

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS OF FRIO CAÑON

This Declaration of Covenants, Conditions, Easements and Restrictions of Frio Cañon (this “Declaration”) is made on the 19<sup>th</sup> day of December, 2007, by Frio Cañon Land, LLC, a Texas limited liability company (“Declarant”).

RECITALS

A. Declarant is the owner of all that certain real property (“the Property”) located in Real County, Texas, described as follows:

(i) Tracts 1 to 40 of Frio Cañon, a subdivision located in Real County, Texas (“Frio Cañon”), as more completely described in the plat recorded in Volume 1, Page 158 of the Plat Records of Real County, Texas, and amended by the vacate and re-subdivision plat of Tract 10 of Frio Cañon recorded in Volume 1, Page 160 of the Plat Records of Real County, Texas (as may be amended from time to time hereafter, the “Frio Cañon Plat”);

(ii) Tracts 15, 16, 17, and 18 of Frio Vista Ranch, a subdivision located in Real County, Texas (“Frio Vista Ranch”), as more completely described in the plat recorded in Volume 1, Page 155 of the Plat Records of Real County, Texas, and amended by the re-subdivision plat recorded in Volume 1, Page 156 of the Plat Records, Real County, Texas, and further amended by the vacate and re-subdivision plat of Tracts 15-24 of Frio Vista Ranch, recorded in Volume 1, Page 157 of the Plat Records, Real County, Texas, and being further amended by a correction plat for the vacate and re-subdivision plat of Tracts 15-24 of Frio Vista Ranch, recorded in Volume 1, Page 159 of the Plat Records, Real County, Texas (as may be amended from time to time hereafter, the “Frio Vista Ranch Plat”); and

(iii) Such other property as may hereafter be included in the definition of “Property” by Declarant by unilateral amendment of this Declaration in accordance with the terms hereof.

The Property is more particularly described in Exhibit “A” attached hereto and made a part hereof for all purposes. Individually numbered tracts or parcels of land included in the Property and referenced on the Frio Cañon Plat, the Frio Vista Ranch Plat, or the plat of such other property as is included in the Property in accordance with the terms hereof are referred to herein individually as a “Tract” and collectively as the “Tracts.”

B. Declarant has devised a general plan for the development of the Property as a whole, with specific provisions for particular parts and tracts of the Property. This general plan provides a common scheme of development designed to perpetuate the natural environment of the Property, preserve and propagate the wildlife on the Property for the use of the Owners, and protect and safeguard the value of the Property.

C. This general plan will benefit the Property in general, each Tract, Declarant, each Owner, and each successive owner of an interest in the Property or any Tract.

COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS

NOW THEREFORE, in accordance with both the doctrines of restrictive covenant and implied equitable servitude, Declarant hereby restricts the Property according to the following covenants, conditions, easements and restrictions in furtherance of this general development plan for the Property and declares that all of the Property and each Tract shall from and hereafter the date hereof be held, sold, and conveyed subject to the following covenants, conditions, easements and restrictions:

1. “Architectural Guidelines” as used herein means the Architectural Design Guidelines for Frio Cañon, as currently existing or as hereafter amended.
2. “Association” as used herein means Frio Cañon Community Association, a Texas non-profit corporation, its successors and assigns. The Association shall have all those powers, duties and responsibilities set out herein, and such other powers, duties and responsibilities not inconsistent herewith provided for in its Certificate of Formation and its Bylaws as the same may be amended from time to time by proper action of its members.
3. “ACC” as used herein means the Architectural Control Committee designated and constituted as provided herein. Whenever Declarant owns at least thirty percent (30%) of the Tracts, the ACC will initially consist of one or more persons designated by Declarant. Whenever Declarant owns less than thirty percent (30%) of the Tracts (i) the ACC will consist of three (3) persons chosen by a majority of the Votes, and (ii) any ACC member may be removed from the ACC by at least sixty percent (60%) of the Votes; provided, however, that if a vacancy exists in the ACC for longer than six (6) consecutive months, then the vacancy may be filled by a majority vote of the Directors of the Association. The ACC will develop and promulgate to all Owners written standards for the construction of improvements on the Property, which standards will supplement but not contradict the terms of this Declaration and the Architectural Guidelines.
4. “Owner” as used herein means the record owner, whether one or more persons or entities, of fee simple title to any Tract, including contract seller(s), but excluding those having such interest merely as security for the performance of an obligation.
5. “Common Areas” as used herein means Tract 17 of Frio Vista Ranch, Tracts 20, 23, and 39 of Frio Cañon, and such other property as may hereafter be included in the definition of “Common Areas” by amendment of the terms hereof.
6. “Member” as used herein means a person entitled to membership in the Association. Every Owner shall be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Tract. Ownership of a Tract shall be the sole qualification for membership. The membership held by an Owner shall not be alienated,

transferred to pledged in any way except by the sale or encumbrance of such Tract or as otherwise set forth in this Declaration.

7. “Board of Directors” as used herein means those persons duly elected to and serving as a member of the Board of Directors of the Association. The affairs of the Association shall be managed by the Board of Directors, as provided in the Bylaws of the Association. The initial Board of Directors shall serve until their annual terms expire according to the Bylaws of the Association, at which time the Members shall elect a new Board of Directors, all as more particularly set forth in the Bylaws of the Association.

8. “Resident” means a person residing on any Tract in the Property in compliance with the terms hereof.

9. “Walking Easement” as used herein means (a) the twenty (20) foot wide easement along and parallel to the east edge of the Frio River at normal flow, but not to extend outside the approximate 100 year flood plain or onto any bluff on Tract 15 of Frio Vista Ranch or Tracts 11, 12, 13, 14, 15, 16, 17, 18, or 19 of Frio Cañon, and (b) the ten (10) foot wide easement along and parallel to the South side of Bybee Creek at normal flow, as shown on the Plat. Declarant reserves from each Tract the Walking Easement, for the benefit of all Owners and their guests as well as Declarant and Declarant’s assigns. The Walking Easement may be used only for the purpose of foot traffic by Owners and their guests, and then only so as not to interfere with any Owner’s rights and privileges as to his or her Tract, such as but not limited to fishing and family/social gatherings. No picnicking, camping, loitering, or other non-ambulatory activity is allowed in the Walking Easement. No animals other than household pets are allowed on the Walking Easement, and each Owner is responsible for cleaning up any waste on the Walking Easement or other portion of the Property caused by such Owner’s animal. No vehicle may be parked or operated on the Walking Easement for any reason. Each Owner shall be responsible, at his own expense, for maintaining and providing liability insurance as to that portion of the Walking Easement located on such Owner’s Tract, naming the Association, Declarant, and each principal in Declarant as additional insureds, in an amount of at least One Million and No/100ths Dollars (\$1,000,000.00). No building or fence shall encroach on any portion of the Walking Easement. No other improvement shall encroach on any portion of the Walking Easement without the prior written consent of the ACC.

10. “Utility Easement” as used herein means a ten (10) foot wide easement and building setback line along and parallel to each side boundary line of each Tract, and along and parallel to each public roadway on or adjacent to the Property. In addition to setback lines set out in the Architectural Guidelines, Declarant reserves from each Tract the Utility Easement, for the benefit of all Owners and as well as Declarant and Declarant’s assigns. The Utility Easement may be used for the purposes of (i) installing and maintaining water, electric, telephone and other utility lines, poles and/or anchor systems, (ii) cutting and/or trimming trees, bushes, shrubs and other vegetation within or adjacent to the Utility Easement which at any time interfere or threaten to interfere with such lines, poles and/or anchor systems, and (ii) ingress and egress by employees, agents

and/or contractors of utility companies owning or maintaining such lines, poles and/or anchor systems. Any vehicle parked on the Utility Easement must be moved immediately upon request for the purpose of providing utilities, police, fire protection or other services to the Property. No building, fence or other improvement shall encroach on any portion of the Utility Easement.

11. "Temporary Shelter" as used herein means any tent, travel trailer, motor home, other recreational vehicle, and temporary or transient style shelter. No Temporary Shelter is permitted on the Property, except that, if a Primary Residence has been constructed on a Tract, tent camping is permitted on that Tract for a maximum of seven (7) days in any rolling twelve (12) month period.

12. Each Tract is subject to and each Owner shall be deemed to have taken notice of all of the following: (a) The covenants, conditions, easements and restrictions set forth in this Declaration; (b) All matters shown on the Frio Cañon Plat, the Frio Vista Ranch Plat, and the plat of such other property as is included in the Property in accordance with the terms hereof; (c) The Architectural Guidelines; (d) All properly adopted rules and regulations of the ACC; (e) All properly adopted rules and regulations of the Association; and (f) All matters otherwise filed of record in the real property records of Real County, Texas.

13. It is the desire of Declarant to limit the type of vehicle used for travel within the Property to small, quiet, and safe vehicles. Parking of full-sized vehicles used on the Property should be on an Owner's Tract. Vehicles parked at the Common Areas should be small and quiet vehicles except in common parking areas designated by the Association. The operation of battery powered golf carts, gasoline powered golf carts, "vespas," and other small vehicles that do not create a noise nuisance on the Property is desired and encouraged. Cars, trucks and similar motor vehicles approved and licensed for travel on public streets may be operated on the Property, but may only be parked (a) in a location on a Tract not otherwise in violation of the terms hereof, and (b) in designated parking areas included in the Common Areas. All vehicles operated on the Property must be operated by a licensed driver. The Association will adopt rules and regulations for speed limits and to prohibit or limit the use on the Property of specific types of vehicles.

14. No Tract may be subdivided.

15. An Owner may consolidate one or more adjoining Tracts into one building site under the terms and conditions set out in the Architectural Guidelines and as follows: An owner of two (2) or more tracts may elect to combine all such tracts into one "Combined Tract" for the purpose of voting rights and assessments under this Declaration and with respect to the Association. Election shall be made by written request to the Association, with proof of ownership to each adjoining tract in the name of Owner. Once accepted by the Association, the Combined Tract thereafter shall be limited to one vote and shall be subject only to assessment as if the Combined Tract was only one (1) tract. Thereafter, should one or more tracts comprising such Combined Tract be

transferred to another owner, the status of the transferred tract(s) and other tract(s) for voting and assessments thereafter will cease to be a Combined Tract. If a Combined Tract is created, the change in voting rights and assessment obligations to a Combined Tract basis shall not become effective until January 1 of the calendar year following acceptance by the Association.

16. No oil, gas or other mineral exploration of any type is permitted on the Property. No commercial excavation or mechanical digging for artifacts is permitted in the Property.

17. Water located on or under the Property shall be for domestic and wildlife use only. No commercial development of water resources is permitted on the Property. No water well may be drilled on any Tract without the prior written consent of Declarant or Declarant's successor in interest of the water system supplying water to such Tract. Water will be supplied to each Tract by a central water system, and each Owner will be charged fees by the operator of such system to connect to and receive water from such system.

18. The Association will maintain the entryways, fences, gates, and walls for the Property along the east edge of U.S. Highway 83 and any entryways, fences, gates, or walls on the Common Areas. Otherwise, all entryways, fences, gates, and walls, if any, are to be maintained at the expense of the Owner(s) on whose property such entryways, fences, gates, or walls are located.

19. No activity or use of any Tract or the erection or maintenance of any structure on any Tract which violates in any way any law, statute, ordinance, regulation or rule of any governmental entity with applicable jurisdiction shall be permitted. Noxious or offensive activity shall not be permitted on any Tract, nor shall anything be done on any Tract which may become an annoyance or nuisance to any Owner or any Resident.

20. No gasoline or other internal combustion engine is permitted to operate on any part of any river, creek, or other waterway within or adjacent to the Property.

21. No modification of existing topography of any Tract shall be permitted which would result in the ponding or accumulation of surface water on any other Tract, the Walking Easement, or any common roadway on or adjacent to the Property.

22. No hunting or discharging of firearms or any other device (including but not limited to bows and traps) capable of killing, injuring or causing property damage is permitted on the Property.

23. No trash, garbage, refuse, used lumber, or unsightly items may be maintained, kept, thrown, dumped, or otherwise disposed of on any Tract. Trash, garbage and other waste for pickup must be kept in containers in an enclosed structure that is shielded from

view from any other Tract and the Walking Easement, and protected from scattering by animals or other means.

24. No inoperative vehicle or equipment shall be permitted to remain on any Tract longer than thirty (30) days after the vehicle or equipment becomes inoperative.

25. Generally recognized household/family pets of a reasonable number shall be permitted provided they are not kept or maintained for commercial purposes. No swine, poultry, game chickens, emus, ostriches, exotic or dangerous pets of any type (i.e. pit bulls, boa constrictors, etc.) are permitted on any Tract. Any pet which endangers any Owner or Resident or which creates a nuisance or unreasonable disturbance or is not a common household pet must be removed from the Property within seven (7) days' after written notice.

26. No Tract may be used for any commercial purpose, except that:

(a) Nothing herein shall be construed to prevent an Owner or Resident from rendering professional services of a purely personal nature as long as (i) such services do not attribute to the Tract any appearance of a commercial or non-residential use, and (ii) no sign of any nature indicating such services is displayed on or near the Tract.

(b) "Primary Residence" as used in this Declaration means a single-family residence that is intended to be the full-time or part-time residence of the Owners of a particular Tract. "Secondary Residence" as used in this Declaration means a guesthouse or servant's quarters. The Primary Residence and/or Secondary Residence on a Tract may be rented or leased for periods of time less than twelve (12) consecutive months only if placed in a rental pool operated by a person or entity approved by or in contract with the Association and rented on a nightly basis for single family use only, provided that (i) the Tract is not used solely for rental purposes, (ii) no sign of any nature indicating such services is displayed on or near the Tract, and (iii) if both the Primary Residence and the Secondary Residence are leased at the same time, both of them are leased to the same lessee. The Association will enact written policies and procedures for the placement of property in a rental pool. All users of lodging services must acknowledge in advance in writing that he or she has been made aware of and agrees to abide by all of the covenants, conditions, easements and restrictions set forth in this Declaration. The use of any Tract for lodging services does not and will not release any Owner from compliance with any of the obligations and duties as an Owner under this Declaration.

(c) The Primary Residence and/or Secondary Residential Structure on a Tract may be leased for occupancy for a period of time of at least twelve (12) consecutive months by not more than one family unit or in the alternative two (2) adult residents. If both the Primary Residence and the Secondary Residence are leased at the same time, both of them must be leased to the same lessee All leases

must be in writing, a copy of which must be furnished to the Association, within seven (7) days after its execution, and must contain an initial term of not less than twelve (12) consecutive months when signed.

(d) The rent or lease of a Primary or Secondary Residence does not release the Owner from compliance with any of the obligations and duties as an Owner under this Declaration. Each Owner must provide his, her or its lessee with a copy of this Declaration. All the provisions of this Declaration shall be applicable and enforceable against any lessee or other occupant of a living unit to the same extent as any Owner. Any lease or rental agreement shall be deemed to be subject to this Declaration without the necessity of specific reference hereto, and shall bind each Resident, lessee, occupant, and invitee with respect to such Tract to the terms and conditions hereof.

27. All improvements on each Tract must meet the requirements set out in the Architectural Guidelines.

28. No overnight stay is permitted in any portion of a Living Unit until the Living Unit has been completed and been approved by the ACC and all governmental agencies and political subdivisions with regulatory authority over the construction of all or any portion of a Living Unit.

29. No exterior lighting of any sort shall be installed or maintained on any Tract where the light is offensive to any Owner or Resident; provided, however, that reasonable security, landscape, tree, deck, patio or swimming pool lighting is permitted.

30. No exterior horns, bells, whistles or other sound devices shall be placed or used on any Tract; provided, however, that residential security alarm systems are permitted.

31. The Association shall be responsible for maintenance of the portions of the waterways of the Frio River and Bybee Creek that lie within the Property, including bridges and low water crossings and the dams located on Frio Cañon Tract 2 and Frio Cañon Tract 7. Each Owner shall be responsible for the maintenance of the landscaping and the exterior of any dwelling unit and all other appurtenant structures located on such Owner's Tract at a standard in keeping with the level of maintenance determined by the ACC as applicable to each Tract. Each Owner's maintenance obligations shall include painting and repairs to roofs, glass windows and doors and all structural elements, as well as plumbing, electrical equipment, foundation maintenance and repairs, landscaping and all other improvements on such Owner's Tract.

32. Water may not be drawn directly from any river, creek, or other waterway within or adjacent to the Property for any reason.

33. Each Owner by acceptance of a deed to a Tract, whether or not expressed in such deed, shall be deemed to covenant and agree to pay the Association: (1) Regular Assessments; (2) Special Assessments for capital improvements; and (3) the Initial

Association Capitalization Fee. Regular Assessments and Special Assessments are referred to herein collectively as “Assessments” and individually as an “Assessment.” All sums assessed as provided for in this Declaration that remain unpaid, together with interest, costs of collection and reasonable attorneys’ fees, shall be a continuing lien and charge upon the Tract against which each such Assessment is made, which shall bind and be a continuing charge upon such Tract. Each Assessment, together with interest, cost of collection and reasonable attorneys’ fees shall also be the personal obligation and debt of each person who was the Owner of the Tract at the time when the Assessment fell due.

34. The Assessments, and all funds derived therefrom, shall be used exclusively for (a) the maintenance, repair and care of the Common Areas (including recreational areas and private streets), and improvements to or on the Common Areas and Tracts for which the Association is herein given responsibility; (b) the furtherance and fulfillment of the purposes of this Declaration and other herein provided responsibilities of the Association; (c) the promotion of the recreation, health, safety and welfare of the Owners; and (d) administrative costs and other costs and expenses of the Association, which costs and expenses may include fidelity insurance for acts of directors, managers, officers and employees of the Association responsible for the handling of Association funds; liability insurance covering the Common Areas and all damage and injury caused by the negligence of the Association, its employees and agents; mowing grass, caring for the grounds and for improvements that may be placed upon the Common Areas; maintenance and improvement of the Common Areas; discharge of any liens on the Common Areas; payment of fees to managing agents, accountants, attorney and other parties providing professional and /or other services to the Association in connection with the performance of the Association’s duties and responsibilities; and other charges required by this Declaration or as to which the Association is authorized to incur which the Association shall determine to be necessary or desirable to benefit the Owners, including the establishment and maintenance of a reserve for repair, maintenance, replacement and other charges as specified herein (herein collectively called “Association Expenses”).

35. The Initial Association Capitalization Fee will be One Thousand and No/100ths Dollars (\$1,000.00) per Tract, payable at the closing of the initial purchase of such Tract from Declarant. The Board of Directors may change the Initial Association Capitalization Fee from time to time. Thereafter, Regular Assessments include both Monthly Assessments and the Transfer Fee Assessment set forth herein. The Board of Directors may change the Regular Assessments from time to time.

A. Monthly Assessments. Until changed in accordance herewith by the Association, (i) the Monthly Assessments for any Tract that is not a part of a Combined Tract (as such term is defined in the Association’s Certificate of Formation) shall be One Hundred and No/100ths Dollars (\$100.00), (ii) the Monthly Assessments for any Combined Tract made up of two (2) Tracts shall be One Hundred Fifty and No/100ths Dollars (\$150.00), (iii) the Monthly Assessments for any Combined Tract made up of three (3) Tracts shall be Two Hundred Twenty Five and No/100ths Dollars (\$225.00), and (iv) the Monthly Assessments for any Combined Tract made up of more than three (3)

Tracts shall be Three Hundred and No/100ths Dollars (\$300.00); provided, however, that the owner of a Tract will be credited for twelve (12) Monthly Assessments if he or she pays a lump sum equal to eleven (11) Monthly Assessments before January 31<sup>st</sup> in any year.

- B. Transfer Fee Assessment. In addition to the Monthly Assessments, until changed in accordance herewith by the Association, each Owner shall pay to the Association a Transfer Fee Assessment of One Thousand and No/100ths Dollars (\$1,000.00) upon each conveyance of a Tract.

The Monthly Assessments shall be due and payable on the first day of each month unless the Board of Directors by majority vote determines an alternate date for such payment. The Monthly Assessments shall commence on the date of the sale, transfer or other conveyance of a Tract to another Owner. In fixing the amount of the Monthly Assessments, the Board of Directors of the Association may, but shall not be required to, add reasonable anticipated depreciation and necessary replacement and repair of capital assets and improvements and may from time to time establish one or more funds or accounts to accumulate amounts deemed necessary therefore.

36. Notwithstanding anything to the contrary herein contained, and in addition to the Regular Assessments authorized above, the Association may levy in any calendar year one or more Special Assessments applicable to that calendar year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto. The assent of two-thirds (2/3rds) of the Members either in person or by proxy at a regular or special meeting called for the purpose of voting on a Special Assessment will be required if the total Special Assessments in any calendar year would exceed (a) Five Hundred and No/100ths Dollars (\$500.00) for any Tract that is not a part of a Combined Tract, (b) Seven Hundred Fifty and No/100ths Dollars (\$750.00) for any Combined Tract made up of two (2) Tracts, (c) One Thousand and No/100ths Dollars (\$1,000.00) for any Combined Tract made up of three (3) Tracts, or (d) One Thousand Two Hundred Fifty and No/100ths Dollars (\$1,250.00) for any Combined Tract made up of more than three (3) Tracts.

37. The Association shall fix the amount of the Regular Assessments for each calendar year at least thirty (30) days in advance of the commencement of such calendar year. Failure of the Association to meet or to fix the amount of the Regular Assessments as herein provided shall be deemed to constitute a setting of the amounts at the levels fixed for the previous calendar year. Written notice of any change in the Regular Assessments shall be mailed (by U.S. first class mail) to every Owner subject thereto. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Tract have been paid and the amount of any delinquencies. The Association shall not be required to obtain a request for such certificate signed by the Owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same.

38. All payments shall be made to the Association at its place of business in Real County, Texas or at such other place as the Association may direct. Any Assessment not paid within fifteen (15) days of its due date shall be subject to a one-time late fee of One Hundred Dollars (\$100.00). Any assessment not paid within thirty (30) days after the due date shall bear interest from such thirtieth date until paid at the rate of the commercial prime interest rate then in effect plus four percent (4%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the assessment, or foreclose the lien against the Tract involved; and interest costs and attorney fees of any such action shall be added to the amount of the assessment. In no event shall the Association be liable to any Owner or other person or entity for failure or inability to enforce or attempt to enforce collection. No Owner may waive or otherwise escape liability for the assessments of his Tract. Further, the powers and enforcement granted to the Association in this paragraph shall be cumulative of, and shall be in addition to, all other remedies and powers of the Association.

39. Upon compliance with the notice provisions set forth herein below, the Association may foreclose the assessment lien against any Tract. Each undersigned Owner, and each subsequent Owner by his acceptance of a conveyance instrument as to a Tract, expressly grants and vests in the Association and 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, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property as provided in section 51.002 of the Property Code of the State of Texas, and each undersigned Owner (and each subsequent Owner by acceptance of a conveyance instrument as to a Tract) expressly grants to the Association a power of sale in connection with said lien. The lien herein provided for shall be in favor of the Association for the benefit of all Owners. The Association acting on behalf of the Owners shall have the power to bid upon an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same and to treat the proceeds of any such lease, mortgage or conveyance in the same manner as assessments hereunder.

Notice of Lien: No action shall be brought to foreclosure said assessment lien or to proceed under the power of sale herein provided less than thirty (30) days after the date of notice of claim of lien is deposited with the postal authority, certified or registered, postage prepaid, to the Owner of said Tract, and a copy thereof is recorded by the Association in the Office of the County Clerk of Real County. Said notice of claim must recite a good and sufficient legal description of any such Tract, the record owner or reputed owner thereof, the amount claimed (which may, at the Association's option, include any late charge and interest on the unpaid assessment as herein provided, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

Foreclosure Sale: Any such sale provided for above is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Section 51.002 of the Property Code of the State of Texas, as the same may be amended from time to time, or in any other manner permitted

by law. The Association, through duly authorized agents and on behalf of the Owners, shall have the power to bid on the Tract at foreclosure sale and to acquire and hold, mortgage and convey same hereinabove provided.

40. The lien for the Assessment provided herein shall be superior to all other liens and charges against said Tract except only for tax liens, liens for purchase money and/or development costs and all first deed of trust liens of record (which shall include a deed of trust that secures a debt secured by a first deed of trust lien, including “wraparound” and “all inclusive” financing), which liens for such purposes shall be superior to the assessment liens herein provided with the understanding that assessments subsequent to a foreclosure of such a superior lien shall continue to bind the mortgaged property and be secured by an assessment lien as herein provided. The Association shall have the power to subordinate the assessment lien to any other lien, and to extinguish such lien and the underling debt, such powers being entirely within the discretion of the Association and exercisable in a writing duly adopted by the Board of Directors. Except as otherwise provided herein, no sale or transfer shall relieve such Tract from liability for any assessment thereafter becoming due or from the lien therefore, but such lien shall exist as, and constitute, a separate and distinct charge and lien on each Tract.

41. The failure of any Owner or Resident to comply with any covenant, condition, easement, or restriction in this Declaration or the Architectural Guidelines will result in irreparable damage to Declarant and other Owners; thus the breach of any provision of this Declaration or the Architectural Guidelines may not only give rise to an action for damages at law, but also may be enjoined or may be subject to an action for specific performance in equity in any court of competent jurisdiction. In the event an action is instituted to enforce any term hereof or of the Architectural Guidelines or prohibit any violation hereof or of any of the Architectural Guidelines, and the party bringing such action prevails, then in addition to any other remedy herein provided or provided by law, such party shall be entitled to recover court costs and reasonable attorney’s fees from the non-prevailing party. Declarant, the Association, the ACC, and each Owner have the right, but not the obligation, to police, control or enforce the terms of this Declaration. These provisions are intended to strictly comply in full with all applicable law, as now existing or hereafter amended. If and to the extent that any provision this Declaration does not comply with applicable law, such provision is hereby altered, changed and amended to secure such compliance; and this covenant and condition shall be deemed paramount and control over all other provisions.

42. Declarant may unilaterally amend this Declaration from time to time for any purpose until December 31, 2017. After December 31, 2017, (a) Declarant may unilaterally amend this Declaration, at any time and from time to time, if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which is in conflict therewith, necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Property, or is required by an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to enable it to make, purchase, insure or guarantee mortgage loans on any portion of the

properties within the Property, and (b) this Declaration may be amended with the written consent of at least two thirds (2/3) of the votes in the Association.

43. No amendment may remove, revoke or modify any right or privilege of Declarant without the written consent of Declarant or its respective assignee of such right or privilege.

44. The covenants, conditions and restrictions of this Declaration shall be effective for a term of twenty (20) years from the date this Declaration is recorded, after which period the covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years. Neither any amendment nor any termination shall be effective until recorded in the real property records of Real County, Texas, and all governmental approvals, if any, with regard to such amendment or termination have been obtained.

These covenants, conditions, easements and restrictions are for the purpose of protecting the value and the desirability of the Property; as such, they shall run with the Property, be for the benefit of the Property, each Tract and each Owner, and be binding on all parties having any right, title or interest in the Property or any Tract, in whole or part, and each of their respective heirs, successors and assigns.

Executed effective as of the date first set forth above.

**Frio Cañon Land, LLC, a Texas limited liability company**

By: \_\_\_\_\_

Name: David Dalglish

Title: Manager

STATE OF TEXAS  
COUNTY OF REAL

This instrument was acknowledged before me on December 19, 2007, by David Dalglish, Manager of Frio Cañon Land, LLC, a Texas limited liability company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit "A" Property Description for Frio Cañon**

**Prepared in the law office of and after recording return to: Garry A. Merritt, P.C.,  
P.O. Box 441, Leakey, TX 78873**

## EXHIBIT "A"

FIELD NOTES TO DESCRIBE A 59.339 Acre Tract of land being all of Frio Cañon, a subdivision of land, according to the plat thereof recorded in Volume 1, Pages 158 of the Plat Records of Real County, Texas and all of Tract Nos. 15, 16, 17 and 18 of Frio Vista Ranch, a subdivision of land, according to the plat thereof recorded in Volume 1, Page 155-156 of said Plat Records, a Vacate and Re-subdivision plat recorded in Volume 1, Page 159 of said Plat Records, and Vacate and Re-subdivision plat of Tracts 15-24 of Frio Vista Ranch recorded in Volume 1, Page 159 of said Plat Records, and being more particularly described as follows:

**BEGINNING:** At a point in the North line of a 1535.30 Acre Tract (Volume 88, Page 231 Deed Records) and in the center of the Frio River for the Southwest corner of Frio Cañon from which a 5/8" iron pin set in the East line of U.S. Highway 83 for the Southwest corner of Frio Vista Ranch bears N 75° 18' 38" W 513.23 feet;

**THENCE:** With the common West line of Frio Cañon and the East line of Frio Vista Ranch and the center off the Frio River as follows:

N 01° 07' 18" E 882.37 feet to an angle point;

N 06° 40' 22" E 544.00 feet to an angle point;

N 15° 32' 02" E 356.32 feet to an angle point;

N 42° 00' 31" E 124.70 feet to the Southeast corner of Lot 15 of Frio Vista Ranch and an interior corner of this tract;

**THENCE:** N 84° 39' 38" W 489.25 feet to a 5/8" iron pin set for the Southwest corner of Lot 15 and upper Southwest corner of this tract;

**THENCE:** With the East line of U.S. Highway 83 and the West line of Tracts Nos. 15, 16, 17 and 18 of Frio Vista Ranch as follows:

with a curve to the right, having a radius of 2099.45 feet, an arc of 440.46 feet, and a central angle of 12° 01' 14", and a chord bearing N 26° 37' 32" E 439.65 feet to a concrete highway marker found for an angle point;

N 28° 30' 50" E 45.74 feet to a 5/8" iron pin set for the Northwest corner of Tract 18 and lower Northwest corner of this tract;

THENCE: S 85° 26' 50" E 607.61 feet to the Northeast corner of Tract No. 18 and an interior corner of this tract;

THENCE: With the West line of Frio Cañon and the East line of Frio Vista Ranch and the center of the Frio River as follows:  
 N 42° 21' 57" E 605.60 feet to an angle point;  
 N 34° 45' 25" E 352.53 feet to the Northeast corner of Frio Vista Ranch and the Northwest corner of Frio Cañon and the upper Northwest corner of this tract;

THENCE: S 89° 20' 43" E 1399.61 feet with the North line of Survey No. 1531.4 to a 5/8" iron pin set for the Northeast corner Survey No. 1531.4 and of Frio Cañon and of this tract;

THENCE: S 00° 20' 58" W 460.00 feet with the East line of Survey No. 1531.4 to a 5/8" iron pin set for the upper Southeast corner of Tract No. 20 (Frio Cañon Trail) Frio Cañon and of this tract;

THENCE: With the South line of Tract No. 20 as follows:  
 With a curve to the right, having a radius of 60.00 feet, an arc of 188.49 feet, and a central angle of 180° 00' 00", and a chord bearing N 89° 20' 43" W 120.00 feet to a 5/8" iron pin set for an angle point of this tract;  
 N 89° 20' 42" W 494.50 feet to a 5/8" iron pin set for an angle point;  
 S 70° 12' 39" W 553.94 feet to a 5/8" iron pin set for the North corner of Tract 40 of Frio Cañon and an interior corner of this tract;

THENCE: S 19° 47' 21" E 75.00 feet to a 5/8" iron pin set for the East corner of Tract 40 and an exterior corner of this tract;

THENCE: S 70° 12' 38" W 120.66 feet to a 5/8" iron pin set for the South corner of Lot 40 and an exterior corner of this tract;

THENCE: N 19° 47' 21" W 75.00 feet to a 5/8" iron pin set for the West corner of Tract 40 and an interior corner of this tract;

THENCE: With the East line of Tract No. 20 as follows:  
 S 70° 12' 39" W 117.38 feet to a 5/8" iron pin set for an angle point;

S 66° 11' 01" W 182.80 feet to a 5/8" iron pin set for an angle point;

S 48° 51' 29" W 164.43 feet to a 5/8" iron pin set for an angle point;

S 23° 20' 41" W 63.46 feet to a 5/8" iron pin set for an angle point;

S 16° 55' 06" W 153.89 feet to a 5/8" iron pin set for an angle point;

with a curve to the right, having a radius of 50.00 feet, an arc of 92.73 feet, a central angle of 106° 15' 42", and a chord bearing

S 16° 52' 22" W 80.00 feet to a 5/8" iron pin set for an angle point;

S 16° 52' 16" W 158.92 feet to a 5/8" iron pin set for an angle point;

S 26° 27' 08" W 430.07 feet to a 5/8" iron pin set for an angle point;

S 04° 49' 19" W 789.04 feet to a 5/8" iron pin set for an angle point;

S 01° 39' 44" W 116.77 feet to a 5/8" iron pin set for an angle point;

S 01° 30' 13" W 317.20 feet to a 5/8" iron pin set for an angle point;

with a curve to the right, having a radius of 50.00 feet, an arc of 46.03 feet, a central angle of 52° 44' 34", and a chord bearing S 25° 15' 18" E 44.42 feet to a 5/8" iron pin set for the lower Southeast corner of Tract 20 and the Northeast corner of Tract 39 of Frio Cañon and an angle point of this tract;

THENCE: S 01° 30' 13" W 173.76 feet to a 5/8" iron pin set for the Southeast corner of Tract 39 and the lower Southeast corner of this tract;

THENCE: N 75° 18' 38" W 576.19 feet with the North line of said 1535.30 Acre Tract to the POINT OF BEGINNING.

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