

**DECLARATION OF ROAD MAINTENANCE**

THIS DECLARATION made this 8<sup>th</sup> day of October, 2008, by **H.S. TEJAS, LTD.**, a Texas Limited Partnership, hereinafter referred to as "Declarant;"

WHEREAS, the Declarant is the owner of a certain tract or parcel of land situated in the Shawsville Magisterial District of Montgomery County, Virginia, more particularly described as "Plat of Major Subdivision of A Portion of Tax Parcel No. 33-(A)-6 prepared for H.S. Tejas, Ltd", dated March 5, 2009, hereinafter named Major Subdivision; and

WHEREAS, the Declarant has subdivided said parcel as shown on that certain plat of subdivision named "Major Subdivision", dated March 05, 2009, made by Gay & Neel, Inc., marked as Exhibit A, attached hereto and incorporated herein by reference as a part hereof; and

WHEREAS, the Declarant desires to subject said lots in such subdivision to the fifty foot access easement hereinafter set forth and to subject such lots to the covenants, liens, and charges for private maintenance and improvement of the Access Easement as hereinafter set forth, which are for the benefit of the lots served by such Access Easement and the Owners hereof.

NOW, THEREFORE, the Declarant declares that the lots shown on the said subdivision plat named "Major Subdivision" and attached hereto as Exhibit "A," shall be held, transferred, sold, conveyed and occupied subject to the covenants, easements, liens and charges hereinafter set forth which are hereby imposed to enhance and protect the value and desirability of said lots. The provisions set forth herein shall run with the land and shall be binding upon any and all parties who have, or shall acquire, any right, title or interest in all of any part of the said lots and shall inure to the benefit of each Owner thereof.

**ARTICLE ONE  
DEFINITIONS**

The following words, which used in this Declaration, shall have the following meanings:

1. **"Access Easement"** shall mean and refer to the fifty foot (50') easement established in Article Two hereof.
2. **"Owner"** shall mean and refer to the record Owner, whether one or more persons or entities, including Declarant, of the fee simple title to each lot served by the Access Easement including contract sellers, but excluding those having such interests merely as security for the performance of an obligation. In the case where any such lot is held by one or more persons for life with the remainder to another or others, the term "Owner" shall mean and refer only to such life tenant or tenants until such time as the remainderman or remaindermen come into use, possession or enjoyment of such lot. In the case where any such lot is beneficially owned by more than one person, such persons may exercise the rights provided herein as they may choose among themselves; provided, however, that each lot shall be entitled to only a single vote; and provided further that each such person shall be jointly and severally liable for any assessment made with respect to such lot.

**ARTICLE TWO  
ACCESS EASEMENT**

1. **Establishment Of Access Easement:** The Declarant does hereby establish and impose a perpetual non-exclusive access easement

fifty (50') feet in width from the end of public right-of-way of Reese Mountain Road, across the lots created by the plat, designated as a 50' Access & PUE Easement on the aforesaid plat of survey.

2. **Maintenance:** The Access Easement is private and requires private maintenance as hereinafter set forth. The costs of repair, maintenance, upkeep, improvement or replacement of the Access Easement and the private road located therein will not be borne by the County of Montgomery, the Commonwealth of Virginia, or any other public agency, but rather shall be the responsibility of and borne as follows:
  - a. **Declarant.** The initial construction of the private road and related improvements (grading, seeding, drainage ditches, culvert pipe, etc.) within the Access Easement shall be borne and completed by the Declarant. Upon the completion of such initial construction, the Declarant shall have the rights of an Owner to each lot actually owned by it; except that, as to any assessment made pursuant to paragraph 3© of this Article, the Declarant shall have one vote per lot that it owns.
  - b. **Owners of Lots.** The Owners of the lots shall be responsible for and shall bear equally, the costs of maintenance of the private road and related improvements within the Access Easement.
  - c. **Damage from Construction Activities.** Notwithstanding the foregoing, each Owner shall be solely and exclusively responsible for and shall fully bear the cost of maintenance

within the Access Easement necessitated by construction activities on his/her lot, and each Owner shall restore any portion of the Access Easement damaged by his/her construction activities to at least the Access Easement's prior condition upon completion of such construction.

3. **Assessments:**

- a. **Standards of Maintenance.** The Owners of the lots served by the Access Easement shall determine (by a majority decision) the standards to which the Access Easement and private road located therein shall be maintained; provided, however, that any portion of the private road and related improvements shall be maintained in such condition that the private road is passable at all times for ordinary use by passenger vehicles, excepting only severe, temporary conditions such as snow or ice, with gravel of appropriate type, depth and width, and drainage ditches and culverts as necessary. Periodic removal of ice and snow shall be deemed to be maintenance if the Owners of a majority of the lots shall so determine. The expense of such maintenance shall be assessed against each lot served by the Access Easement in equal shares. A notice of such assessment shall be delivered to the Owner of each such lot. Each notice of assessment shall be presumed to have been delivered in accordance with this Article if it shall be mailed, by first class mail, postage prepaid, to the Owner of such lot at the address listed in the

Office of the Commissioner of Revenue of Montgomery County for such Owner for real estate tax purposes.

- b. **Improvements by Individual Owners.** Any Owner may, at his/her own expense, make such improvements to the Access Easement as he/she may deem advisable, from time to time; provided, however, that all such improvements shall be carried out in a manner consistent with good engineering practice and without interruption of service for the Owners of a majority of the lots served by the Access Easement, any Owner making such improvements shall be solely liable for all additional liability for additional maintenance expenses proximately caused by such improvements. Such liability for additional maintenance expenses may be enforced by assessment as provided in this Article.
- c. **Other Improvements.** In the event that it shall be determined by a majority of the lots served by the Access Easement that it is desirable to make improvements thereto, other than ordinary maintenances, the Owner of each lot served by the Access Easement shall be liable for his/her proportionate share of such expense, which expense shall be divided equally among all the lots served by the Access Easement. Such liability shall be evidenced by an assessment made by vote of the majority of the Owners of the lots served by the Access Easement. A Notice of such assessment shall be delivered to the Owner of each lot served by the Access

Easement. Each notice of assessment shall be presumed to have been delivered, in accordance with this Article, if it shall be mailed, by first class mail, postage prepaid, to the Owner of such lot at the address listed in the Office of the Commissioner of Revenue of Montgomery County for such Owner for real estate tax purposes.

4. **Collection of Assessments:**

- a. **Personal Liability.** Each Owner shall be personally liable and responsible for his/her share of the assessments provided in this Article, which are incurred during his/her Owners of His/her lot, and shall pay to the person or corporation performing the work for such assessment was made, his/her share within fifteen (15) days following completion of such work.
- b. **Enforcement.** If any Owner shall fail to pay his/her proportionate share of the costs of maintenance for which he/she is responsible, as provided herein, any other Owner or the person or corporation performing such maintenance, may bring an action at law against each Owner failing to pay his/her proportionate share, and/or foreclosure the lien provided herein against said Owner's Lot. The amount due by any delinquent Owner shall bear interest at the maximum judgment rate provided by law from the date of completion of the maintenance, and the delinquent Owner shall be liable for all costs of collection, including, but not limited to,

reasonable attorney's fees.

- c. **Liens.** There shall be a continuing lien on each of the said lots to secure the payment of the assessments described herein. Such lien shall be at all times subject to the provisions of paragraph 4(d) of this Article and shall be enforceable in the same manner as a non-judicial foreclosure proceeding.
- d. **First and Second Deeds of Trust.** The lien provided by this Article shall be at all times subject to any first or second deed of trust placed on any lot at any time until notice of such lien is recorded in the Office of the Clerk of the Circuit Court as hereinafter provided. If any assessment is not paid by any Owner of a subject lot within fifteen (15) days after the same becomes due and payable, a notice of such non payment as to such lot may be recorded by any other Owner or by the person or corporation of Montgomery County, Virginia, and from the time of such recordation the amount stated in the notice, together with interest, costs of collection, and reasonable attorney's fees shall become a lien prior to any first or second deed of trust recorded subsequent to the date and time of recordation of such notice of assessment.

**ARTICLE THREE  
FURTHER SUBDIVISION OF A LOT**

No lot served by the Access Easement shall be re-subdivided without the

express written consent of the Owners of all lots served by the Access Easement.

**ARTICLE FOUR  
IMPROVEMENT TO PUBLIC ROAD STANDARDS;  
DEDICATION TO PUBLIC USE**

The Access Easement is not a public road and is not eligible for inclusion in the Virginia Secondary Highway System. It is contemplated that, at some time in the future, it is possible that the Owners of lots served by the Access Easement may wish to cause the same to be submitted for inclusion into the Virginia secondary Highway System. In the event of such submission, the expense of improving the Access Easement to the standards of the secondary Highway System shall be the sole responsibility of the Owners of the lots served by the Access Easement. Such expense may be paid by assessments as provided in Article Two above. In the event that the Owners of the majority of the lots served by the access Easement shall decide that it is in the interests of the Owners of all the lots in Major Subdivision of a Portion of Tax Parcel 33-(A)-6 along the Reese Mountain Road, that the Access Easement be dedicated to public use, the Owners of all lots in the subdivision shall take appropriate action to dedicate to public use, in fee simple absolute, without additional consideration, all of the strip of land designated as the "Fifty Foot Access Easement" on the aforesaid subdivision plat. The duty to dedicate such strip may be enforced as a ministerial duty by *mandamus*, injunction or otherwise.



The foregoing notwithstanding, nothing contained herein shall be deemed to guarantee that the Access easement will ever be accepted as a public road or that the same will ever be maintained by the County of Montgomery, The Commonwealth of Virginia, or any other public agency.

**ARTICLE FIVE  
ASSIGNMENT OF RIGHTS**

The rights set forth herein relating to assessments for maintenance and improvement, including the collection thereof, may be assigned by the Owners to an association incorporated for that purpose. The members of any such membership in the association shall be the Owners of all lots in the subdivision, and membership in the association shall be non-servable from the ownership of each such lot. The voting rights of the members of any such association as to assessments for maintenance and improvements shall be the same as the voting right of Owners pursuant to this Declaration. Such assignment shall be in writing, signed by the Owners of all lots in the subdivision and recorded in the Clerk's Office of the Circuit Court of Montgomery County, Virginia.

**ARTICLE SIX  
GOVERNING LAW; VENUE**

This Declaration shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. Exclusive venue for any dispute arising hereunder shall be in the courts of Montgomery County, Virginia.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be

executed on its behalf by its duly authorized parties hereto affix their signature and seal.

H.S. TEJAS, LTD.  
A Texas Limited Partnership

By: [Signature] (SEAL)  
J. Barron Strother, Managing Member of  
General Partner

STATE OF Alabama  
CITY/COUNTY OF Pike

The foregoing instrument was acknowledged before me this 29<sup>th</sup>  
day of April, 2009, by J. Barron Strother, Managing Member of General  
Partner on behalf of H.S. Tejas, Ltd..

Notary Registration Number: \_\_\_\_\_

My commission expires: \_\_\_\_\_

[Signature]  
RENITA R. MILLS  
Notary Public, AL State at Large  
My Comm Expires July 16, 2009

INSTRUMENT #09004350  
RECORDED IN THE CLERK'S OFFICE OF  
MONTGOMERY COUNTY ON  
MAY 5, 2009 AT 03:05PM

ERICA W. WILLIAMS, CLERK  
RECORDED BY: WMH