company shall notify the members of the Architectural Review Committee, of the date, time and place of the meeting to review the plans and specifications submitted. A quorum shall be two (2) members of the Architectural Review Committee.

Section 7. Variance. The Architectural Review Committee is hereby authorized and empowered, upon written request of an Owner or Builder, to grant such variances from the Architectural Guidelines as will be in the best interest of all Owners

where, owing to the Lot itself or special conditions caused by property adjacent to the Lot, whether within or without the Property, a literal enforcement of the provisions of the Architectural Guidelines will result in hardship which will prevent a reasonable use of the Lot or a reasonable design of the residence and other improvements to be constructed on such Lot. The power to grant variances shall in no case be interpreted to completely dispense with the Architectural Guidelines. All decisions of the Architectural Review Committee shall be made in its sole and absolute discretion and shall not be subject to judicial review. The Architectural Review Committee shall render its decision either approving or disapproving a request for variance not later than twenty (20) working days following receipt of the request and all information reasonably necessary to determine whether the variance request is in the best interest of all Owners. The decision of the Architectural Review Committee shall be made by one of two members if only two members attend a meeting and by two of three members if three members attend a meeting. If the Architectural Review Committee fails to approve or disapprove within twenty (20) working days following the receipt of the variance request, then the request shall be deemed approved. All decisions shall be in writing and shall be served on the applicant by the United States mail, postage prepaid, return receipt requested, and shall be deemed given when deposited in the United States mail. The Architectural Review Committee shall not consider a request for variance that is the same or substantially similar to one that has been previously disapproved for a period of six (6) months from the date of disapproval. Further, the Architectural Review Committee shall not consider any request for variance which may be in violation of any statute, ordinance or rule and regulation to which a Lot is subject; provided, however, if the subject of the request is on its face unlawful, but can be made lawful by governmental administrative action, then the Architectural Review Committee may conditionally approve such request subject to favorable governmental administrative action.

Section 8. Architectural Guidelines. All Construction Documents and landscape plans and all improvements made pursuant to such Construction Documents and landscape plans shall comply with the Architectural Guidelines set forth in the document entitled Architectural Guidelines: The Estates at Sky Island and the Retreat at Sky Island, a copy of which is attached as Exhibit "B". Any conflict between the Architectural Guidelines and this Declaration shall be resolved in favor this Declaration.

ARTICLE VI EASEMENTS

Section 1. Easements on Plat. No residence or other improvements (except landscaping) shall be erected or permitted to remain on any part of a Lot which has been dedicated to the public for utility, fire, drainage or other public purposes on the Subdivision Plat.

Section 2. View Easements. There are no easements of view encumbering or benefiting any Lot.

Section 3. Easements on Common Area: The Association may create easements on the Common Area for parking or other purposes not inconsistent with this Declaration.

ARTICLE VII LAND USE

Section 1. Building Type. No Lot shall be used except for residential purposes. No structure shall be erected, altered, or placed or permitted to remain on any of said Lots, or any part thereof, other than one single family Residence together with a private 2 or more car garage or carport and other customary appurtenances to private dwellings.

Section 2. Temporary Structures. No structure of a temporary character including trailers, tents, shacks or other buildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 3. Recreational Vehicles and Boats. No recreational vehicles, motor homes, trailers, trucks, campers or motorcycles of any kind or character and no boats or yachts shall be stored or parked on any Lot other than where completely screened from streets, neighboring homesites and Common Areas or in a completely enclosed garage.

Section 4. Nuisances. No noxious or offensive activity shall be carried on upon any Lot including but not limited to excessive noise from motorcycles, cars, stereos, radios and pets, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood.

Section 5. Walls and Fences. All fences and retaining walls must meet the requirements of the Architectural Guidelines and shall be approved in writing by the Architectural Review Committee prior to the construction.

Section 6. City Ordinances. All buildings and structures shall be erected in conformity with all ordinances of the City of El Paso, Texas.

Section 7. Drilling, Transmitting, and Receiving Equipment. No drilling or excavation for oil, gas, sand, clay, dirt, coal, gravel or minerals shall be made on any Lot, whether for profit or otherwise. Radio and television antennas and satellite dishes shall be permitted but must comply with the Architectural Guidelines.

Section 8. Prohibited Activities. No professional, business, or commercial activity of any kind shall be conducted on or from any Lot, except those which are permitted as a Home Occupation under the El Paso City Code.

Section 9. Rubbish, Trash and Garbage. No Lot shall be used or maintained as

a dumping ground for rubbish or trash, and no other garbage or waste shall be kept except in sanitary containers. All containers for the storage and disposal of such materials shall be kept in a clean and sanitary condition. No person shall dump rubbish, trash or garbage on any Lot within the Property.

Section 10. Animals. No animals, including but not limited to, livestock or poultry, of any kind shall be raised, bred, or kept on any Lot; provided, however, not more than three (3) dogs and cats, or any three (3) other household pets may be kept on a Lot if such numbers do not violate ordinances of the City of El Paso and such pets do not create a legal nuisance.

Section 11. Eyesores. Clotheslines, inoperable motor vehicles, building materials, broken or discarded furniture and fixtures, broken or discarded equipment and other similar personal property shall not be stored or permitted to remain on any Lot in such a manner as to be visible from the street or adjacent Lot.

Section 12. Hazardous Materials and Waste. No Owner shall permit anything to be done or kept on his Lot or in his residence which will result in the cancellation of customary Texas homeowners property damage and liability insurance. No hazardous waste materials shall be kept on any Lot or the residence thereon.

Section 13. Encroachments. If an encroachment occurs due to settlement or shifting of a residence or other improvements, there shall be created a valid easement for the maintenance of any such encroachment so long as it shall exist; provided, however, in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful or negligent conduct of such Owner or his builder.

Section 14. Commercial Vehicles. No commercial type vehicles shall be stored or parked on any Lot except while engaged in transport of goods and services to or from a residence.

Section 15. Visitor Parking. The Association shall have the right to designate those parts of the Common Area and utility easements within a Residential Area which are available for visitor parking. Visitor parking areas shall not be used for storage of vehicles or for any purpose other than the temporary parking of operational vehicles. Temporary parking is less than 24 hours.

Section 16. No yard sales shall be permitted.

ARTICLE VIII
OWNER'S OBLIGATION TO REPAIR

Exterior Maintenance. Each Owner of a Lot shall at all times maintain his Lot and the residence and other improvements situated thereon in good order, condition, and repair. If any Owner fails to maintain his Lot or the residence and other improvements in good order, condition and repair, fifty-one (51%) percent of the Owners of the Lots may elect to send written notice to such Owner specifying the default, and providing a time, not less than ten (10) working days after receipt of such notice within which the default must be corrected. If the Owner receiving the notice has not corrected the default within the time period specified in the notice, fifty-one (51%) percent of the Owners of the Lots shall have the right and authority to cause such default to be corrected by expending such sums as may be reasonably required to do so. In this connection, such electing Owners shall have the right to enter upon the defaulting Owner's Lot to make such repairs and correct the default without committing a trespass. The reasonable attorney fees, if any, shall become a personal obligation of the Owner receiving the notice and a lien on his Lot and the electing Owners may enforce collection of the debt by judicial foreclosure of the lien created herein. The lien created herein to secure the payment of sums expended by the electing Lot Owners as provided above shall be inferior to any purchase money or home improvement Deed of Trust or Mechanic's Lien encumbering a Lot.

If any Owner has not paid to the electing Owners the amount expended by them to correct the default plus any attorney fees plus interest on such amounts at the highest rate permitted by law within ten (10) days after receipt of written demand, the electing Owners may bring an action at law against such Owner to collect the debt and judicially foreclose the lien. Each Owner by his acceptance of a deed expressly agrees to the foregoing provisions.

ARTICLE IX
USE OF THE PROPERTY BY DECLARANT

Notwithstanding anything to the contrary, Declarant, his agents, employees, successors or assigns may operate and maintain upon the Property described herein a real estate sales and development business, and may place, erect and maintain upon the property such customary sales and advertising signs and parking areas as are usual and reasonable for such real estate sales and development operations until all Lots on the Property have been sold and conveyed to grantees.

Notwithstanding anything herein to the contrary, Declarant, his agents, employees, contractors, subcontractors and other authorized personnel shall have the right to enter in and upon the Property and to perform work and all other related activities and other acts required thereon, in order to complete construction on the Property and construction upon such additional property or adjacent property of Declarant and perform work required by governmental agencies having jurisdiction over the Property or other adjacent properties of

Declarant and during construction to direct and maintain and store upon the property such sheds, storage buildings, temporary toilets, storage yards and areas, materials, tools and machines, fabrication areas and other temporary installations for the requirements and convenience of construction. It is expressly provided that no Owner shall in any manner interfere with any of the foregoing activities of Declarant. No action shall be maintained by any Owner for damages or inconvenience resulting from the exercise of the foregoing rights of Declarant.

ARTICLE X
ANNEXATION AND WITHDRAWAL OF PROPERTY

Section 1. For a period of 5 years, Declarant may unilaterally subject to the provisions of this Declaration all or portions of the real property described in Exhibit "C." Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the Property and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "C" in any manner whatsoever.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Office of the County Clerk of El Paso County, Texas, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of Lot Owners, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Section 2. Annexation with Approval of Membership. The Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Lot Owners representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purposes, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Article X.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Office of the County Clerk of El Paso County; Texas, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

Section 3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of

removing property then owned by the Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

ARTICLE XI
GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 3. Duration. These covenants, conditions and restrictions shall run with and bind the land for a term of thirty-five (35) years unless amended by an instrument signed by not less than 90% of the Lot Owners, and thereafter by an instrument signed by not less than 75% of the Lot Owners. Any amendment must be recorded in the Deed Records of El Paso County, Texas. Notwithstanding the foregoing, so long as the Declarant owns more than 16 Lots in Sky Island, the Declarant shall have the right to amend the Declaration without the consent of any other Lot Owner.

Sky Island

IN WITNESS THEREOF, the undersigned being the Declarant herein has hereunto set its hand this 8 day of April, 1998.

Sky Island Partnership, Ltd.

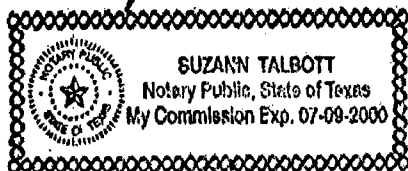
By: Corycon, L.L.C.
General Partner

By: Vernon W. Schoemaker
Vernon W. Schoemaker
President

STATE OF TEXAS)
)
COUNTY OF EL PASO)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Vernon W. Schoemaker known to me to be the person and President whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Corycon, L.L.C., a Texas Limited Liability Company, and that Corycon, L.L.C. executed the same as the General Partner of Sky Island Partnership, Ltd. for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN under my hand and seal of office, this the 8 day of April, 1998.



Suzann Talbott
Notary Public, State of Texas

Exhibit A: Identified below are the areas within Sky Island where the private parks and hiking trails will be constructed.

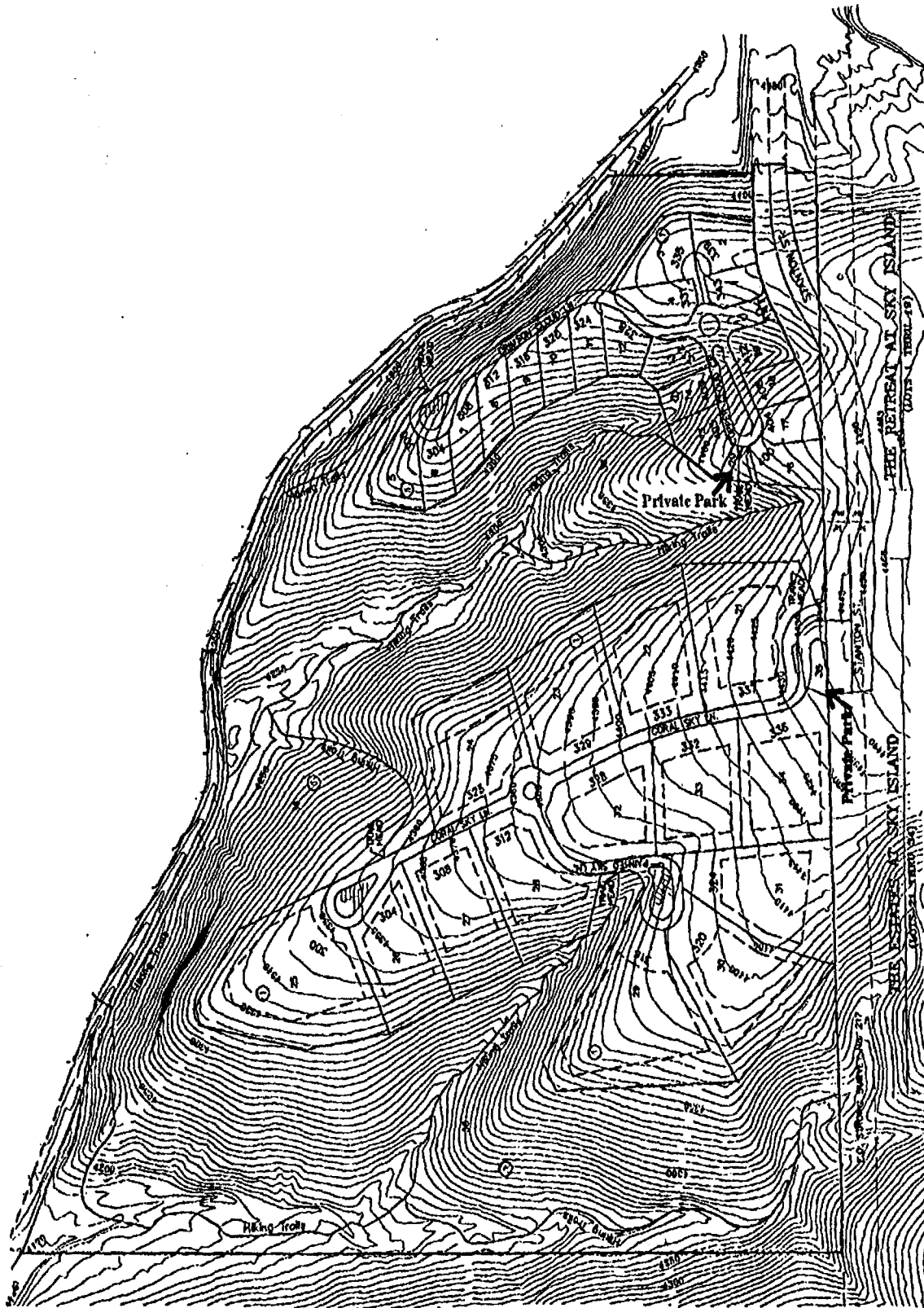


Exhibit C: Property for Possible Annexation

As referenced in Article X of the Sky Island Declaration of Covenants, Conditions and Restrictions, the Declarant may unilaterally subject the following properties to the provisions of the Declaration.

- A. A certain thirty (30) acre tract of land out of Survey No. 261, El Paso County, Texas, described by metes and bounds as follows:

A line from the common corner of Survey No. 216, 217, and 261, the said point marked with a 2" pipe, bears North 1726.93 feet and East 675.00 feet to the point of beginning of this description,

Thence, North 1089.00 feet to a point for corner,

Thence, East 1200.00 feet to a point for corner,

Thence, South 1089.00 feet to a point for corner,

Thence, West 1200.00 feet to the point of beginning,

And said portion of land containing 1,306,800 square feet or 30,000 acres of land, more or less.

- B. A certain fifty-three and five hundred and eighty one thousandths (53.581) acre tract of land out of Survey No. 261, El Paso County, Texas, described by metes and bounds as follows:

COMMENCING FOR REFERENCE at the EPGS "El Paso 13" concrete monument from which the KTSM Tower on Franklin Mountain bears South 61°45'49" East and the Asarco Stack bears South 11°00'30" West;

Thence, North 64°02'25" East, a distance of 3,127.70 feet to the City Monument at the Intersection of Festival Drive and Stanton Street;

Thence, South 81°52'41" East, a distance of 127.05 feet to a point in the west line of said Survey No. 261 and POINT OF BEGINNING for the herein described tract;

Thence, leaving said west line of Survey No. 261, North 79°53'38" East, a distance of 13.17 feet to a point at the beginning of a curve to the left;

Thence, along the arc of said curve (Delta Angle = 71°52'38", Radius = 400.00 feet, Chord = North 43°57'20" East, 469.53 feet) a distance of 501.79 feet to a point;

Thence, South 9°51'59" East a distance of 310.00 feet to a point;

Thence, North 83°37'26" East, a distance of 85.00 feet to a point;

Thence, North 38°45'24" East, a distance of 285.00 feet to a point;

Thence, North 16°45'24" East, a distance of 55.00 feet to a point;

Thence, South 81°59'26" East, a distance of 136.08 feet to a point in the west line of the Franklin Mountain State Park boundary;

Thence, along the west line of said Franklin Mountain State Park, the following two courses:

South 62°00'00" East, a distance of 1,350.00 feet to a set ½" rebar with cap (Tx2027);

South 00°00'00" East, a distance of 1,299.56 feet (called 842.39 feet) to a set ½" rebar with cap (Tx2027) in the south line of said H.G. Foster Survey No. 261;

Thence, along the south line of said Survey No. 261, North 89°57'23" West, a distance of 323.97 feet to a set ½" rebar with cap (Tx2027) at the southeast corner of the Church of Saint Clements property;

Thence, along the east line of said Church property, North 00°00'00" East, a distance of 1,089.91 feet to a set ½" rebar with cap (Tx2027) at the northeast corner of said Church property;

Thence, along the north line of said Church property, North 90°00'00" West, a distance of 1,200.00 feet to a set ½" rebar with cap (Tx2027) at the northwest corner of said Church property;

Thence, along the west line of said Church property, South 00°00'00" East, a distance of 1,089.00 feet to a set ½" rebar with cap (TX2027) at the southwest corner of said Church property in the south line of said Survey No. 261;

Thence, along the south line of said Survey No. 261, North 89°57'23" West, a distance of 651.51 feet to a set ½" rebar with cap (Tx2027) at the southwest corner of said Survey No. 261 from which a found brass cap marked 261-217-216 bears North 89°57'23" West a distance of 23.5 feet;

Thence, along the west line of said Survey 261, North 00°13'14" West, a distance of 1,525.81 feet to the POINT OF BEGINNING and containing 53.581 acres of land.

- C. That certain approximately 6.184 acres of land out of E. D. Strong Survey No. 217, El Paso County, Texas, and being more particularly described by metes and bounds as follows, to wit:

From a point, said point being the common corner of E. D. Strong Survey No. 217, A. F. Miller Survey No. 216, E. L. DeShazo Survey No. 218 and C. M. Newman Survey;
Thence North along the common boundary line of E. D. Strong Survey No. 217 and A. F. Miller Survey No. 216 a distance of 3975.00 feet to a point lying in the common boundary line of E. D. Strong Survey No. 217 and H. G. Foster Survey No. 261; Thence East along said common boundary line a distance of 675.00 feet to the POINT OF BEGINNING;

Thence East along said common boundary line a distance of 1200.00 feet;

Thence South a distance of 224.46 feet;

Thence West a distance of 1200.00 feet;

Thence North a distance of 224.46 feet to the point of beginning and containing in all 269,352.000 square feet or 6.184 acres of land more or less.