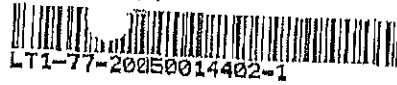


STC/JG/GF/A084 16.00



SCANNED

281 CANYON

SUPPLEMENTAL DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MOUNTAIN LODGE UNIT 6B-1
SAN ANTONIO, TEXAS

STATE OF TEXAS §



COUNTY OF BEXAR §

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNTAIN LODGE UNIT 6B-1 (the "Supplemental Declaration") is made this 15th day of January, 2005, by Newmark Homes, L.P., a Texas limited partnership (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property (the "Neighborhood") described on Exhibit A, attached hereto and made a part hereof for all purposes; and

WHEREAS, 281 Canyon Partners, Ltd., a Texas limited partnership ("Developer") has heretofore subjected certain land (the "Land"), of which the Neighborhood is a part, to certain covenants, conditions, restrictions, easements, charges and liens set forth in the Master Declaration of Covenants, Conditions and Restrictions for 281 East Land (the "Declaration") filed with the County Clerk of Bexar County in Volume 8202, Page 0524, in the Official Public Records of Real Estate of Bexar County, Texas; and

WHEREAS, Developer is conveying the Neighborhood to Declarant by Special Warranty Deed of even date with this Supplemental Declaration; and

WHEREAS, Declarant deems it desirable to impose certain additional covenants, conditions, and restrictions upon the Neighborhood as provided for under the Declaration.

NOW, THEREFORE, Declarant declares that the Neighborhood is and shall be held, transferred, sold, conveyed, used and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "Supplemental Covenants and Restrictions") hereinafter set forth.

Handwritten signature and date: 1/15/05

ARTICLE I

DEFINITIONS

Terms used in this Supplemental Declaration with initial capital letters that are not otherwise defined herein shall have the meanings given to them in the Declaration.

ARTICLE II

NEIGHBORHOOD

The Neighborhood is also a Neighborhood under the Declaration. The name of the Neighborhood is Mountain Lodge Phase 6B-1.

ARTICLE III

USE OF PROPERTIES AND LOTS - PROTECTIVE COVENANTS

The Properties and each Lot situated thereon shall be constructed, developed, occupied and used as follows:

3.1 Setback Requirements. All front, side, and rear setbacks from Lot lines, shall meet the requirements of all applicable codes and ordinances of the City of San Antonio and, subject to the provisions of Section 3.6 with respect to the permitted location of garages, shall meet the following requirements:

<u>Side Yard</u>	<u>Front Yard</u>	<u>Rear Yard</u>
5'	20'	15'

3.2 Minimum Floor Space. Each dwelling constructed on any Lot in the Neighborhood shall contain a minimum of one thousand seven hundred (1,700) square feet of air-conditioned floor area, exclusive of porches, garages, or breezeways attached to the main dwelling.

3.3 Construction Requirements. Except as provided below, at least seventy-five percent (75%) of the surface of the first floor exterior wall area (excluding windows and doors) below the plate line of all residential dwellings shall be constructed of stucco, brick veneer, or stone material listed in the Architectural Guidelines.

3.4 Roofing Material. The exposed roofing material shall be asphalt or composition type shingles with at least a twenty-five (25) year warranty. All roofing material shall have the

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explicit, itemized approval of the New Construction Committee for each structure constructed on a Lot in the Neighborhood. The roof pitch of any structure shall have the explicit, itemized approval of the New Construction Committee.

3.5 Exterior Paint and Stain Colors. Exterior paint and stain colors may be limited to those listed in the Architectural Guidelines, and shall have the explicit, itemized approval of the New Construction Committee.

3.6 Garages and Driveways. Each dwelling erected on any Lot shall provide garage space for a minimum of two (2) conventional automobiles. Front entry and rear detached garages are permitted. In lieu of the side setback requirement in Section 3.1 above, any garage located a minimum of sixty-five (65) feet behind the front property line of the Lot may be located no nearer than three (3) feet from the side property line of the Lot. In lieu of the rear setback requirement in Section 3.1 above, any garage may be located no nearer than ten (10) feet from the rear property line of the Lot. All driveways must be sized so as to accommodate at least two (2) conventional automobiles in front of the garage for off-street parking, and shall be constructed of concrete with at least a brushed finish.

3.7 Fences. All fences for any dwelling shall be constructed of metal, masonry, or wood (and if constructed of wood, shall have slats at least 1" x 4" in size). No spruce, pine, dog-ears, or pickets are permitted.

3.8 Street Lights. Maintenance of street lights shall be the responsibility of the Association. Declarant, at Declarant's expense, shall install for each street light within the Neighborhood a photoelectric cell, of a make and model approved by the New Construction Committee that automatically turns on the street light at dusk and turns it off at dawn. Further, before completion of construction of a principal residence on each Lot herein designated, Declarant shall cause to be erected and maintained a light fixture, provided by the Association at the Association's expense, at the front Lot line, or, at the direction of the New Construction Committee, within the Common Area, at such point as the New Construction Committee may designate. Each such light fixture shall be of a design, size, material, color, and lighting specification approved by the New Construction Committee, which items shall not be altered or changed without the approval of the New Construction Committee. Such lights and fixtures shall be repaired and maintained by the Association at the expense of the Association; provided, however, that the street lights shall be connected to the electric meters on each Lot designated below, and the Owner of each such Lot shall pay the cost of the street light electricity (subject to the credit described below). The following Lots and the Owners thereof are responsible for such light fixtures:

<u>LOTS</u>	<u>BLOCK</u>
1	21
10	21

The Owners of each of the above-designated Lots may deduct \$15.00 a month from their Assessments in full consideration of their payment of the cost of electricity to the street light adjacent to their Lot.

ARTICLE IV

APPROVALS AND VARIANCES

4.1 Required Approval. No building, structure, paving, pools, fencing, hot tubs or improvement of any nature shall be erected, placed or altered on any Lot unless the approvals required by the Declaration have been obtained from the New Construction Committee.

4.2 Variances. Upon submission of a written request for same, the New Construction Committee may, from time to time, in its sole discretion, permit any Owner to construct, erect, or install improvements that vary from this Supplemental Declaration or the Architectural Guidelines. In any such case, variances shall be in basic conformity with and shall blend effectively with the overall quality, general architectural style and design of the community. No member of the New Construction Committee shall be liable to any Owner for any claims, cause of action, or damages arising out of the grant of, or the refusal to grant, any variance to an Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the granting of a variance to any Owner shall not constitute a waiver of the New Construction Committee's right to strictly enforce this Supplemental Declaration against any other Owner.

4.3 No Liability. Neither Declarant, the Association, the New Construction Committee, any Modifications Committee, any Neighborhood Association, the Board of Directors, nor the officers, directors, members, employees or agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Committee, any Modifications Committee, any Neighborhood Association, the Board of Directors, or the officers, directors, members, employees or agents of any of them, to recover any such damages and hereby releases, remises, and quits all claims, demands and causes of action arising out of or in connection with any actual or alleged mistake of judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Approval of plans and specifications by the New Construction Committee or any Modifications Committee is not approval thereof for engineering or structural design or adequacy of materials. By approving such plans and specifications neither the New Construction Committee, any Modifications Committee, the members of either, the Declarant, the Developer, the Association, any Neighborhood Association, nor the Board of Directors assumes liability or responsibility for

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safety or adequacy of design, nor for any defect to any structure constructed from such plans and specifications.

ARTICLE V

GENERAL PROVISIONS

5.1 Duration. The Supplemental Covenants and Restrictions of this Supplemental Declaration shall run with and bind the Neighborhood, and shall inure to the benefit of and be enforceable by Declarant, the Association, and (upon compliance with Section 5.3 hereof) each Owner of a Lot in the Neighborhood, and each of their respective successors and assigns. This Supplemental Declaration shall be effective for an initial term of thirty-five (35) years from the date that this Supplemental Declaration is recorded in the Official Public Records of Real Property of Bexar County, Texas, after which time such Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless, at least one (1) year prior to the expiration of the then current term, an instrument terminating this Supplemental Declaration is signed by Owners of at least seventy percent (70%) of the Lots in the Neighborhood, and is recorded in the Official Public Records of Real Property of Bexar County, Texas.

5.2 Amendments. Notwithstanding Section 5.1 of this Article, this Supplemental Declaration may be amended and/or changed upon the express written consent of the Owners of at least seventy percent (70%) of the Lots in the Neighborhood. Any and all amendments of this Supplemental Declaration shall be recorded in the Official Public Records of Real Property of Bexar County, Texas. Notwithstanding the foregoing, until such time as Developer no longer owns any of the Land, no amendment of this Supplemental Declaration may be made without the joinder of Developer if such amendment would negatively and materially impact the values of homes within the Land, in Developer's reasonable opinion, and until such time as Declarant no longer owns any of the Land, no amendment of this Supplemental Declaration may be made without the joinder of Declarant if such amendment would negatively and materially impact the values of homes within the Land, in Declarant's reasonable opinion.

5.3 Enforcement. This Supplemental Declaration may be enforced by Developer, Declarant and the Association against any Person or Persons violating or attempting to violate them, by any proceeding at law or in equity, including, without limitation, through actions to enjoin violations, to recover damages, or to enforce any lien created by these covenants. The failure by Developer, Declarant or the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If an Owner of a Lot in the Neighborhood believes that this Supplemental Declaration has been violated, such Owner (the "Notifying Owner") may deliver written notice thereof to the Board of Directors identifying the violation and the Person violating this Supplemental Declaration and requesting the enforcement thereof. If, within ninety (90) days after receiving such notice and request, the Board of Directors fails or refuses to commence to enforce this Supplemental Declaration against the Person identified in such written notice as violating them, the Notifying Owner shall have a

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private right to enforce this Supplemental Declaration against the Person identified as the violator thereof in the written notice to the Board of Directors.

5.4 Conflict with Declaration. If any provision of this Supplemental Declaration conflicts with a provision in the Declaration pertaining to the same subject, the provision contained in this Supplemental Declaration, shall control.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the date set forth in the first paragraph of this Supplemental Declaration.

NEWMARK HOMES, L.P., a Texas limited partnership

By: TOUSA Homes, Inc., a Florida corporation, General Partner

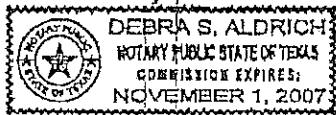
By: [Signature]
Name: Jeff Buell
Title: President

THE STATE OF TEXAS

COUNTY OF Bexar

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§

This instrument was acknowledged before me on the 18 day of January, 2005, by Jeff Buell, Division President of TOUSA Homes, Inc., a Florida corporation, General Partner of NEWMARK HOMES, L.P., a Texas limited partnership, on behalf of said corporation and limited partnership.



[Signature]
Notary Public in and for the State of Texas

AFTER RECORDING RETURN TO:

Stewart Title San Antonio, Inc.
Stewart Title Co.
16350 Blanco Rd., Suite 113
Attn: San Antonio, Tx. 78232

as of
1/18/05

EXHIBIT "A"



FIELD NOTES

FOR

A 7.788 acre or 339,244 square feet more or less, tract of land out of a 522.6 acre tract of land conveyed to 281 Canyon Partners, Ltd. described in instrument recorded in Volume 7916, Pages 1115-1127 of the Official Public Records of Real Property of Bexar County, Texas, out of the Beaty Seale & Forwood Survey No. 1, Abstract 113, County Block (C.B.) 4926 and the B. Staffel Survey No. 2, Abstract 946, C.B. 4925 in Bexar County, Texas, and being more particularly described by metes and bounds as follows with the bearings based on NAD 83 from State Plane Coordinates established for the Texas South Central Zone:

- BEGINNING:** At a found $\frac{1}{2}$ " iron rod with yellow cap marked "Pape-Dawson" at the southwest corner of Lot 2, Block 20, C.B. 4926 of the Mountain Lodge, Unit-6A1, Planned Unit Development, recorded in Volume 9563, Page 15, of the Deed and Plat Records of Bexar County, Texas;
- THENCE:** S $85^{\circ}00'41''$ E, along and with the south line of said Lot 2, a distance of 120.00 feet to a found $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson" at the southeast corner of said Lot 2 on the west right-of-way line of Heavens Peak, a 50' private right-of-way;
- THENCE:** N $83^{\circ}40'43''$ E, across said Heavens Peak right-of-way, a distance of 50.99 feet to a found $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson" at the southwest corner of Lot 15, Block 19, C.B. 4926 of said Mountain Lodge, Unit-6A1 on the east right-of-way line of said Heavens Peak;
- THENCE:** S $85^{\circ}00'41''$ E, along and with the south line of said Lot 15, a distance of 120.00 feet to a found $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson" at the southeast corner of said Lot 15;
- THENCE:** Over and across said 522.6 acre tract the following bearings and distances:
 S $04^{\circ}59'19''$ W, a distance of 677.55 feet to a set $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson";
 S $13^{\circ}25'10''$ E, a distance of 47.29 feet to a set $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson";
 S $26^{\circ}47'03''$ E, a distance of 16.08 feet to a set $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson";
 N $82^{\circ}29'06''$ E, a distance of 130.00 feet to a set $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson";
 S $07^{\circ}30'54''$ E, a distance of 316.02 feet to a set $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson";
 S $87^{\circ}08'21''$ W, a distance of 99.15 feet to a set $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson";
 N $83^{\circ}47'02''$ W, a distance of 154.86 feet to a set $\frac{1}{2}$ " iron rod with a yellow cap marked "Pape-Dawson";

PAPE-DAWSON ENGINEERS, INC.

555 East Ramsey | San Antonio, Texas 78216 | Phone: 210.375.9000 | Fax: 210.375.9010 | info@pape-dawson.com

Any provision herein which restricts the sale, or use of the described real 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:

Doc# 20050014402 Fee: \$28.00
 01/21/2005 11:03AM # Pages 8
 Filed & Recorded in the Official Public
 Records of BEXAR COUNTY
 GERRY RICKHOFF COUNTY CLERK

JAN 21 2005



Gerry Rickhoff
 COUNTY CLERK BEXAR COUNTY, TEXAS