

RECORDED

(Jrnl, 2004) **RESERVE** KMP

50011236 #3400

Doc# 20040135819

SUPPLEMENTAL DECLARATION
FOR PROMONTORY POINTE AT STONE OAK II P.U.D., UNIT 4
(PROMONTORY RESERVE)
(GATED)

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF BEXAR §

THAT THIS SUPPLEMENTAL DECLARATION ("this Supplemental Declaration") is made on the date hereinafter set forth by VFA Associates, Ltd., a Texas limited partnership (hereinafter referred to as "Declarant"), through Great America Companies, Inc., a Texas corporation, its Managing General Partner, acting herein by and through its duly authorized officers.

WITNESSETH

WHEREAS, Declarant was the owner and developer of certain property heretofore platted and subdivided into that certain residential subdivision known as Promontory Pointe at Stone Oak II P.U.D., Unit 1, Bexar County, Texas, according to plat recorded in Volume 9534, Pages 64-67 of the Deed and Plat Records of such County (the "Initial Property"); and

WHEREAS, Declarant is the owner of certain property being contemporaneously herewith platted and subdivided into that certain residential subdivision known as Promontory Pointe at Stone Oak II P.U.D., Unit 4, Bexar County, Texas, and being marketed as Promontory Reserve, such property being more particularly described in that one certain plat recorded in Volume 9560, Pages 168-169 of the Deed and Plat Records of Bexar County, Texas (the "Additional Property"); and

WHEREAS, Declarant desires to hold, sell and convey the Additional Property subject to that one certain Declaration of Covenants, Conditions and Restrictions for Promontory Pointe at Stone Oak II, Unit 1 recorded in Volume 6747, Page 1222 of the Real Property Records of Bexar County, Texas, as amended (collectively, the "Umbrella Declaration"), which was recorded by Declarant for the purpose of establishing a uniform plan for the development, improvement and sale of the property, (including the Initial Property together with such other land constituting the property from time to time brought within the scope and purview of the Umbrella Declaration pursuant thereto), and to insure the preservation of such uniform plan for the benefit of both present and future owners of the residential subdivision Lots within the property; and

WHEREAS, Declarant now, pursuant to the provisions of Section 1 (a) of Article XI of the Umbrella Declaration entitled "Annexation of Additional Property" desires to annex the Additional Property within the scope and purview of the Umbrella Declaration and wishes to subject the Additional Property to the covenants, conditions and restrictions contained in the Umbrella Declaration and this Supplemental Declaration.

NOW, THEREFORE, Declarant hereby adopts this Supplemental Declaration which is for the purpose of annexing the Additional Property to the scope and purview of the Umbrella Declaration. This Supplemental Declaration shall run with the Additional Property and shall bind all parties having or acquiring any right, title or interest therein or any part thereof, their heirs or successors in title and assigns, and shall inure to the benefit of each owner thereof.

Except as otherwise defined herein, each capitalized term used in this Supplemental Declaration shall have the meaning ascribed to such term in the Umbrella Declaration or this Supplemental Declaration, whichever is applicable.

DECLARATIONS

Declarant hereby makes the following declarations in accordance with the requirements of Section I (a) of Article XI of the Umbrella Declaration:

1. The Owner of the Additional Property is the Declarant.
2. The recorded plat or plats of the Additional Property to be recorded contemporaneously herewith in the Deed and Plat Records of Bexar County, Texas will identify to the extent applicable (i) those portions of the Additional Property that are dedicated and/or conveyed to the public or any governmental or quasi- governmental authority for street right-of-way or utility facility purposes, (ii) those portions that are to comprise Lots for construction of Living Units and related improvements, and (iii) those portions, if any, that comprise interior Common Area or Common Properties.
3. A mutual grant and reservation of rights and easements of the Owners of any Lots comprising the Additional Property and for the use of existing and Common Properties or Common Facilities annexed in the future.
4. The Additional Property is being added or annexed in accordance with and subject to the applicable provisions of the Umbrella Declaration.
5. The Additional Property shall be developed, held, used, sold and conveyed in accordance with and subject to the provisions of the Umbrella Declaration, as amended from time to time, and by this Supplemental Declaration.
6. All of the provisions of the Umbrella Declaration, as herein modified, shall apply to the Additional Property with the same force and effect as if the Additional Property were originally included in the Umbrella Declaration as part of the Initial Property except as modified in this Supplemental Declaration.

7. A vendor's lien is reserved in favor of the Association, in the same manner as provided in the applicable sections of the Umbrella Declaration, to secure collection of the Assessments provided for, authorized or contemplated in the Umbrella Declaration or in this Supplemental Declaration, as applicable.
8. From and after the recording of this Supplemental Declaration, all Assessments collected by the Association from the Owners in the Additional Property may be commingled with the Assessments collected from all other Owners so that there shall be a common maintenance fund for the Property. This fund shall be separate and apart from the fund held by the Interior Association, which shall benefit only the Additional Property.
9. Nothing in this Supplemental Declaration shall be construed to represent or imply that Declarant, or its successors or assigns, is under any obligation to add or annex any additional land to the scope and purview of the Umbrella Declaration.

ADDITIONAL RESTRICTIONS AND AMENDMENTS

Additionally, Declarant hereby imposes the following additional and specific covenants, conditions and restrictions pursuant to its rights under Section 5(b) of Article XII of the Umbrella Declaration entitled "General Provisions" which shall apply only to the Additional Property:

ARTICLE I. DEFINITIONS

Section 1.1 "Interior Association" shall mean and refer to Promontory Reserve Interior Homeowners Association, Inc. (the "Interior Association"), a Texas nonprofit corporation, its successors and assigns.

Section 1.2 "Interior Common Area" shall mean all real property owned, controlled or maintained by the Interior Association for the common use and enjoyment of the Owners of the Additional Property. The Interior Common Area to be owned, controlled or maintained by the Interior Association shall include but not be limited to the private streets situated within the Additional Property, and landscaped areas situated within the Additional Property, or abutting or in close proximity thereto or otherwise serving the Additional Property, medians or esplanades within the Additional Property, drainage ways/greenbelts within the Additional Property, entry signs, gates or other controlled access improvements or equipment with related fencing. Such Interior Common Area shall not be deemed to be part of the Common Properties.

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ARTICLE II. PROPERTY RIGHTS

Section 2.1 Owner's Easements of Enjoyment. Every Owner of a Lot within the Additional Property shall have a right and easement of enjoyment in and to the Interior Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Interior Association to suspend the voting rights for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (b) The right to the Interior Association to dedicate or transfer all or any part of the Interior Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded; provided, however, that except as to the grant of easements for utilities and similar or related purposes, the Interior Common Area may not be alienated, released, transferred, hypothecated or otherwise encumbered without the approval of all holders of first mortgage liens covering any Lots.
- (c) The right of the Interior Association, in accordance with its Articles of Incorporation or Bylaws of the Interior Association, to borrow money for the purpose of improving the Interior Common Area and facilities and in aid thereof to mortgage said property. The rights of any such mortgagee in said Properties shall be subordinate to the rights of the Owners hereunder.

Section 2.2 Delegation of Use. Any Owner of a Lot within the Additional Property may delegate, in accordance with the Bylaws of the Interior Association, his right of enjoyment to the Interior Common Area and facilities situated thereupon to the members of his family, his tenants or contract purchasers who reside on the Additional Property.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Every Owner of a Lot within the Additional Property which is subject to assessment shall be a member of the Interior Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3.2 The Interior Association shall have two (2) classes of voting membership:

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Class A. Class A members shall be all Owners of any Lots within the Additional Property with the exception of the Declarant and shall be entitled to one (1) 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 Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) The fifth anniversary date of the recordation of this Supplemental Declaration.

ARTICLE IV. COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Additional Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Interior Association:

- (a) Annual assessments or charges; and
- (b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on each Lot comprising the Additional Property and shall be a continuing lien upon such land against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the applicable Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 4.2. Purpose of Assessments. The assessments levied by the Interior Association shall be used exclusively to:

- (a) Promote the health, safety and welfare of the residents in the Additional Properties; and

(b) The improvement and maintenance of the Interior Common Area;
and

(c) Enforcement of any restrictive covenants affecting the Additional Property.

Section 4.3 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot situated within the Additional Property to an Owner, the maximum annual assessment payable to the Interior Association shall be SEVEN HUNDRED AND THIRTY AND NO/100 DOLLARS (\$730.00).

(a) From and after January 1 of the year immediately following the conveyance of the first Lot in the Additional Property to an Owner, the maximum annual assessment may be increased each year not more than fifteen percent (15%) (such percentage increase may be cumulative from year to year) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above fifteen percent (15%) by the vote or written assent 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.

(c) The board of directors of the Interior Association may fix the annual assessment at an amount not in excess of the maximum.

Section 4.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Interior 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 a capital improvement upon the Interior Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4.5 Notice and Quorum for Any Action Authorized Under Sections 4.3 and 4.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, 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 4.6 Uniform Rate of Assessment. Both annual and special assessments, subject to Section 4.7, must be fixed at a uniform rate for all Lots comprising the Additional Property and may be collected on a quarterly, semi-annual or annual basis, as determined from time to time by the board of directors.

Section 4.7 Declarant Assessment Liability. As long as there is a Class B Membership, Declarant shall not pay assessments per se but shall be responsible only for any shortages in the accounts of the Interior Association, but only in the event that the maximum annual assessments chargeable under the provisions hereof are insufficient to cover the actual costs of maintaining the Interior Common Area, in accordance with the provisions hereof. If shortages can be reduced before Declarant's subsidy by a reduction in excess or non-life threatening services then those services may (and, if requested by Declarant, shall) be reduced to enable the Interior Association to operate within its budget under the constraints of the limitations hereof with the least possible subsidy from Declarant. This Section 4.7 shall be in effect for the first two (2) years following January 1 of the year immediately following the conveyance of the first Lot comprising the Additional Property to an Owner.

Section 4.8 Date of Commencement of Annual Assessments -- Due Dates. The annual assessments provided for herein shall commence as to each Lot, other than those owned by Declarant which shall not commence until after the expiration of the two (2) year period set forth in Section 4.7 hereof, on the first day of the month following the expiration of thirty (30) days following the conveyance of such Lot by Declarant, and shall commence as to each Lot owned by the Declarant on the first day of the month following the month on which such Lot is first used for residential purposes. 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 Interior Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Interior Association setting forth whether the assessments on a specified Lot have been paid.

Section 4.9 Effect of Nonpayment of Assessments -- Remedies of the Interior Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum, but in no event higher than the maximum rate allowed by applicable usury laws. The Interior Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Interior 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 judicial foreclosure by an action brought in the name of the Interior Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Interior Association a power of sale in connection with said lien. The lien provided for in this

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section shall be in favor of the Interior Association and shall be for the benefit of all other Lot Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Interior Common Area or abandonment of his Lot.

Section 4.10 Subordination of the Lien to Mortgagees. The lien of the assessments provided for herein shall be subordinate to the lien of any enforceable purchase-money mortgage or enforceable home-improvement mortgage of record. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.11 Exempt Property. All land comprising the Additional Property dedicated to, and accepted by, a local public authority and all land owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 4.12 Assessments to Interior Association Are Separate and Apart from Other Assessments. The Assessments payable to the Interior Association shall be separate and apart and in addition to any other assessments attributable to Lots comprising the Additional Property including Assessments payable to the Association prescribed in the Umbrella Declaration.

ARTICLE V. AMENDMENT TO NEW CONSTRUCTION COMMITTEE AND MODIFICATION COMMITTEES

Section 5.1 Amendment to Article IV, Section 2. Article IV, Section 2 of the Umbrella Declaration is amended by adding the following paragraph:

Declarant assigns its rights to control and direct the New Construction Committee for the Additional Property to RH of Texas Limited Partnership, a Maryland Limited partnership

ARTICLE VI. AMENDMENT TO RESTRICTIONS ON USE

The following use restrictions shall modify the use restrictions appearing in Article X of the Umbrella Declaration insofar as they affect any Lots in the Additional Property and shall apply only to the Additional Property (references to Section numbers shall correspond to Section numbers of Article X of the Umbrella Declaration):

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Section 1 Single Family Residence.

(b) Unless the New Construction Committee otherwise agrees in writing, the exterior finish or construction of a Living Unit shall be at least sixty percent (60%) brick, stone, or other masonry on the first floor and at least forty percent (40%) brick, stone, or other masonry on the second floor. Section (c) is deleted in its entirety.

Section 19. Roof Ventilators and Projections. This Section is hereby deleted in its entirety with respect to the Additional Property.

Section 25. Building Height: Minimum Square Footage. No Living Unit shall contain less than 1,900 square feet of heated/air-conditioned living space for one story homes or 2,200 of heated/air conditioned living space for two story homes. Total floor area shall be exclusive of open porches, breezeways, carports, garages and other outbuildings. The minimum size of a Living Unit may be waived by the New Construction Committee on an individual case if in its opinion, such waiver is advisable in order to accommodate a unique building concept, and the resulting structure will not detract from the general appearance of the neighborhood.

Section 26 Building Requirements. Detached garages, provided that they do not exceed one story in height, may be placed as close as ten feet (10') to a rear property line.

Section 27 Walls and Fences. Fences are not required in the Additional Property. No chain link fence type construction will be permitted on any Lot. Approval of the New Construction Committee shall be obtained prior to the construction of any wall or fence on any lot. Any fence fronting and/or visible from the street shall be constructed of 6 foot cedar with a cedar cap. Fences not visible from the street shall be constructed with 6 foot cedar (non-capped). All wooden fences shall be constructed with the slats touching each other. No fences shall be stained or otherwise altered in color without the express written consent of the New Construction Committee.

Section 28 Roofs. The roof of each Living Unit shall be tile, slate, standing seam metal roof or minimum 25 year dimensional shingle roof. Any other type roofing material may be permitted only at the sole discretion of the New Construction Committee, upon written request.

ARTICLE VII. GENERAL PROVISIONS

The following Sections shall be added to Article XII of the Umbrella Declaration insofar as it affects the Lots in the Additional Property and shall apply only to the Additional Property:

Section 23 Payment of One Time Recreation Center Fee. In addition to the provisions of Article III of the Umbrella Declaration, at the time of the sale or conveyance of a completed dwelling on each "Lot" or "Building Plot" comprising any portion of the Additional Property, the third party acquiring such Lot shall be obligated to pay to the Declarant a recreation center origination fee in the sum of \$750.00 in good funds as a one-time recreation center fee and the title company closing such transaction is hereby instructed to collect such sum and pay same directly to Declarant (VFA Associates, Ltd., 8000 IH-10 West, Suite 700, San Antonio, Texas 78230, phone number of 210-344-9200). The origination fee shall become due and payable and collected on the date of the transfer of the Lot with the newly constructed Living Unit to the new occupant.

Section 24 Annual Assessment. Notwithstanding any provisions to the contrary contained in Article III of the Umbrella Declaration, Base Annual Assessments for each "Lot" or "Building Plot" comprising the Additional Property shall not commence until the earlier to occur of (i) the sale or conveyance of the Lot by RH of Texas Limited Partnership, or (ii) the first occupancy of a dwelling situated on such Lot.


Section 25 Utility Providers. The following utility providers (electric, potable water, waste water, cable television, natural gas and telephone services) shall not be required to obtain permission of the Association, or any interior association, or its membership to enter upon the private streets in the Additional Property or to temporarily remove portions thereof, as reasonable and necessary for the installation, operation, maintenance and repair of any service line and/or conduits, providing utility services to the residents of the subdivision comprising the Additional Property. However, this consent of the Association is expressly conditioned upon the agreement of the utility provider to repair that portion of the street so removed or disturbed, using good workmanship and materials within a reasonable time.

IN WITNESS WHEREOF, this Supplemental Declaration is executed this the 16th day of June, 2004.

DECLARANT:

VFA ASSOCIATES, LTD.,
a Texas limited partnership

By: Great America Companies, Inc.,
Managing General Partner

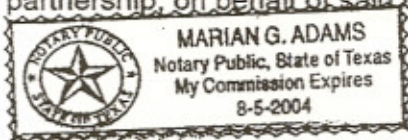
By: 
Israel Fogiel, President

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STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on the 16th day of June, 2004, by Israel Fogiel, President of Great America Companies, Inc., a Texas corporation, Managing General Partner of VFA Associates, Ltd., a Texas limited partnership, on behalf of said corporation and said limited partnership.



Marian G. Adams
Notary Public in and for the State of Texas

AFTER RECORDING, RETURN TO:
VFA Associates, Ltd.
c/o Great America Companies, Inc.
8000 IH-10 West, Suite 700
San Antonio, TX 78230

Any provision herein which restricts the sale, or use of the described property because of race is invalid and unenforceable under Federal law. STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

JUN 17 2004



Gerry Rickhoff
COUNTY CLERK BEXAR COUNTY, TEXAS

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Pages 11
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Filed & Recorded in
Official Records of
BEXAR COUNTY
GERRY RICKHOFF
COUNTY CLERK
Fees \$34.00

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