

RECORDED BY:  
TICOR TITLE AGENCY  
GF NO. 95118740C  
\$ 27.00

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LA CIERRA

95- 0187353

STATE OF TEXAS

COUNTY OF BEXAR

§  
§  
§

KNOW ALL BY THESE PRESENTS:

On this 7<sup>th</sup> day of December, 1995, ASC San Antonio Venture I (herein called "Developer"), hereby declares that the land described below shall be held, used, transferred, sold, conveyed, encumbered, leased, occupied, built upon, or otherwise used, improved or dealt with, in whole or in part, subject to the following covenants, conditions and restrictions (herein called "Restrictions"), as amended or modified from time to time, hereby specifying and agreeing that this Declaration of Covenants, Conditions and Restrictions for *La Cierra* (this "Declaration") and the provisions hereof shall constitute covenants to run with the land, be for the benefit of, bind and burden the Land, and shall be binding upon Developer, its successors and assigns, all subsequent owners of each lot and any other party having an interest in the Land. The owners, by the acceptance of their deeds, for themselves, their heirs, devisees, administrators, representatives, successors and assigns, covenant and agree to abide by the terms and conditions hereof.

1. LAND

Developer is the owner of real property located in Bexar County, Texas as described on the subdivision plat described below for *Cobblestone P.U.D.*, which will be known as *La Cierra*, to which reference is hereby made for all purposes. When used in this Declaration, the term "Land" refers to all of the real property described in the Plat (defined below) except for the lots designated as lots 36, 37 and 38, Block 1 on the Plat.

2. SUBDIVISION

Developer has subdivided the Land into one or more parcels (herein called "lots") according to the plat thereof recorded in Volume 9533, Pages 72 - 73 of the Plat Records of Bexar County, Texas (the "Plat"), to which plat reference is made for all purposes. Developer plans, without obligation to do so, to create a residential community by selling the lots for the construction of single-family residences pursuant to this Declaration and the other restrictions that affect the Land.

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### 3. PURPOSE

The Land is encumbered by these Restrictions for the following reasons: to promote the best and highest use and most appropriate development of the Land; to protect lot owners against improper use of surrounding lots; to preserve so far as practicable the natural beauty of the Land; to guard against the erection of poorly designed or proportioned structures of improper or unsuitable materials; to encourage and secure the erection of attractive improvements on each lot subject to this Declaration with appropriate locations; to secure and maintain proper setbacks from streets and adequate free space; and, in general, to provide for development of the highest quality to enhance the value of investment made by lot owners.

### 4. ARCHITECTURAL COMMITTEE

A. There is hereby created an Architectural Committee (the "Committee") composed of three (3) members. The initial members shall be Joe Verdoorn, Dick Austin and Glen Westrom, and such initial members shall serve until their successors are named by the Developer or until their earlier death, resignation or removal by the Developer. A majority of the Committee may act for the Committee and no notice of any of its meetings shall be required. During the Developer Control Period (defined below), the Developer may remove any member of the Committee and any vacancy on the Committee shall be filled by the Developer. The Developer Control Period shall commence upon the recordation of this Declaration in the Official Public Records of Real Property of Bexar County, Texas and continue until (i) all of the lots subject to this Declaration are sold or otherwise conveyed by the Developer or Developer's successors in interest to any owner or owners other than the Developer or any party related to the Developer and (ii) single family residences are constructed on all of the lots subject to this Declaration. Upon the expiration of the Developer Control Period, the terms of office of all members of the Committee appointed by the Developer shall be deemed to have expired and the *Sonterra* Property Owners Association (herein called "Sonterra POA") shall have the authority to fill all vacancies thereby created on the Committee. The term of office of each Committee member shall be one (1) year. The members of the Committee whose terms have expired after the expiration of the Developer Control Period shall serve until their successors are appointed by the Sonterra POA or until their earlier death, resignation or removal by the Sonterra POA. The Committee may (but need not) from time to time establish, amend and repeal guidelines and standards (the "Architectural Rules") to be used in rendering its decisions. Nothing shall preclude the Committee from granting variances from the Architectural Rules.

B. The Committee shall have the authority to control the architectural and aesthetic character of the Land. No changes or deviations in or from the plans and specifications approved by the Committee for any such work shall be made without the prior written approval of the Committee. In determining whether to approve or disapprove plans and specifications, the Committee shall have the exclusive right to disapprove any such plans or specifications which, in its sole opinion, are not suitable or desirable with respect to the individual plan or specification, the particular or surrounding locations concerned, or all or any portion of the

Land. In this regard, the Committee shall have the right to take into consideration the matters mentioned below, as well as the aesthetics of the proposed plans and specifications, the harmony thereof with the surroundings, their effect on the view of or from the adjacent or neighboring property and the effect on all or any portion of the Land. Approval is for the purpose of reviewing harmony and aesthetics of design and location and ensuring consistency with the overall development of the Land and neither the Committee, the Developer nor any other person or entity shall have any liability in connection with the granting of any approval for any technical, structural or other defects in the plans or specifications so approved.

C. No building, excavation, grading, landscaping, garage, storage house, wall, fence, driveway, sidewalk, parking area or other improvements of any kind, size or purpose shall be erected, placed, altered or maintained upon any lot, nor shall any exterior additions to, or change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials and location shall have been submitted to and approved in writing (considering, among other matters, the harmony of external design and location in relation to surrounding structures, topography and existing hardwood trees of six inch (6") chest high diameter or larger) by the Committee. No building of any size or type may be constructed on any lot by a person or company other than a builder approved in advance in writing by the Committee (a "Builder"). Plans, elevations, site plans, specifications, plats, and names and credentials of Builders shall be filed with the Committee by delivery of such materials to the office of the Developer, which delivery must be confirmed by a written receipt from the Developer. All actions of the Committee will be in writing and copies of its actions will be retained in its records. Such records shall be maintained at the office of the Developer during the Developer Control Period and thereafter shall be maintained at the offices of the Sonterra POA. If the Committee fails to respond to a request within thirty (30) days after filing and receipt of such materials, such request shall be deemed approved.

D. Construction done pursuant to and in accordance with plans, specifications and plats approved, or allowed to become effective without specific disapproval, by the Committee under the terms of this Section shall be conclusively presumed to comply with these Restrictions and shall not be subject to legal prohibition under Section 9.

E. The Committee is authorized, in its sole discretion, to grant a deviation from the requirements contained in Subsections 6(B), 6(C), 6(E), 6(F), and 6(H), but such deviation shall not be construed as a waiver of any prior and continuing restrictions, including without limitation, the Stone Oak Master Plan (defined below); provided however, that the Committee is not authorized to grant a deviation from the requirement in Subsection 6(E) regarding the minimum rear setback on lots adjacent to the golf course.

F. The Committee may establish a reasonable processing fee to defer the costs of the Committee in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

## 5. ASSOCIATIONS

The Land and lots subject to this Declaration are hereby also made subject to the jurisdiction of the Sonterra Property Owners Association, Inc. ("Sonterra POA"), serving pursuant to that certain Declaration of Covenants filed as Volume 3418, Page 1980, Real Property Records of Bexar County, Texas, as that Declaration has been amended and may be amended from time to time, and the Land and lots are also subject to the jurisdiction of the Stone Oak Property Owners Association, Inc. ("Stone Oak POA"), the First Amended and Restated Stone Oak Master Plan ("Stone Oak Master Plan") filed in Volume 4361, Page 617, Real Property Records of Bexar County, Texas, as that Stone Oak Master Plan has been amended and may be amended from time to time, and the Third Amendment to Stone Oak Master Plan filed in Volume 3998, Page 444, Real Property Records of Bexar County, Texas. The board of directors of the Sonterra POA may establish a one-time reasonable fee for each lot for the express purpose of assuring street maintenance and cleanup during and after construction on such lot, which fee shall be paid at the time a request for approval is submitted to the Committee.

## 6. RESTRICTIONS ON LOTS/ENTRY AND EXIT GATES

A. Land Use. All lots included in the Land shall be used for single family residential purposes. No building shall remain uncompleted for more than one (1) year after construction has commenced. Temporary use may be made of a house by a Builder, but only for a sales office for the single purpose of selling homes in *La Cierra* constructed by such Builder. Such temporary use shall be permitted until such house is sold, but the period of time during which such temporary use shall be permitted shall not exceed twelve (12) months in total and each Builder may only use one house for temporary use at any given time.

B. Building Types. No building shall be erected, altered, placed or permitted to remain on any lot subject to this Declaration other than: one (1) detached single-family dwelling with only one or two stories above ground and one (1) one-story garage for not less than two (2) nor more than three (3) motor vehicles. All garages shall be large enough to accommodate under roof a minimum of two (2) and a maximum of three (3) full-sized automobiles and shall be attached to the house by a common wall or breezeway. No garage shall be permanently enclosed or otherwise converted for any use other than storage of automobiles. Open car ports are not permitted.

C. Dwelling Size. The heated and air conditioned inside living area of each single-family dwelling, exclusive of open or screened porches (covered or uncovered), garages, storage rooms, stoops, open terraces, decks and/or servant's quarters shall not be less than 2,000 square feet.

D. Building Materials. The exterior walls of all residential buildings shall be constructed entirely of stucco, brick or stone of a quality, color, type and texture approved by the Committee. All roof overhangs and window and door openings shall be excluded from the

masonry requirement of this subsection. Roofing shall be slate or tile of a quality, color, type and texture approved by the Committee. Composition roofs are not permitted.

**E. Building Location.** No building located on any lot shall be nearer the front street property line than twenty-five feet (25'). All lots shall have a minimum rear setback of twenty-five feet (25'). The side lot line minimum setback shall be five feet (5'), except that on corner lots, the side on a street shall have a ten foot (10') setback. In no event shall any of the exterior walls of any two houses be nearer than ten feet (10'). Eaves, steps, terraces and patios shall not be considered part of a building for purposes of the restrictions of this subsection; provided, however, no part of a structure may encroach on another lot or obstruct any easement. Swimming pools may be constructed within the required rear yard setback areas that are not adjacent to the golf course; provided however, that such improvements shall not encroach on any easements of record. No obstruction to visibility at street intersections shall be permitted.

**F. Fences and Walls.** Fences and walls must have the prior written approval of the Committee wherever they are constructed, erected, altered, modified or permitted to remain. Walls must be constructed of masonry of a kind, color and height approved by the Committee. All fences that are visible to a street shall be constructed of wrought iron or architectural iron. No chain link or similar fence will be permitted in any location. No wooden fence may be constructed without the prior written approval of the Committee, and all fences shall be constructed per specifications as set forth by the Committee from time to time. No gates shall be permitted in fences on lots adjacent to the golf course which would provide pedestrian, golf cart or vehicular access to the golf course from said lots; provided however, that this provision shall in no manner or event be construed to affect or restrict access to the golf course pursuant to easements filed of record granting access to the golf course from any portion of the Land. Nothing contained in this Declaration is intended to grant, or shall be construed as granting, access to the golf course to any person who is not a qualified member of The Club at Sonterra. Obstruction of any easement by fences or walls shall be at the owner's risk.

**G. Landscaping.** A landscape plan shall be submitted for approval by the Committee showing, as a minimum, foundation planting and sodding of the front yard and all other improvements required by this Declaration. The Committee may also require submission for approval of a landscape plan for the rear yard of any lot adjacent to the golf course. Underground sprinkler systems shall be included in the landscape plan and shall be installed, maintained, and operated at each dwelling to keep lawns and landscaping in a condition acceptable to the Sonterra POA and appropriate to the season, weather conditions and water availability. All landscaping for front yards shall be completed within thirty (30) days after completion of a residence (as determined by the issuance of the certificate of occupancy for the residence). The use of native plant materials which minimize water consumption is encouraged. At least seventy percent (70%) of the plant material introduced to the front yard, including lawn grasses, shall consist of xeric or natives. A list of acceptable plant materials and planting specifications shall be included in the Architectural Rules.

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**H. Temporary Structures.** No temporary structure, mobile home, trailer, basement, tent, shack, garage, barn or other out building shall be moved onto, constructed on or otherwise located on or used on any lot as a residence or for any other purpose either temporarily or permanently, unless specifically authorized in writing, in advance, by the Committee.

**I. Resubdivision.** No lot in the subdivision may be further subdivided at any time or for any purpose.

**J. Business.** No gainful occupation, trade, business or other non-residential use shall be conducted on any residential lot, except home office activities which (i) are not apparent or detectable by sight, sound or smell from the exterior of the residence, (ii) do not result in increased traffic, increased parking, (iii) do not violate any applicable city zoning ordinances or other laws, and (iv) are consistent with the residential character of the Land and do not create a nuisance or a hazardous or offensive use of the lot. Any area within a residence to be used for business purposes shall be noted on plans submitted to the Committee and a description of the nature and extent of the use and the business purpose shall be included in such submissions.

**K. Signs.** Signs of any kind shall not be permitted without the prior written approval of the Committee. No sign shall be displayed on any residential lot except (i) one sign for each lot, not more than five (5) square feet in area, advertising that such lot is for sale or rent, or (ii) signs used by Builders to advertise the property during construction and sales, each not more than twelve (12) square feet in area.

**L. Oil and Mining Operation.** No drilling, development, refining, quarrying, mining, or prospecting operations for any oil, gas, other minerals or any rock, gravel, aggregate, dirt or other earthen material shall be conducted on any lot, nor shall any well (including a water well), tank, tunnel, mineral excavation or shaft be permitted on any lot.

**M. Livestock and Poultry.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except household pets (limited to no more than two (2) domestic, household dogs and two (2) domestic, household cats) which are not kept, bred, or maintained for commercial purposes. Pets shall not be permitted to run loose and all pets must be on a leash when outside their owner's lot.

**N. Garbage and Refuse.** No lot shall be used or maintained as a dumping ground for refuse. All trash, garbage and other waste shall be kept in sanitary containers, which at all times must be kept sealed, kept concealed from public view, and the contents thereof disposed of as required by the Sonterra POA and other applicable local authority.

**O. Clotheslines.** No clotheslines shall be constructed, placed, erected, located or used on any lot in such a way as to be visible to any extent whatsoever from any point outside that lot.

**P. Utility Services.** Except for temporary structures of Developer, all lots will be connected to the central water and sewer systems provided by Developer, and no other water or sewage system may be constructed, located or used at any time or for any purpose on any lot.

**Q. Parking.** No motor home, boat, personal watercraft, recreational or travel trailer vehicle, truck larger than pick-up size (one and one half ton capacity), trailer of any size or inoperative motor vehicle shall be or remain parked in any situated on any front yard, driveway, street or other visible area of the subdivision for a period of thirty-six (36) hours or more, unless specifically authorized in writing, in advance, by the board of directors of the Sonterra POA. Off-street parking shall be provided by the owner of each lot for all such vehicles in a location entirely screened from view from all points outside that lot. On-street parking, except by visitors on a temporary basis not to exceed twenty-four (24) hours, is prohibited.

**R. Nuisance.** No noxious or offensive activities shall be permitted to exist or occur upon any lot, nor shall anything be done thereon which may be or may become an unreasonable annoyance to the neighborhood or to any neighbor or which is opposed to the purposes of these Restrictions.

**S. Antennae.** No television, radio (whether of citizens band, shortwave or other frequency), satellite dish or outside antennae of any type shall be used, installed or permitted to remain unless placed in the attic of a residence or otherwise completely hidden from view from all points outside the lot and approved in advance in writing by the Committee.

**T. Solar Collectors.** Solar apparatus, if used, must be installed in a location not visible from any point outside of that lot, and shall not be moved on, constructed on or otherwise located on or used on any lot without prior written approval of the Committee.

**U.** During the Developer Control Period, the entry and exit gates to the subdivision to be known as "La Cierra" shall remain open during normal business hours to facilitate the marketing, sale and construction of new homes on the Land. The Developer, in its sole discretion, may amend and/or rescind the policy set forth in this Subsection 6(U) at any time during the Developer Control Period in accordance with Section 11 of this Declaration.

## **7. DRIVEWAYS**

Driveways and sidewalks in the front yard of each lot must be constructed of concrete with pebble finish or pavers. Location, design, texture and color of, and any decorative surface to be used on, any driveway must be approved in advance, in writing by the Committee. The streets are constructed in such manner as to permit a vehicle to drive over the curb and into the driveway entrance and the curb shall not be broken out, unless approved in advance, in writing, by the Committee. Driveways and sidewalks must be shown on the site plan submitted for approval by the Committee. No driveway or other access to any lot is permitted from Blanco Road.

## 8. MAILBOXES

If curbside mailboxes are required for mail delivery by the U.S. Postal Service, individual designs for mailbox holders shall be required by the Committee. Within the scope of postal service requirements, the mailbox holders shall be designed and constructed of masonry materials which harmonize architecturally with the residences in color, materials, construction, texture, size, shape and other means, and the standard rural mailbox installation on a single post shall not be permitted. Designs shall conform to the design described in the Architectural Rules. The Committee may, to comply with Postal Regulations, require mailbox groupings at selected locations in the subdivision, rather than individual boxes. If groupings are required, Developer will provide for the enclosure for such groupings.

## 9. ENFORCEMENT

Except for matters related to the Committee as described in Section 4, if the owner of any lot, or such owner's heirs, devisees, executors, administrators, representatives, successors, assigns, agents, guests, invitees, licensees or tenants shall violate or attempt to violate any of the restrictions or covenants set forth in this Declaration, it shall be lawful for the Sonterra POA and/or the Developer, or if the Sonterra POA and/or Developer shall fail to do so after sixty (60) days' written notice from a person owning any lot encumbered by this Declaration, then for any such owner, to institute an enforcement action against the person or persons violating or attempting to violate any such restrictions or covenants. Each of the owners acknowledge and agree, for themselves and for each of their heirs, devisees, executors, administrators, representatives, successors, assigns, agents, guests, invitees, licenses and tenants, that the failure of any owner or other affected person or entity to comply with any applicable restriction or covenant contained in this Declaration will result in irreparable damage to Developer, the Sonterra POA and the other owners of lots; thus, the breach of any provision of this Declaration shall give rise not only to an action for damages at law, but also may be enjoined by an action for specific performance in equity in any court or competent jurisdiction. If enforcement actions are instituted, then in addition to the remedies specified above, court costs and reasonable attorney's fees shall be assessed against the losing party and awarded to the prevailing party.

## 10. SEVERANCE

If any of the foregoing Restrictions is held illegal, invalid or unenforceable to any extent by a court of competent jurisdiction, it shall not affect the legality, validity and enforceability of the other Restrictions and the illegal, invalid or unenforceable provision shall be deemed reformed to the minimum extent necessary to make it legal, valid and enforceable and in a manner so as to most closely implement the intent of this Declaration. If any provision of this Declaration is subject to more than one interpretation, the interpretation which more clearly reflects the intent hereof shall be enforced.

## 11. AMENDMENT

The Restrictions set forth in this Declaration may not be amended or otherwise modified during the Developer Control Period except by a written instrument which is (i) executed by the Developer or its successor in interest and (ii) recorded in the Official Public Records of Real Property in Bexar County, Texas. The Restrictions set forth in this Declaration may not be amended or otherwise modified after the Developer Control Period except by a written instrument which is (i) executed by the owners of two-thirds of the lots at the time and (ii) is recorded in the Official Public Records of Real Property in Bexar County, Texas.

## 12. TERMS OF RESTRICTIONS

The Restrictions shall run with and bind the Land, and the owner of the Land subject to this Declaration, its respective legal representatives, heirs, devisees, executors, administrators, successors, assigns, agents, guests, invitees, licensees and tenants for a term of twenty-five (25) years from the date this Declaration is recorded, and shall be automatically extended for successive periods of one (1) year unless an instrument amending this Declaration has been executed and filed in accordance with Section 11.

## 13. DEVELOPER

Developer may assign its rights, powers and obligations hereunder by the express written assignment thereof recorded in the Official Public Records of Real Property in Bexar County, Texas. Any notice to Developer shall be in writing, shall be personally delivered or mailed by registered or certified mail, return receipt requested to Developer at Post Office Box 160067, Austin, Texas 78716. Developer's address may be changed for purposes of notices by filing an instrument in the Official Records of Real Property in Bexar County, Texas. To the fullest extent permitted by law, neither the Developer nor the Committee, nor any member of the Committee, nor any officer, director, employee or agent of any of the above, shall be liable to any person or entity for any damage, loss, cost, expense or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission or the like made in good faith, whether or not

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erroneous or negligent, which they reasonably believed to be within the scope of their respective duties and rights hereunder or in connection herewith. Anything to the contrary in this Declaration notwithstanding, Developer makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Land can or will be carried out, or that if such Land is once used for a particular use, such use will continue in effect.

Executed this 17<sup>th</sup> day of December, 1995.

ASC SAN ANTONIO VENTURE I

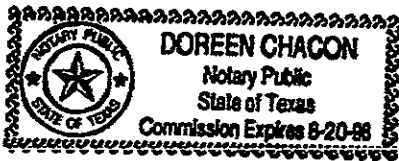
By: American SC Texas, Inc., its Project Manager

By: [Signature]  
Joe A. Birdwell, President

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on this 17<sup>th</sup> day of December, 1995 by Joe A. Birdwell, President of American SC Texas, Inc., a Texas corporation, as Project Manager for ASC San Antonio Venture I, a Texas general partnership, on behalf of such general partnership.



[Signature]  
Notary Public, State of Texas

Typed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

PLEASE RETURN TO:

Ticor Title Agency of San Antonio  
10010 San Pedro, Suite 100  
San Antonio, TX 78216

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Filed for Record in:  
BEXAR COUNTY, TX  
GERRY RICKHOFF, COUNTY CLERK

On Dec 14 1995

RC 4:47pm

Receipt #: 185369  
Recording: 21.00  
Doc/Inst: 6.00

Doc/Num : 95- 0187353

Deputy -Betty Sequiveda

Any provision in any instrument purporting to affect the sale, rental, or use of the described real property in violation of this act is void and unenforceable under: PERIODIC LAW STATUTE OF TEXAS, COUNTY OF BEXAR  
I hereby certify that this instrument was FILED in the Public Records on the 15th day of the 12th month of 1995 at 4:47 PM and was duly RECORDED in the Public Records of Bexar County, Texas on

DEC 15 1995



*Gerry Rickhoff*  
COUNTY CLERK BEXAR COUNTY, TEXAS

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