

DECLARATION OF COVENANTS, CONDITIONS, ASSESSMENTS, CHARGES, SERVIDUTES, LIENS, RESERVATIONS, AND EASEMENTS (KIEPERSOL ESTATES)

THIS DECLARATION of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements (herein called the "Declaration") is made as of the 2nd day of November, 1999, by KIEPERSOL ESTATE, LTD., a Texas limited partnership (herein called "Declarant").

W I T N E S S E T H :

WHEREAS, Declarant owns certain real property in Smith County, Texas; and

WHEREAS, Declarant intends to develop the Property, as hereinafter defined, into a residential community consisting of single-family residences and certain other designated uses as set forth herein; and

WHEREAS, in order to enable Declarant to (i) integrate the Property into the overall development of all the Declarant Land, as hereinafter defined, (ii) implement a general plan of development and accomplish the development of such lands as a first-class residential and commercial development of high quality and standards in a consistent manner with continuity, and (iii) to insure the creation of an architecturally harmonious subdivision, Declarant desires to subject the Property, as hereinafter defined, to the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements hereinafter set forth (herein collectively called the "Covenants").

NOW, THEREFORE, Declarant, hereby declares that the Property be held, sold, and conveyed subject to the Covenants.

ARTICLE I

DEFINITIONS

The following words, phrases, or terms used in this Declaration shall have the following meanings:

- (A) "Additional Properties" shall mean properties added in accordance with Article XVIII, hereof.
- (B) "Annual Assessment" shall mean the charge levied and assessed each year against the Property.

- (C) "Architectural Control Committee" shall mean the Declarant or, if and when applicable, committee, corporation, or association appointed by Declarant for the purposes of exercising architectural control, all as set forth in the Reservation of Architectural Control.
- (D) "Assessable Property" shall mean the Property, except, such part or parts thereof as may from time to time constitute Exempt Property.
- (E) "Assessment Lien" shall mean the lien created and imposed by Article VII.
- (F) "Covenants" shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements set forth herein.
- (G) "Declarant" shall mean Kiepersol Estate, Ltd., a Texas limited partnership, and any successor and assign of Declarant's rights and powers hereunder, but with respect to any such successor or assign (i) such successor or assign shall not be deemed to be a "Declarant" unless such successor or assign is designated as such pursuant to a written instrument signed by Declarant (which written instrument shall be filed of record in the Real Estate Records of Smith County, Texas, designating that part of the Property to which it relates) and (ii) such successor or assign shall only have those rights and powers of Declarant that are specifically assigned to such successor or assign pursuant to such written instrument.
- (H) "Declarant Land" shall mean such part or parts of Property, including such part or parts of the Property, the Reserved Areas and the Lots, owned by Declarant, together with the buildings, structures and improvements thereon, if any, as may be owned now or at any time hereafter by the Declarant, for as long as the Declarant is the owner thereof.
- (I) "Declaration" shall mean this Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, as amended or supplemented from time to time.
- (J) "Deed" shall mean a deed or other instrument conveying the fee simple title (less and except all of the oil, gas and other minerals) to all or any portion of the Property, including but not limited to a Lot.
- (K) "Exempt Property" shall mean the following parts of the Property:
- (a) All land and Permanent Improvements owned by or dedicated to and accepted by the United States, the State of Texas, the County of Smith, or any political subdivision thereof, for as long as such entity or political subdivision is the owner thereof, or for so long as said dedication remains effective.

- (b) All Declarant Land.
- (c) All Reserved Areas.
- (L) "Lot Owners' Association" shall mean and refer to any incorporated or unincorporated association which is formed to facilitate the maintenance and operation of the common elements appurtenant to each Lot, or is formed to enforce and administer any covenants, conditions, restrictions or regulations other than those contained herein. Every Owner shall be a member of the Lot Owners' Association.
- (M) "Lot" shall mean, individually or collectively, those certain lots designated as Lots 1 through 72 of Kiepersol Estates, Vinson Moore Survey, A-15, Smith County, Texas, according the plat thereof recorded in Cabinet D, Slides 56C and 56D of the Plat Records of Smith County, Texas, and any resubdivided Lot.
- (N) "Maintenance Charges" shall mean any and all costs assessed pursuant to Article V or Section 14.02.
- (O) "Owner" shall mean the person or persons, entity or entities, who either own record fee simple title to the Property or any portion thereof or have entered, as an original party as purchaser thereunder or as a successor or assignee thereof, into a Contract for Deed with Declarant, its successor or assigns, covering a Lot or any other portion or parcel of the Property; the term "Owner" to exclude any person or persons, entity or entities, having an interest in a Lot or any such portion or parcel merely as security for the performance of an obligation; the term "Owner" to include Declarant if Declarant is a record owner of fee simple title to a Lot or any such portion or parcel, but only if with respect to such Lot or any such portion or parcel, Declarant has not entered into a Contract for Deed. For the purposes hereof, the term "Contract for Deed" shall be any contract executed by Declarant with another person containing as its title or as part of its title the term "Contract for Deed" pursuant to which such person is acquiring a Lot or any such portion or parcel on an installment basis whereby Declarant does not transfer fee simple title to the Lot or any such portion or parcel until such person has satisfied all of the terms and conditions of such contract.
- (P) "Permanent Improvements" shall mean with respect to any Lot or any other portion or parcel of the Property, any and all improvements, structures, and other materials and things (including, but without limitation, trees, berms, shrubs, hedges, swimming pools, tennis courts and fences) which, at the time of the assessment of each Annual Assessment are located thereon.
- (Q) "Plat" shall mean the subdivision plat of any portion of the Property presently on file in the Plat Records of Smith County, Texas, and any other plat or plats of all or any portion of the Property now or hereafter filed for record in the Plat Records of Smith County, Texas (as such plat or plats may be amended from time to time).

- (R) "Property" shall mean:
- (a) At the time of recordation of this Declaration, Kiepersol Estates, Vinson Moore Survey, A-15, Smith County, Texas, according to the plat thereof recorded in Cabinet D, Slides 56C and 56D of the Plat Records of Smith County, Texas; and
 - (b) From and after the addition of any Additional Properties subjected to this Declaration pursuant to Article XVIII hereof, any such Additional Properties.
- (S) "Reservation of Architectural Control" shall mean that certain Reservation of Architectural Control executed by Declarant, recorded in the Real Property Records of Smith County, Texas, and providing, among other things, for the reservation unto Declarant, or its delegate, or, if and when applicable the Architectural Control Committee, the rights set forth in Section 13.01 hereof.
- (T) "Reserved Areas" shall mean those areas of the Declarant Land (including without limitation the streets, and access ways which are Lots 73 through 77, Kiepersol Estates, Vinson Moore Survey, A-15, Smith County, Texas, according to the plat thereof recorded in Cabinet D, Slides 56C and 56D of the Plat Records of Smith County, Texas), the ownership of such areas being reserved to Declarant and its successors and assigns.
- (U) "Residential Lots" shall mean all Lots in Kiepersol Estates, except (possibly) for Lots 25 through 32 as per the provisions in Section 3.01(b) hereof.
- (V) "Unit" shall mean any building or portion of a building and all common elements appurtenant thereto actually constructed and completed upon a part of the Property.

ARTICLE II

COVENANTS BINDING ON PROPERTY AND OWNERS

2.01 Property Bound. From and after the date of recordation of this Declaration, the Property shall be subject to the Covenants and the Covenants shall run with, be for the benefit of, bind, and burden the Property.

2.02 Owners Bound. From and after the date of recordation of this Declaration, the Covenants shall be binding upon and inure to the benefit of each Owner and his heirs, executors, administrators, personal representatives, successors and assigns, whether or not so provided or otherwise mentioned in the Deed. Except with respect to the Exempt Property, each Owner, for himself, his heirs, executors, administrators, personal representatives, successors, and assigns, expressly agrees to pay, and to be personally liable for, the assessments provided for hereunder, and to be bound by all of the Covenants herein set forth. Except with respect to Exempt Property, each Owner shall be and remain personally liable,

regardless of whether he has transferred title to his portion of the Property, for the amount of assessments (together with interest, costs, and attorneys' fees as provided in Section 6.01) which fell due while he was an Owner. No Owner shall escape personal liability for the assessments herein provided by transfer or abandonment of the Property.

2.03 Lot Owners' Association Bound. Upon the incorporation of the Lot Owners' Association, the Covenants shall be binding upon and inure to the benefit of the Lot Owners' Association.

ARTICLE III

GENERAL RESTRICTIONS

3.01 (a) Single-Family Residential Purposes. All Lots in the Property, except as provided in Section 3.01(b) hereof, shall be used only for single-family residential purposes.

(b) Designated Uses for Lots 25-32. Notwithstanding anything in this Declaration to the contrary, Lots 25 through 32 may be used for either single family residential purposes or for the following special purposes, at the discretion of Declarant:

Lots 25 and 26 - chalets.

Lot 27 - a bed and breakfast and restaurant (which has already been constructed and is in use as of the date of this Declaration).

Lot 28 - medical rehabilitation spa.

Lot 29 - health spa.

Lots 30 - 32 - adult living condominium.

If any of such Lots are used for single family residential purposes, such Lots shall be subject to and governed by the Covenants set forth in this Declaration. Declarant reserves the right to impose covenants, conditions and restrictions on Lots 25-32 in the future which relate to the special purposes set forth above, without joinder, concurrence or approval of any other Owner. In the event Declarant imposes any such covenants, conditions and restrictions in the future, such Lots shall be governed by those covenants, conditions and restrictions to the extent of any conflict between such new covenants, conditions and restrictions and the Covenants set forth in this Declaration. As to any of Lots 25-32 which do not, on December 31, 2003, have constructed or have under construction Permanent Improvements to be used for the special purpose designated for such Lot as above stated, such Lot shall thereafter be used only for single family residential purposes.

3.02 Type of Structures. Except as provided in Section 3.01(b) or elsewhere herein, no structure other than a single family dwelling not to exceed two and one-half (2-1/2) stories in

height with a private garage which shall be attached to the main dwelling structure and which shall be fully enclosed and covered, together with permanent accessory structures shall be constructed or permitted to remain on any Lot. Accessory structures, such as porta cocheres, cabanas and tool sheds, shall be permitted, provided however, such accessory structures shall be subject to prior written approval of the Declarant, must be of the same material as the Unit on the same Lot and, in any case, may not be portable or constructed of metal or plastic.

3.03 Minimum Square Footage. The heating and cooled area of each Unit (exclusive of porches, patios, garage, terraces or driveways) on each Lot shall contain not less than the following square footage:

Lots 14, 15, 16, 17, 18, 19, 20, 44, 45, 46, 47, 48, 49, 50, 51 and 52 - 2200 square feet

Lots 1, 2, 3, 4 and 5 - 2400 square feet

Lots 33, 34, 35, 36, and 37 - 2500 square feet

Lots 6, 7, 8, 9, 10, 11, 12, 13, 21, 22, 23, 24, 38, 39, 40, 41, 42, 43, 53, 67, 68, 69, 70, 71 and 72 - 2700 square feet

Lots 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65 - 3000 square feet

Lots 25, 26, 27, 28, 29, 30, 31 and 32 - 3,000 square feet (for any of such Lots that are used only for single family residential purposes)

3.04 Setbacks. As to any Lot, except with respect, to walls, fences, planters, hedges or other screening material, no Permanent Improvement or any part thereof may be nearer to any street line than 50 feet, nearer to any side Lot line than 30 feet and nearer to any rear lot line than 50 feet.

3.05 Walls, Fences, Hedges and Other Screening Material. As to any Lot, the following (as to any permitted wall, fence, planter, hedge or other screening material) shall apply, except as hereinafter provided: No wall, fence, planter, hedge or other screening material in excess of two (2) feet high shall be erected or maintained nearer to the front lot line than the front building setback line, nor on corner lots nearer to the side lot line than the building setback line parallel to the side street. No rear or side fence, wall, hedge or other screening material other than those built by Declarant shall be more than six (6) feet high. Notwithstanding the foregoing, no wall, fence, planter, hedge or other screening material shall be permitted to unduly interfere with the view from any other Lot, as determined by the Architectural Control Committee in its sole discretion. All walls and fences shall be constructed of brick, stone and/or wrought iron so as to be constructed of the same material as the Unit constructed or to be constructed on the Lot so as to be compatible, in the sole discretion of the Architectural Control Committee, with such Unit. 3.06 Construction Materials. All materials used in the

construction of the exterior of any Unit or other structure or accessory building must be approved by the Architectural Control Committee before commencement of construction. Any exposed exterior walls, exclusive of doors, windows and gabled areas, shall be constructed of brick, brick veneer, stone or stone or stucco types veneer with all other exterior construction materials to be of standard grade and quality. All solar collectors and panels to be incorporated into the design of any Unit must receive specific approval from the Architectural Control Committee prior to commencement of construction. Only new construction materials shall be used (except for used brick if and as approved by the Architectural Control Committee on a case by case basis). All Units shall be built on a slab or solid concrete beam foundation (provided no such slab shall be exposed above the ground level), approved by the Architectural Control Committee. No mobile home, metal or temporary buildings shall be placed on or constructed on any Lot.

3.07 Walks. Walks to any Unit shall have a minimum width of three (3) feet and shall be constructed entirely of concrete (except however, some other material may be used with the prior written consent of the Architectural Control Committee).

3.08 Prosecution of Construction. By acceptance of a deed for a Lot, each Owner covenants and agrees to complete the construction on such Lot, in accordance with this Declaration and all applicable governmental ordinances and requirements, within two (2) years from the date of such deed (the "Construction Period"). The Declarant reserves the right, title and privilege to repurchase the Lot and all improvements thereon, at any time within one (1) year after the end of the Construction Period, if Owner fails to comply with the foregoing covenant. Such repurchase option shall be exercised by the Declarant's giving thirty (30) days prior written notice to Owner, at Owner's last known address, of the Declarant's election to repurchase the Lot. Such election notice shall specify the time, date and place of repurchase of the Lot and shall have attached thereto the form of deed to be used to convey the Lot to developer. Such deed shall be substantially similar in form as the deed to the Owner, containing the same warranties of title and be subject to any and all exceptions of record.

3.09 Water Wells. Water wells are permissible, provided there shall be no more than one (1) well per Lot and each Owner shall comply with all applicable laws and regulations with respect to any such water well.

3.10 Air Conditioners and Heaters. No window or wall type air conditioner or heater shall be permitted to be used, erected, placed or maintained on or in any Unit.

3.11 Driveways. As to any portion of the Property, all driveways shall be entirely of concrete (except however, some other material may be used with the prior written consent of the Architectural Control Committee). The concrete finish and color shall be compatible with the Unit on the Lot, in the sole discretion of the Architectural Control Committee. No driveway or other roadway may be constructed on any portion of the Property in such a manner as to furnish access to any other property without the prior written consent of the Architectural Control Committee. All driveways shall have a minimum width of ten (10) feet.

3.12 Septic Systems. Sewage will be disposed of by individual septic system on each Lot. Each septic system must meet or exceed State of Texas regulations applicable thereto. The spray from any aerobic septic system shall not encroach on to the area between any building set back line (set forth in Section 3.04 hereof) and any street, rear or side Lot line. In the event a sanitary sewer collection system is installed in the Property in the future, each and every Unit shall be required, at the cost of each Owner, to be connected to such system.

3.13 Utilities. Each and every Unit shall be required to be connected to the water distribution system, the natural gas distribution system, and the electrical system in the easements adjacent to or within the respective Lot upon which the Unit is located. Individual underground electrical service drops must be installed to each Dwelling Unit. Each Owner shall comply with the requirements of the applicable utility company regarding such underground service installations, including without limitation the payment of any lawful charges which might be incurred for the installation of the underground service as set forth in applicable utility company rules, regulations and terms and conditions of service, as the same may be amended from time to time without notice.

3.14 Mailboxes. Unless the Architectural Control Committee approves otherwise, the construction and installation of mailboxes shall A) be in accordance with specifications furnished by Declarant, and B) (i) be in locations chosen by Declarant or otherwise designated by Declarant, and (ii) shall be constructed with the same or similar materials as the Unit so as to be compatible therewith, in the sole discretion of the Architectural Control Committee.

3.15 Garages. Garages shall be attached to the main Unit, fully enclosed, under the same roof as the main Unit, and shall be built for a minimum of two (2) automobiles. Each garage shall be either side or rear entry and, in any event, shall not be visible from any street.

3.16 Satellite Dishes. Any satellite dishes shall be the newer small dishes. They shall not be mounted on the front side of any Unit where they would be visible from any street.

3.17 Damage. Each Owner shall be responsible for any damage to any street, easement, utility, Amenity, Reserved Areas, or Declarant Land during construction on any Lot.

3.18 Roofs. Unless otherwise approved by the Architectural Control Committee in writing prior to construction, all roofs shall be constructed of slate tile or other heavy composition shingles.

3.19 Wiring. All electrical wiring in any Unit or other building shall strictly comply with all governmental requirements .

3.20 Trees. In the planning/construction process, every effort shall be made to preserve and protect as many trees as possible. Trees in excess of four (4) inches in diameter may not be removed without the consent of the Architectural Control Committee.

3.21 Approval of Builder. Owner shall not permit any builder to commence construction of a Unit on owner's Lot or Lots until and unless each builder (A) appears on Declarant's approved builder's list, or (B) obtains the written consent of the Architectural Control Committee.

ARTICLE IV

SPECIAL RESTRICTIONS

4.01 Greenbelt. No trees or other vegetation may be removed or cleared within 100 feet of the rear property lines of Lots 24 through 31 and within 100 feet of the west and north property lines of Lot 32, such areas to function as a greenbelt.

4.02 Tree Removal - Set Back Lines. No trees shall be removed from the area between any building set back line (set forth in Section 3.04 hereof) and any street, rear or side Lot line. No other vegetation of any kind shall be removed from the area within fifteen (15) feet of any side or rear Lot line.

ARTICLE V

IMPROPER MAINTENANCE BY OWNER

In the event any portion of the Property (other than Declarant Land) or any Lot or Unit thereon is, in the judgment of the Declarant, so maintained by the Owner thereof (i) as to present a public or private nuisance, (ii) as to detract (including but not limited to detractions caused by debris and/or weeds) from the appearance or quality of the surrounding Lots or other areas of the Property or any adjacent land owned by Declarant or its successors or assigns, not presently included in the Property but which is substantially affected thereby or related thereto, or (iii) as to not comply with these Covenants, the Declarant may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto deliver notice thereof to the offending Owner that unless corrective action is taken within ten (10) days, the Declarant will cause such action to be taken at such Owner's cost. If after the expiration of said ten (10) day period of time the requisite corrective action has not been taken, the Declarant shall be authorized and empowered to cause such action (including entering upon such portion of the Property without liability for any damage that may be caused in the absence of gross negligence or willful misconduct) to be taken and the costs thereof, including but not limited to the costs of collection, court costs and attorneys' fees (such costs being herein collectively called the "Maintenance Charge"), together with interest accruing thereon from the expiration of such ten (10) day period at the rate specified in Section 6.01 hereof, shall be assessed against the Lot of the offending Owner. The Maintenance Charge, together with all interest accruing thereon, shall be secured by the Assessment Lien as provided in Article VII hereof. Written notice of such assessment shall be delivered to the offending Owner which notice shall specify the amount of such Maintenance Charge and shall demand payment thereof within thirty (30) days after the date of said notice.

ARTICLE VI

ASSESSMENTS

6.01 Annual Assessments. In order to provide funds for the purposes and uses specified in Article IX hereof, the Declarant in each year, commencing with the year in which these Declarations are recorded, shall assess against the Assessable Property an Annual Assessment, in an amount per acre to be determined by Declarant, in his sole discretion, subsequent to the date hereof and communicated to each owner, such amount to be prorated by the Declarant if the first Assessment Period (hereinafter defined) is less than twelve (12) months. At such time as any of Lots 25, 26, 28, 29, 30, 31 and/or 32 are used for any special purpose set forth in Section 3.02(b) hereof, the Annual Assessment for any such Lot, for so long as it is used for any special purpose, shall thereafter be equal to three (3) times the Assessment (per acre) of the other Lots that are not used for a special purpose. The total number of acres comprising each Lot shall be as set forth in the Plat. In the event of any dispute, the final and conclusive determination as to the total number of acres comprising each Lot shall be made by Declarant. The Annual Assessments may be increased by the Declarant following January 1 of each calendar year subsequent to the first Assessment Period by an amount not to exceed the lesser of (i) five percent (5%), (ii) the percentage change in the National Consumer Price Index for the United States, all Urban Customers, all Components, or its equivalent index as published by the Bureau of Labor Statistics or such other governmental body as may issue such official index, or (iii) such lesser amount as Declarant may permit. The Declarant shall make the calculations required by this Section, and shall prepare and forward to the Lot Owners' Association for collection a statement setting forth the amount of the Annual Assessment assessed against each Lot. The Lot Owners' Association shall thereafter collect and pay to the Declarant the Annual Assessments, failing which Declarant shall have the right to collect the Annual Assessment pursuant to Section 7.02 hereof. All delinquent payments of Annual Assessments shall bear interest at the maximum rate of interest which may be charged under applicable law (including the laws of the United States of America) from such due date until paid (or at such a lesser rate as may be determined by Declarant in its sole discretion on a case by case basis from time to time), and the Owner shall be deemed to have agreed in writing to the payment of such interest and all costs, including court costs and attorneys' fees which may be incurred by the Declarant in collecting same.

6.02 Assessment Period. The Declarant shall establish either a calendar or fiscal year (herein called the "Assessment Period") for which the Annual Assessment is to be levied. The Declarant in its sole discretion may from time to time change the Assessment Period.

6.03 Rules Regarding Billing and Collection Procedures. The Declarant shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the assessment provided herein and for the billing and collection of the Annual Assessments and the Maintenance Charges, provided that said procedures are not inconsistent with the provisions hereof.

ARTICLE VII

IMPOSITION OF LIEN; EXEMPTIONS; OWNERS' AGREEMENT

7.01 Imposition of Assessment Lien and Priority of the Lien. Except with respect to Exempt Property, each Lot shall be charged with and subject to a continuing servitude and lien from the date of recordation of this Declaration for the amount of the Annual Assessments assessed and levied against each such Lot, for Maintenance Charges, for any interest accrued on any Annual Assessments or Maintenance Charges provided for herein and for any and all costs, including court costs and attorneys' fees incurred by Declarant in collecting same. Except as provided in Section 8.03 hereof, the lien (herein called the "Assessment Lien") against each such Lot shall be superior to any and all other charges, liens, or encumbrances which hereafter in any manner may arise or be imposed upon each such Lot, except that such Assessment Lien shall be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. It is expressly intended by acceptance of a Deed or other conveyance or muniment of title to a Lot, each Owner acknowledges that title is accepted subject to the Assessment Lien which shall, in addition to the subrogation rights described in Section 7.02 below, be deemed to be an express contractual lien and shall be superior to any defense of homestead or other exemption, the Assessment Lien having been created prior to the creation or attachment of any homestead right with respect to any Lot.

7.02 Subrogation to Rights of Lot Owners' Association. The Lot Owners' Association shall include in its Bylaws an obligation running with the land obligating the Owner of each Lot to pay all Annual Assessments and Maintenance Charges (together with interest, costs and attorneys' fees as provided in Section 6.01) for which each Owner is obligated under this Declaration. Each such document shall impose and acknowledge a lien and charge on the Lot, which shall be a continuing lien upon the Lot for the benefit of the Lot Owners' Association against which each Annual Assessment or Maintenance Charge is made. In the event that the Lot Owners' Association shall fail to collect any Annual Assessment or Maintenance Charge, the Declarant may itself, at its election, but without any obligation to do so, collect such unpaid Annual Assessment or Maintenance Charge. Each Owner by acceptance of a Deed or other conveyance, whether or not it shall be so expressed in any such Deed or other Conveyance, is deemed to covenant and agree with the Declarant to pay to the Declarant or cause to be paid to the Declarant by the Lot Owners' Association the Annual Assessments and Maintenance Charges assessed and/or levied against his Lot. The Declarant shall be subrogated to all charges, and liens against each Lot which may be in favor of the Lot Owners' Association, and the Declarant shall have the right to enforce such liens for the collection of the Annual Assessments or Maintenance Charges.

7.03 Owners' Promises. Each Owner owning a portion of the Assessable Property, for himself, his heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees:

- (a) That he will pay to the Lot Owners' Association when due the Annual Assessments assessed by the Declarant in each year against his Lot, together with any Maintenance Charges imposed;
- (b) That he acquires his Lot subject to the Annual Assessments and Maintenance Charges and the Assessment Lien, as they may exist from time to time; and
- (c) That by accepting a Deed to his Lot, he shall be, and remain, personally liable for any and all Annual Assessments and Maintenance Charges assessed against his Lot while he is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether he signed the Deed.

ARTICLE VIII

ENFORCEMENT OF PAYMENT OF ANNUAL ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

8.01 Declarant as Enforcing Body. Except as otherwise provided herein, the Declarant shall have the exclusive right to enforce the provisions of this Declaration. However, if the Declarant shall fail or refuse to enforce this Declaration for an unreasonable period of time, after written request from an Owner to do so, then any Owner may enforce this Declaration at his sole cost and expense by any appropriate action, whether at law or in equity.

8.02 Declarant's Enforcement Remedies. If the Owner of any Lot constituting a portion of the Assessable Property fails to pay any of the Annual Assessments or installments when due, or to pay Maintenance Charges assessed, or to pay any interest accrued or any Annual Assessments or Maintenance Charges, and any and all costs (including court costs and attorneys' fees) incurred by Declarant in collecting same; the Declarant may enforce the payment of the Annual Assessments, Maintenance Charges, and all interest accrued thereon and costs incurred by Declarant in collecting same, and/or enforce the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Declarant does not prejudice its exercise of any other remedy):

- (a) Bring an action at law and recover judgment against the Owner personally obligated to pay the Annual Assessments or the Maintenance Charges;
- (b) Enforce the Assessment Lien against the Lot by any means available at law or in equity, including without limitation a non-judicial foreclosure sale of the Lot, such sale to be conducted in the manner set forth in Section 51.002 of the Texas Property Code, as same may be amended or supplemented from time to time. The Declarant or any other Owner may be the purchaser at any such foreclosure sale.

8.03 Subordination of the Lien to First Mortgage or Deed of Trust. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, an institutional lender which is chartered (or licensed) by the United States or any state within the United States. Sale or transfer of any Lot shall not affect the Assessment Lien, provided, however, that if the sale or transfer is pursuant to foreclosure of such a mortgage or deed of trust, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking any deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior and except to the extent stated herein with respect to any subsequent first lien financing), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall (i) take subject to all Annual Assessments, Maintenance Charges, and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure and (ii) be and remain personally liable for all assessments (together with interest, costs and attorneys' fees as provided in Section 6.01 hereof) which fall due while he is an Owner.

8.04 Costs to be borne by Owner in Connection with Enforcement. If any action taken pursuant to Section 8.02 of this Article, the Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual Assessments and Maintenance Charges together with interest and the Declarant's costs and attorneys' fees.

ARTICLE IX

USE OF FUNDS

9.01 Purposes For Which Declarant's Funds May Be Used. The Declarant shall apply all funds collected and received by it through its imposition of the Annual Assessments for the benefit of the Reserved Areas, the Owners, and residents of the Property by devoting said funds, among other things, to the acquisition, construction, alteration, maintenance, provision, and operation of and the landscaping and maintenance of the Reserved Areas. The use and application of all funds collected and received by Declarant through its imposition of the Annual Assessments shall in no manner be limited or restricted by reason of other sources of funds available to Declarant, including those available through initiation, admission and other fees, dues or assessments charged by Declarant in connection with the use of any or all of the Declarant Land, including specifically but not by way of limitation the Amenities. Declarant shall have no duty to utilize any other funds otherwise available to Declarant from other sources prior to applying funds collected and received by it through its imposition of the Annual Assessments for the purposes herein stated. The Declarant shall not have the obligation to account to any Owner for the collection or use of any funds collected and received by Declarant through its imposition of the Annual Assessments.

9.02 Declarant's Rights in Spending Funds from Year to Year. The Declarant shall not be obligated to spend in any year all the sums received by it in such year, and may carry forward as surplus any balance remaining. Nor shall the Declarant be obligated to apply any such surpluses to the reduction of the amount of the Annual Assessment in the succeeding year, but may carry forward from year to year surplus as the Declarant in its discretion may determine to be desirable for the effectuation of the purposes set forth in this Article.

ARTICLE X

RIGHTS AND POWERS

10.01 Enforcement. The Declarant shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration, or other instrument affecting all or any part or parts of the Property. Any such instrument shall have been executed pursuant to, or subject to, the provisions of this Declaration, or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Declarant; provided, however, that any such instrument that is recorded subsequent to recordation of this Declaration shall at all times be subordinate and inferior to this Declaration whether or not so provided in such instrument.

10.02 Right to Inspect. The Declarant shall have the right to enter all Units, during the course of construction thereof, for the purpose of inspecting whether or not the Owner thereof is in compliance with the covenants. If during the course of construction of a Unit, Declarant determines in its sole discretion that there is a violation of the Covenants, the Declarant may order a discontinuance of the construction of the Unit until such time as corrective measures have been taken to assure full compliance with the Covenants, and an Owner's failure to immediately discontinue or cause the discontinuance of construction of the Unit, upon demand by Declarant, shall constitute a further violation of this Declaration by that Owner.

10.03 Delegation and Assignment of Rights and Powers. With respect to the Property, or any part thereof, and without assigning or transferring any portion of the Property, or any interest therein, the Declarant may, and hereby reserves the right to, delegate all rights and powers contained in this Declaration to (i) a committee appointed, empowered and constituted by Declarant whose members shall serve and may be replaced at the pleasure of Declarant or (ii) a corporation or association, profit or nonprofit, whose directors and officers may be elected and designated by Declarant. Any such delegation shall be made by written instrument filed of record in the Real Property Records of Smith County, Texas, and may be rescinded at any time by Declarant by filing an instrument so stating such act of rescission in such Real Property Records. As long as any such delegation is in effect, any person or entity owning any interest in the Property, or any part thereof shall be required to deal with such committee, corporation or association and not Declarant, and Declarant shall have no responsibility or liability for the actions of such committee, corporation or association as the case may be. In addition to the power to delegate set forth hereinabove, and as a separate right and power reserved unto Declarant, Declarant may, in conjunction with any conveyance of any interest in

the Declarant Land, or any part thereof, to any other person or entity ("Assignee"), assign any and all of Declarant's powers and rights contained in the Declaration to the Assignee, following which Declarant shall have no further liability or responsibility with regard to any of the powers and/or rights assigned to the Assignee. Each such assignment must be expressed, in writing, and recorded in the Real Property Records of Smith County, Texas, and state to what portion of the Property such assignment applies. No such assignment shall be deemed to arise by implication.

ARTICLE XI

EASEMENTS AND RIGHTS OF ENJOYMENT IN RESERVED AREAS: RESERVATIONS OF DECLARANT

11.01 Rights of Enjoyment in Reserved Areas. No Owner, by reason of ownership of any interest in the Property, shall have a right or easement of enjoyment in and to any Reserved Areas.

11.02 Rules Regulating Use of Reserved Areas. All rights, easements and privileges, if any to enter upon or use any part of the Reserved Areas granted from time to time by Declarant, shall be subject to the exclusive right of the Declarant to adopt from time to time reasonable rules and regulations pertaining to the use thereof the use of which may include persons or entities other than Owners.

11.03 Fees Chargeable to Users of Reserved Areas. All rights, easements and privileges to enter upon or use any part of the Reserved Areas which may be granted and conferred by the Declarant shall be subject to the exclusive right of the Declarant to charge Owners and others initiation, admission, and other fees, dues or assessments in connection with the use of any or all of the Reserved Areas.

11.04 Reservations of Declarant. The following reservations are hereby made by Declarant:

- (a) Utility easements shown on any Plat are dedicated with the reservation that such utility easements are for the use and benefit of any public utility operating in Smith County, Texas, as well as for the benefit of Declarant to allow for the construction, repair, maintenance and operation of a system or systems of electric light and power, telephone lines, television cable lines, security, gas, water, sanitary sewers, storm sewers and any other utility or service which Declarant may find necessary or proper.
- (b) Declarant reserves the right from time to time to make changes in the location, shape and size of, and additions to, the easements described in Section 11.04(a) for the purpose of more efficiently or desirably installing utilities therein and thereon.

- (c) The title conveyed to any part of the Property shall not be held or constructed to include the title to the water, gas, electricity, telephone, storm sewer or sanitary sewer lines, poles, pipes, conduits, cable television lines or other appurtenances or facilities constructed by Declarant or public utility companies upon, under, along, across or through such utility easements; and the right (but no obligation) to construct, maintain, repair and operate such systems, utilities, appurtenances and facilities is reserved to Declarant, its successors and assigns.
- (d) The right to sell or lease the lines, utilities, appurtenances and other facilities described in Section 11.04(c) to any municipality, governmental agency (including any water control or utility district created under Article XV, Section 59 of the Texas Constitution covering the Property as well as other lands), public service corporation or other party is hereby expressly reserved to Declarant.
- (e) Neither Declarant nor its successors or assigns shall be liable for any damage done by any of such parties or any of their agents or employees to shrubbery, trees, flowers or other property an Owner situated on the Property covered by the above-described utility easements.
- (f) An easement is hereby reserved by the Declarant to enter upon any Lot to render any service or perform any function or duty. In addition, an easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, postal service vehicles and other service vehicles, and to the operators thereof, to enter upon the Property in the performance of their duties.
- (g) A free, perpetual easement for the benefit of Declarant, its successors and assigns, over, across and through all roads and streets now or hereafter located on the Property for the purpose of ingress and egress to and from any real property abutting and/or adjoining the Property.

ARTICLE XII

FURTHER CONVEYANCES OF AND MODIFICATIONS TO DECLARANT LAND

The Declarant shall have the absolute, exclusive and unrestricted right, exercisable in its sole discretion, without consent from any Owner, to (I) sell, transfer, convey, lease, dedicate, encumber or in any manner alienate to any public or private entity the Declarant Land or any part thereof or otherwise deal with the Declarant Land, or any part thereof, including the Reserved Areas and any Permanent Improvements situated thereon, on such terms and in such manner as Declarant in its sole discretion may determine, or (ii) modify the nature, scope, location, configuration, construction, design or other characteristics of the Declarant Land, or

any part thereof, including the Reserved Areas and any Permanent Improvements situated thereon.

ARTICLE XIII

ARCHITECTURAL CONTROL

13.01 Prior Approval. No building, fence, wall, sign, exterior light, landscaping or other structure or apparatus, either permanent or temporary, shall be commenced, erected, placed, or maintained upon any portion of the Property, nor shall any exterior addition thereto, change therein or alteration, excavation, subdivision, or resubdivision thereof, including without limitation changes in or alteration of grade, landscaping, trees, roadways, and walkways, be made until the plans and specifications showing the nature, kind, shape, height, materials, color, location, and other material attributes of the same shall have been submitted to and approved in writing by Declarant or by an Architectural Control committee appointed by Declarant as to (i) compliance with the covenants herein contained and (ii) harmony of external design and location in relation to surrounding structures and topography which are now or hereafter existing or proposed, including, but not by way of limitation, as to architectural designs, setbacks, landscaping, color schemes and construction materials. In the event Declarant, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article XIII will be deemed to have been fully complied with. Non-exercise of the powers hereby reserved by Declarant in one or more instances shall not be deemed to constitute a waiver of the right to exercise such power in other or different instances. Likewise, approval of any one set of plans and specifications shall not be deemed to constitute approval of any other or different plans and specifications. In the absence of gross negligence or willful misconduct attributable to Declarant or the Architectural Control Committee appointed by Declarant, neither Declarant nor such Architectural Control Committee shall be liable for the improper enforcement or failure to exercise any of the powers reserved unto Declarant pursuant to this Article. In no event shall any approval obtained from Declarant or the Architectural Control Committee pursuant to the terms of this Article, be deemed to be a representation of any nature regarding the structural safety or engineering soundness of the structure or other item for which such approval was obtained, nor shall such approval represent in any manner compliance with any building or safety codes, ordinances or regulations; nor shall such approval be construed as a representation or warranty as to any matter which is the subject of such approval.

13.02 Reservation of Architectural Control. Nothing contained in Section 13.01 above shall in any manner restrict or limit the rights and powers reserved unto Declarant as set forth in the Reservation of Architectural Control, including the right to delegate the powers hereby and thereby reserved to (i) a committee appointed, empowered and constituted by Declarant, whose member or members shall serve and be replaced at the pleasure of Declarant, or (ii) a corporation or association, profit or non-profit, whose directors and offices may be elected and designated by Declarant, all as more fully set forth in the Reservation of Architectural Control.

ARTICLE XIV

MAINTENANCE

14.01 Declarant Land. The Declarant, its duly delegated representative, or at the discretion of the Declarant, the Lot Owners' Association shall maintain and otherwise manage all Declarant Land (including the Reserved Areas. The Declarant shall use a reasonable standard of care in providing for the repair, management, and maintenance of the Declarant Land.

14.02 Assessment of Costs of Maintenance and Repair of Utilities or Declarant Lands. In the event that the need for maintenance or repair of Declarant Land or utilities within the Property is caused by any Owner, his agents, tenants, family, guests or invitees, the cost of such maintenance or repairs at Declarant's option shall be added to and become a part of the Maintenance Charge of which such Owner's Lot is subject, payable and subject to interest as set forth in Article V hereof, and shall be secure by the Assessment Lien.

ARTICLE XV

USE RESTRICTIONS

15.01 All Properties. Except with respect to Exempt Property, including the Declarant Land, all Lots within the Property are hereby restricted as follows:

- (a) Antennas. No exterior television, radio, or other antenna of any type shall be placed, allowed, or maintained on any Lot without prior written approval and authorization of the Declarant.
- (b) On Street Parking. On street parking is restricted to approved deliveries, pick-up or short-time guests and invitees. No overnight parking on any street shall be permitted.
- (c) Storage. No exterior storage of any items of any kind shall be permitted, except with prior written approval and authorization of the Declarant. Any such storage as is approved and authorized shall be in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view from neighboring property, dwelling units, pathways, and streets. This provision shall apply, without limitation, to woodpiles, camping trailers, boat trailers, travel trailers, boats, mobile or motor homes, and pick-up camper units. Also, without limitation, no automobile, truck, or other vehicle, regardless of ownership, age, condition, or appearance, shall remain on any portion of the Property in any manner which could be construed as being stored, neglected, abandoned, or otherwise not in frequent use, except pursuant to written approval and authorization of the Declarant.

- (d) **Garbage.** No garbage or trash shall be placed at the exterior of any building, except in containers meeting the approval of the Declarant and the placement, maintenance, and appearance of all such containers shall be subject to reasonable rules and regulations of the Declarant. All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon.
- (e) **Animals.** No animals, reptiles, fish or birds of any kind shall be raised, bred or kept in, on or about any portion of the Property, except pursuant to prior written approval of and in accordance with rules and regulations promulgated by the Declarant, provided, however, that dogs, cats, birds, or fish may be kept as household pets so long as, in the sole discretion of the Declarant, such pet is not or does not become, a nuisance, threat, or otherwise objectionable to other Owners. Furthermore, household pets, including without limitation, dogs and cats, shall at all times be contained within the boundary of the Lot of their Owner and shall not be permitted to freely roam on the Property.
- (f) **Re-subdivision.** Except for the right of Declarant as set forth in Article XVII hereof, no portion of the Property shall be further subdivided and no portion less than all of any such portion of the Property, or any easement or other interest therein, shall be conveyed by any Owner without the prior written authorization and approval of the Declarant.
- (g) **Diseases and Insects.** No Owner shall permit any thing or condition to exist in, on or about any portion of the Property which shall induce, breed or harbor plant disease or noxious insects.
- (h) **Machinery, Fixtures, and Equipment.** No machinery, fixtures, or equipment of any type, including without limitation, air conditioning or refrigeration equipment and clothes lines, shall be placed, allowed, or maintained in, on or about any portion of the Property, except with prior written approval and authorization of the Declarant in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view of neighboring property, Units, pathways, and streets; and no such machinery, fixtures, or equipment shall be placed, allowed, or maintained anywhere other than on the ground (such as on the roof) except if screened or concealed (subject to all required approvals as to architectural control) in such manner that the screening or concealment thereof appears to be part of the integrated architectural design of the building and does not have the appearance of a separate piece or pieces of machinery, fixtures, or equipment.
- (i) **Burning and Incinerators.** Without the prior written approval and authorization of the Declarant, no open fires shall be permitted in, on or about any portion of the Property at any time and no incinerators or like equipment shall be placed, allowed, or maintained in, on or about any portion of the Property. The

foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

- (j) Signs. No exterior signs or advertisements of any kind may be placed, allowed, or maintained in, on or about any portion of the Property without prior written approval and authorization of the Declarant, except that mailboxes, residential nameplates, "for sale" and "for rent" signs may be placed and maintained in conformity with such common specifications, including without limitation, reasonable restrictions as to size, as may be adopted by the Declarant.
- (k) Repairs. No repairs of any detached machinery, equipment, or fixtures, including without limitation motor vehicles, shall be made within view of neighboring property, Units, pathways, and streets, without prior written approval and authorization of the Declarant.
- (l) Utility and Service Lines. No gas, electric, power, telephone, sewer, cable, television, or other utility or service lines of any nature or kind shall be placed, allowed, or maintained upon or above the ground on any portion of the Property, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required.
- (m) Oil, Gas, and Mineral Activity. With respect only to the Property as defined herein (and excluding any additional land added pursuant to Article XVIII), it is expressly provided that no oil or gas exploration, drilling, development, or refining operations and no quarrying or mining operations of any kind, including oil wells, surface tanks, tunnels or mineral excavations or shafts shall be permitted or pursued by any Owner other than Declarant; and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted; provided, however, that with respect to any outstanding mineral interest affecting all or part of the Property owned by any person or entity as of the date hereof other than Declarant, Declarant shall attempt to cause such restrictions on exploration, drilling, development, refining, mining and quarrying to be placed on such part of the Property as Declarant in good faith can negotiate (with no monetary obligation required on the part of Declarant to be paid for such purpose). With respect to additional land which may be added pursuant to Article XVIII, such land shall be subject to the restrictions set forth in this Section 15.01(m) unless Declarant at the time of such addition does not own all of the mineral rights therein. If Declarant does not own all of the mineral rights, Declarant shall attempt to cause such restrictions on exploration, drilling, development, refining, mining and quarrying to be placed on such part of said additional land as Declarant in good faith can negotiate (with no monetary obligation required on the part of Declarant to be paid for such purpose), and such land shall be subject to the

foregoing provisions of this Section 15.01(m) except to the extent of any conflict herein with the rights of the owners of such mineral rights. Notwithstanding anything to the contrary stated herein, as to any mineral interest which Declarant owns with respect to the Property or any such additional land which may be added pursuant to Article XVIII, Declarant reserves the right to explore, drill, develop, refine, mine and quarry any minerals in, on or under the Property or such additional land; provided, however, any such activities shall be subject to (i) Declarant's obtaining whatever permits or licenses are required from governmental authorities having jurisdiction with respect thereto, and (ii) Declarant's pursuing such activities in such a manner so as to not disrupt the surface rights of any Owner.

- (n) Septic Tanks and Sewage Disposal. No septic tank or other means of sewage disposal may be installed unless previously approved in writing by any governmental authorities having jurisdiction with respect thereto, and by the Declarant. No outside toilets of any kind are permitted, and no installation of any type of device for disposal of sewage shall be allowed which would result in raw or untreated or unsanitary sewage being carried into any body of water or water source.
- (o) Firearms and Weapons. No portion of the Property shall be used or permitted to be used for hunting or for the discharge of any pistol, rifle, shotgun, or any other firearm, or any bow and arrow or any other device capable of killing or injuring.
- (p) Motor Vehicles. Any and all motorized vehicles operated within the Property shall be operated in accordance with the laws of the State of Texas. All posted speed limits and other traffic signs placed on the Property by Declarant shall be complied with.
- (q) Storage of Flammable Liquids. The storage of gasoline, oils, heating or other fuels on any Lot is prohibited except for a reasonable amount for lawnmowers and similar tools and equipment.
- (r) Warehousing. The warehousing or other storage of goods or materials for commercial purposes is not allowed on any Lot.
- (s) Loud Noises/Yardwork. The use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device or the creation of any loud or obnoxious noises (including, without limitation, the use of non-licensed motorized vehicles) so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes, shall be prohibited. No use of power tools for yard or other work shall be permitted on any part of the Property on Sundays, or on any of the following holidays: Christmas Eve or Christmas.

- (t) Fireworks. The use and discharge of firecrackers and other fireworks on the Property, except for events designated by the Lot Owners' Association for special occasions, shall be prohibited.
- (u) Dumping. The dumping of grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potential hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Property shall be prohibited, except that fertilizers may be applied to landscaping on any Lot, provided care is taken to minimize runoff and Declarant and any builders may dump and bury rocks and trees removed from a building site on such building site.
- (v) Drainage. It is intended that the Property be developed in an orderly manner such that the Owner of the Lot shall absorb its share of drainage responsibility with respect to the surface water running across, from or to the Property as a whole. Without limiting the remedies otherwise described herein, to the extent any Lot should be developed in a manner which disproportionately diverts surface water onto another Lot or is otherwise developed so as not to absorb its proportionate share of responsibility for the Property's surface water drainage, then, the Declarant shall be entitled to require the Owner of any such Lot to rectify such situation and, if the same is not timely rectified, to itself effectuate such maintenance or repairs as may be desirable to more equitably resolve any drainage problems. Without limiting the foregoing, the Declarant shall be entitled to install drainage services, culverts or other arrangements as the Declarant may, in its sole discretion, deem necessary or desirable. To the extent the Declarant deems the necessity for such maintenance to be the responsibility of only certain of the Lots, then, the Declarant may effectuate a special Maintenance Charge against only those Lots. To the extent the Declarant deems such drainage maintenance not to be attributable to only certain Lots, but, rather, the Property as a whole, then, any such maintenance may be effectuated by way of Maintenance Charges against all Lots.
- (w) Sprinkler Systems. Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Property, are prohibited, except that Declarant and the Lot Owners' Association shall have the right to draw water from such sources.
- (x) Change in Intended Use. No portion of the Property may be developed or redeveloped otherwise than in accordance with its original intended use as described in Section 3.01 without the prior written authorization of the Declarant. In connection with Declarant's authorization to allow any Owner to develop or redevelop any portion of the Property otherwise than in accordance with its original intended use, Declarant shall have the right to further subject the Property to additional and/or different covenants, conditions, assessments,

charges, servitudes, liens, reservations and easements, either by amending this Declaration or by filing a Subsidiary Declaration, and in either event all of the Owners of any portion of the Property shall join in the execution and filing of any such amendment or Subsidiary Declaration.

- (y) Misuse and Mismanagement. No portion of the Property shall be maintained or utilized in such manner as to present an unsightly appearance (including but not limited to clothes drying within public view) or as to unreasonably offend the morals of or as to constitute a nuisance or unreasonable annoyance to, or as to endanger the health of, otherwise Owners or residents of the Property; and no foul or obnoxious odors, noxious or otherwise offensive condition or activity shall be allowed to exist or be conducted therein.
- (z) Violation of Statutes, Ordinances, and Regulations. No portion of the Property shall be maintained or utilized in such manner as to violate any applicable statute, ordinance, or regulation of the United States of America, the State of Texas, the County of Smith, or any other governmental agency or subdivision having jurisdiction over the Property.
- (aa) Violation of Rules or of Covenants, Conditions or Restrictions. No portion of the Property shall be maintained or utilized in violation of this Declaration or of the rules and regulations of the Declarant or of any covenants, conditions, or restrictions applicable to and binding upon said portion of the Property.

ARTICLE XVI

TERM; AMENDMENTS; TERMINATIONS

16.01 Term; Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect to and including December 31, 2029. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by (i) the Declarant and (ii) the then Owners casting seventy-five percent (75%) of the total votes (each Owner other than Declarant having one vote per Lot owned with Declarant having three votes per Lot owned), cast at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

16.02 Amendment to Declaration. This Declaration may be amended or changed, in whole or in part, at any time by the written approval of Declarant, and pursuant to special meeting of the Owners, called pursuant to Section 16.03, at which the amendment is approved by not less than sixty-seven percent (67%) of the Owners (each Owner other than Declarant having one vote per Lot owned with Declarant having three votes per Lot owned) and by fifty-one percent (51%) of the First Mortgagees (as hereinafter defined). Such amendment shall be evidenced by a written instrument executed and acknowledged by such consenting Owners and First

Mortgagees and filed of record in the county in which the Project is located. Any such amendment so effected shall be binding upon all of the Owners; provided, however, that no such amendment shall cause the alteration or destruction of a Unit unless such amendment has been consented to by the Owner and the First Mortgagee of the Unit which is to be altered or destroyed. The Lot Owners' Association shall give each First Mortgagee written notice of any proposed action or amendment which pursuant to the provisions hereof require the approval of First Mortgagees. For purposes hereof, the term 'First Mortgagees' shall mean and include, collectively, any bank, insurance company, agency or instrumentality of the United States government, or other institutional holder of any indebtedness secured by a first and prior lien or encumbrance upon a Unit.

16.03 Election Procedures for Amendments and Terminations. The affirmative votes required under Section 16.01 or 16.02 shall be obtained and evidenced by the requisite vote by the Owners (including Declarant) present at a meeting of Owners duly called by at least ten (10) days before the date of the meeting at which meeting the requisite percentage of Owners, in person or by proxy, vote to so amend or terminate this Declaration (and the Covenants herein). The notice of the meeting must set forth the proposal as to amendment of this Declaration (and/or the Covenants contained herein) and such affirmative vote of the requisite percentage of Owners must be evidence by minutes of the meeting duly certified by the Owners who called the meeting or the Declarant. In any event, a copy of the minutes must be delivered to the Declarant. There shall be no quorum requirements for any meetings held pursuant to this Section.

16.04 Recording of Amendments. Upon the requisite percentage of Owners duly voting to amend this Declaration (and/or the Covenants contained herein) and upon the other conditions set forth in Section 16.01 or 16.02 (as the case may be) and Section 16.03 of this Article being satisfied, then each amendment shall be executed by the Declarant, placed in recordable form, and filed of record in the Real Property Records of Smith County, Texas, accompanied by a statement that the requisite percentage of Owners have voted to make such amendment to this Declaration.

16.05 Effect. Upon the filing of an amendment in accordance with Section 16.04, this Declaration and the Covenants, as amended, shall remain in full force and effect.

16.06 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending/Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by any federal, state, or local agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of the Property or any portion thereof. Any such amendment shall be effective by the recordation, by Declarant, of a Certificate of Amendment signed by a duly authorized agent of Declarant, with his signature acknowledged, specifying the federal, state, or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution.

Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when recorded, shall be binding upon the Property and all persons having an interest in the Property. Except as provided in this Section 16.06, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 16.02 hereof.

ARTICLE XVII

RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT RESERVED AREA AND LOTS

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time while it is the owner thereof to subdivide or resubdivide, as the case may be, and/or plat or replat, as the case may be, all or any portion of the Reserved Area and any portion of the Property without the consent of any Owner.

ARTICLE XVIII

SUBJECTING ADDITIONAL LANDS TO THE DECLARATION

From time to time the size of the Property may be increased, in the manner provided in this Article, by recording in the Real Property Records of Smith County, Texas, a supplement to this Declaration (hereinafter called "Supplemental Declaration"). The Supplemental Declaration shall be signed and acknowledged by or on behalf of the Declarant and by the owner of record of the additional land to be included within the Property and subjected to the Covenants set forth in this Declaration. Each such Supplemental Declaration shall:

- (a) describe the land to be included as a part of the Property; and
- (b) state that such land and the Permanent Improvements thereon are expressly subjected to all of the Covenants set forth in this Declaration.

ARTICLE XIX

OWNERSHIP OF UTILITIES, AMENITIES AND RESERVED AREAS

All of the Reserved Areas and the Permanent Improvements located therein and all utilities, if any, constructed by Declarant (including without limitation all such water, gas, electricity, telephone, television, storm sewer or sanitary sewer lined, security systems, poles, pipes, conduits or other appurtenances or facilities) shall be owned by Declarant and, as to all or any part thereof, may be sold, transferred, conveyed, leased, dedicated, encumbered or in any manner alienated by Declarant at any time to any private or public entity on such terms and in such manner as Declarant in its sole discretion may determine. Declarant shall have the absolute right to charge fees, dues, assessments or other charges of any nature whatsoever for the use of any and all of the Reserved Areas and/or the Permanent Improvements located

thereon and any and all of such utilities, it being understood that no Owner shall have any right to the use of same merely by reason of his or its ownership of any portion of the Property.

ARTICLE XX

MISCELLANEOUS

20.01 Interpretation of the Covenants. Except for judicial construction, the Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Declarant's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

20.02 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

20.03 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be:

- (a) those which would be used in determining the validity of the challenged interest, plus
- (b) if applicable, those of the issue of the partners constituting the Declarant who are living at the time the period of perpetuities starts to run on the challenged interest.

20.04 Change of Circumstances. Except as otherwise provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

20.05 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Declarant shall have the right to adopt rules and regulations with respect to all other aspects of the Declarant's rights, activities, and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

20.06 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the Real Property Records of Smith County, Texas, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete

development of the Declarant Land, including the Property, can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

20.07 Limitation of Liability. In the absence of gross negligence or willful misconduct attributable to Declarant or its successors or assigns, neither Declarant nor its successors or assigns shall have any liability arising out of the performance or nonperformance of any of the rights and powers reserved unto Declarant, its successor or assigns pursuant to this Declaration.

20.08 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assigns of any of Declarant's ownership, rights and powers hereunder.

20.09 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

20.10 Captions and Titles. All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only, and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

20.11 Notices. Any notice required or permitted to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, delivery shall be deemed to have been made twenty-four (24) hours after a copy of the notice has been deposited in the United States mail postage prepaid, registered or certified mail, addressed to each such person at the address given by such person to the party sending the notice or to the address of the Dwelling Unit of such person if no address has been given. Such address may be changed from time to time by notice in writing.

20.12 Prior Recorded Instruments. This Declaration of all of the provisions hereof are expressly subject to all prior recorded documents affecting the Property, including without limitation, the Reservation of Architectural Control as defined in Article I hereof.

20.13 Enforcement of the Covenants. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions hereof, including any of the Covenants, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation of injunction whether prohibitive in nature or mandatory in commanding compliance with such provisions; and it shall not be prerequisite to the granting of any such injunction to show inadequacy of legal

remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions.

20.14 Suspension of the Covenants. The Declarant shall have the right, during the period of construction, development, and sale, to grant reasonable and specifically limited written exemptions from the Covenants to Declarant and any other developer or contractor. Any such exemptions shall be granted only upon specific written request, itemizing the exemption requested, the location thereof, the need therefor, and the anticipated duration thereof; and any authorization and approval thereof shall be similarly itemized. No such exemption shall be broader in terms of activities, location, or time than is reasonably required.

20.15 Approval of Supplemental Declaration. No Supplemental Declaration shall be entered into or made effective with respect to the Property unless same has been previously approved by Declarant in writing.

20.16 Use of Name "Kiepersol Estates". No person shall use the words "Kiepersol Estates" or any derivative in any printed or promotional material without Declarant's prior written consent, provided, however, the Lot Owners' Association shall be entitled to use the words "Kiepersol Estates" in its name.

IN WITNESS WHEREOF, KIEPERSOL ESTATE, LTD., a Texas limited partnership, has hereunto caused its name to be signed by the signature of its duly authorized official as of the day and year first above written.

KIEPERSOL ESTATE, LTD.,
A Texas Limited Partnership

By: Agro Services, L.L.C, a Texas
Limited Liability Company,
General Partner

By: 
Pierre deWet, President

THE STATE OF TEXAS §
§
COUNTY OF SMITH §

This instrument was acknowledged before me on the 2 day of November, 1999 by Pierre deWet, President of Agro Services, LLC, a Texas limited liability company and General Partner of and on behalf of Kiepersol Estate, Ltd., a Texas limited partnership.

Traci D. Brown

Notary Public, State of Texas

My Commission Expires:

11/02/2002



After recording return to:

Randall L. Roberts
Potter, Minton, Roberts, Davis & Jones, P.C.
P.O. Box 359
Tyler, Texas 75710

Filed for Record in:
SMITH COUNTY, TEXAS
JUDY CARNES, COUNTY CLERK

On Nov 03 1999
At 4:14pm

Deputy - Alexa Murray

STATE OF TEXAS COUNTY OF SMITH
I hereby certify that this instrument was filed
on the date and time stamped hereon by me and
was duly recorded in the Official Public records
of Smith County, Texas.



NOV 3 1999

JUDY CARNES
COUNTY CLERK, Smith County, Texas

By *Alexa Murray* Deputy

MANAGEMENT CERTIFICATE

Filed for Record in: SMITH COUNTY, TEXAS
JUDY CARNES, COUNTY CLERK
On Dec 09 2002
At 1:02pm
Receipt #: 250765
Recording: 9.00
Doc/Num : 2002-R0057890
Doc/Type : REC
Deputy - Gloria Parks

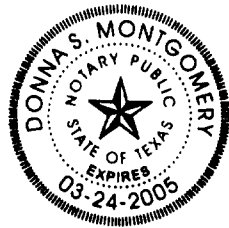
Name of Subdivision: Kiepersol Estates
Name of Association: Kiepersol Estates Lotowners' Association, Inc.
Date Incorporated: November 8, 1999 - Offices of the Secretary of State of Texas
Charter Number: 01557301
Recording Data for Subdivision: Cabinet D, Slides 56-C and 56-D of the Plat Records of Smith County, Texas
Recording Data for Declaration: "Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements"
Volume 5030, Page 298
Deed Records of Smith County, Texas
Mailing Address of Association: 3933 FM 344 E.
Tyler, Texas 75703
Phone Number: 903-894-9330

Signed: [Signature] Date: 12/9/02
Pierre de Wet, President

STATE OF TEXAS §
COUNTY OF SMITH §

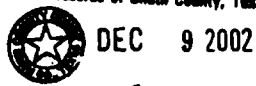
Acknowledged before me by Pierre de Wet on this 9th day of December 2002.

[Signature]
Notary Public, State of Texas



Return to: AGTOPROF
3933 FM 344E.
TYLER, TX 75703

STATE OF TEXAS COUNTY OF SMITH
I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the Official Public records of Smith County, Texas.



[Signature]
JUDY CARNES
COUNTY CLERK, Smith County, Texas

**FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS,
ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS, AND
EASEMENTS
(KIEPERSOL ESTATES)**

THIS FIRST AMENDED DECLARATION of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements (herein called the "First Amendment") is made as of the ~~24th~~ day of May, 2005, by KIEPERSOL ESTATE, LTD., a Texas limited partnership (herein called "Declarant") and all others who execute this First Amendment. The following provisions have been amended as follows:

Background. The Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (Kiepersol Estates) dated November 2, 1999 (the "Declaration") for Kiepersol Estates, a subdivision located in the Vinson Moore Survey, A-15, Smith County, Texas, according to the plat thereof in Cabinet D, Slides 56C and 56D of the Plat Records of Smith County, Texas, is of record in Volume 5030, Page 298 of the Official Public Records of Smith County, Texas. Pursuant to Section 16.02 of the Declaration, not less than sixty-seven percent (67%) of the Owners (each Owner other than Declarant having one vote per Lot owned with Declarant having three votes per Lot owned) and fifty-one percent (51%) of the First Mortgagees have approved amending the Declaration as set forth in this First Amendment and evidence their approval of the same by their execution of this First Amendment. Those who execute this First Amendment are 85% of the Owners and 67% of the First Mortgagees. Capitalized terms used herein shall have the meanings ascribed to them in the Declaration unless otherwise stated herein.

NOW THEREFORE, in consideration of the premises, it is agreed that the Declaration be, and it is hereby, amended as follows:

W I T N E S S E T H :

WHEREAS, Declarant owns certain real property in Smith County, Texas; and

WHEREAS, Declarant intends to develop the Property, as hereinafter defined, into a residential community consisting of single-family residences and certain and certain other designated uses as set forth herein; and

WHEREAS, in order to enable Declarant to (i) integrate the Property into the overall development of all the Declarant Land, as hereinafter defined, (ii) implement a general plan of development and accomplish the development of such lands as a first-class residential and commercial development of high quality and standards in a consistent manner with continuity, and (iii) to insure the creation of an architecturally harmonious subdivision, Declarant desires to subject the Property, as hereinafter defined, to the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements hereinafter set forth (herein collectively called the "Covenants").

NOW, THEREFORE, Declarant, hereby declares that the Property be held, sold, and conveyed subject to the Covenants.

ARTICLE I

DEFINITIONS

The following words, phrases, or terms used in this Declaration shall have the following meanings:

- (A) "Additional Properties" shall mean properties added in accordance with Article XVIII, hereof.
- (B) "Annual Assessment" shall mean the charge levied and assessed each year against the Property.
- (C) "Architectural Control Committee" shall mean the Declarant or, if and when applicable, committee, corporation, or association appointed by Declarant for the purposes of exercising architectural control, all as set forth in the Reservation of Architectural Control.
- (D) "Assessable Property" shall mean the Property, except, such part or parts thereof as may from time to time constitute Exempt Property.
- (E) "Assessment Lien" shall mean the lien created and imposed by Article VII.
- (F) "Covenants" shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements set for herein.
- (G) "Declarant" shall mean Kiepersol Estate, Ltd., a Texas limited partnership, and any successor and assign of Declarant's rights and powers hereunder, but with respect to any such successor or assign (i) such successor or assign shall not be deemed to be a "Declarant" unless such successor or assign is designated as such pursuant to a written instrument signed by Declarant (which written instrument shall be filed of record in the Real Estate Records of Smith County, Texas, designating that part of the Property to which it relates) and (ii) such successor or assign shall only have those rights and powers of Declarant that are specifically assigned to such successor or assign pursuant to such written instrument.
- (H) "Declarant Land" shall mean such part or parts of Property, including such part or parts of the Property, the Reserved Areas and the Lots, owned by Declarant, together with the buildings, structures and improvements thereon, if any, as may be owned now or at any time hereafter by the Declarant, for as long as the Declarant is the owner thereof.

- (I) "Declaration" shall mean this Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, as amended or supplemented from time to time.
- (J) "Deed" shall mean a deed or other instrument conveying the fee simple title (less and except all of the oil, gas and other minerals) to all or any portion of the Property, including but not limited to a Lot.
- (K) "Exempt Property" shall mean the following parts of the Property:
 - (a) All land and Permanent Improvements owned by or dedicated to and accepted by the United States, the State of Texas, and County of Smith, or any political subdivision thereof, for as long as such entity or political subdivision is the owner thereof, or for so long as said dedication remains effective.
 - (b) All Declarant Land.
 - (b) All Reserved Areas.
- (L) "Lot Owners' Association" shall mean and refer to any incorporated or unincorporated association which is formed to facilitate the maintenance and operation of the common elements appurtenant to each Lot, or is formed to enforce and administer any covenants, conditions, restrictions or regulations other than those contained herein. Every Owner shall be a member of the Lot Owners' Association.
- (M) "Lot" shall mean, individually or collectively, those certain lots designated as Lots 1 through 72 of Kiepersol Estates, Vinson Moore Survey, A-15, Smith County, Texas, according to the plat thereof recorded in Cabinet D, Slides 56C and 56D of the Plat Records of Smith County, Texas and any subdivided Lot.
- (N) "Maintenance Charges" shall mean any and all costs assessed pursuant to Article V or Section 14.02.
- (O) "Owner" shall mean the person or persons, entity or entities, who either own record fee simple title to the Property or any portion thereof or have entered, as an original party as purchaser thereunder or as a successor or assignee thereof, into a Contract for Deed with Declarant, its successor or assigns, covering a Lot or any other portion or parcel of the Property; the term "Owner" to exclude any person or persons, entity or entities, having an interest in a Lot or any such portion or parcel merely as security for the performance of an obligation; the term "Owner" to include Declarant if Declarant is a record owner of fee simple title to a Lot or any such portion or

parcel, but only if with respect to such Lot or any such portion or parcel, Declarant has not entered into a Contract for Deed. For the purposes hereof, the term "Contract for Deed" shall be any contract executed by Declarant with another person containing as its title or as part of its title the term "Contract for Deed" pursuant to which such person is acquiring a Lot or any such portion or parcel on an installment basis whereby Declarant does not transfer fee simple title to the Lot or any such portion or parcel until such person has satisfied all of the terms and conditions of such contract.

- (P) "Permanent Improvements" shall mean with respect to any Lot or any other portion or parcel of the Property, any and all improvements, structures, and other materials and things (including, but without limitation, trees, berms, shrubs, hedges, swimming pools, tennis courts and fences) which, at the time of the assessment of each Annual Assessment are located thereon.
- (Q) "Plat" shall mean the subdivision plat of any portion of the Property presently on file in the Plat Records of Smith County, Texas, and any other plat or plats of all or any portion of the Property now or hereafter filed for record in the Plat Records of Smith County, Texas (as such plat or plats may be amended from time to time).
- (R) "Property" shall mean:
 - (a) At the time of recordation of this Declaration, Kiepersol Estates, Vinson Moore Survey, A-15, Smith County, Texas according to the plat thereof recorded in Cabinet D, Slides 56C and 56D of the Plat Records of Smith County, Texas; and
 - (b) From and after the addition of any Additional Properties subjected to this Declaration pursuant to Article XVIII hereof, any such Additional Properties.
- (S) "Reservation of Architectural Control" shall mean that certain Reservation of Architectural Control Executed by Declarant, recorded in the Real Property Records of Smith County, Texas, and providing, among other things, for the reservation unto Declarant, or its delegate, or, if and when applicable the Architectural Control Committee, the rights set forth in Section 13.01 hereof.
- (T) "Reserved Areas" shall mean those areas of the Declarant Land (including without limitation, the streets and access ways which are Lots 73 through 77, Kiepersol Estates, Vinson Moore Survey, A-15, Smith County, Texas, according to the plat thereof recorded in Cabinet D, Slides 56C and 56D of the Plat Records of Smith County, Texas), the ownership of such areas being reserved to Declarant and its successors and assigns.

- (U) "Residential Lots" shall mean all Lots in Kiepersol Estates, except (possibly) for Lots 25 through 32 as per the provisions in Section 3.01(b) hereof.
- (V) "Unit" shall mean any building or portion of a building and all common elements appurtenant thereto actually constructed and completed upon a part of the Property.

ARTICLE II

COVENANTS BINDING ON PROPERTY AND OWNERS

- 2.01 Property Bound. From and after the date of recordation of this Declaration, the Property shall be subject to the Covenants and the Covenants shall run with, be for the benefit of, bind, and burden the Property.
- 2.02 Owners Bound. From and after the date of recordation of this Declaration, the Covenants shall be binding upon and inure to the benefit of each Owner and his heirs, executors, administrators, personal representatives, successors and assigns, whether or not so provided or otherwise mentioned in the Deed. Except with respect to the Exempt Property, each Owner, for himself, his heirs, executors, administrators, personal representatives, successors, and assigns, expressly agrees to pay, and to be personally liable for, the assessments provided for hereunder, and to be bound by all of the Covenants herein set forth. Except with respect to Exempt Property, each Owner shall be and remain personally liable, regardless of whether he has transferred title to his portion of the Property, for the amount of assessments (together with interest, costs, and attorneys' fees as provided in Section 6.01) which fell due while he was an Owner. No Owner shall escape personal liability for the assessments herein provided by transfer or abandonment of the Property.
- 2.03 Lot Owners' Association Bound. Upon the incorporation of the Lot Owners' Association, the Covenants shall be binding upon and inure to the benefit of the Lot Owners' Association.

ARTICLE III

GENERAL RESTRICTIONS

- 3.01 (a) Single-Family Residential Purposes. All Lots in the Property, except as provided in Section 3.01 (b) hereof, shall be used only for single-family residential purposes.

Section 3.01 (b) of the Declaration is hereby deleted and the following substituted therefor:

- (b) Designated Uses for Lots 24-32. Notwithstanding anything in this Declaration to the contrary, Lots 24 through 32 may be used for either single family residential purposes or for the following special purposes, at the discretion of Declarant:

Lots 24 - 26 – chalets.

Lot 27 – a bed and breakfast and restaurant (which has already been constructed and is in use as of the date of this Declaration).

Lot 28 – medical rehabilitation spa.

Lot 29 – health spa.

Lots 30 – 32 – adult living condominium.

If any of such Lots are used for single family residential purposes, such Lots shall be subject to and governed by the Covenants set forth in this Declaration. Declarant reserves the right to impose covenants, conditions and restrictions on Lots 24-32 in the future which relate to the special purposes set forth above, without joinder, concurrence or approval of any other Owner, and to re-plate any or all of such lots. In the event Declarant imposes any such covenants, conditions and restrictions to the extent of any conflict between such new covenants, conditions and restrictions and the Covenants set forth in this Declaration, the new covenants, conditions, and restrictions shall prevail but only as to the lots to which they relate. As to any of Lots 24-32 which do not, on December 31, 2015, have constructed or have under construction Permanent Improvements to be used for the special purpose designated for such Lot as above stated, such Lot shall thereafter be used only for single family residential purposes.

- 3.02 Type of Structures. Except as provided in Section 3.01(b) or elsewhere herein, no structure other than a single family dwelling not to exceed two and one-half (2-1/2) stories in height with a private garage which shall be attached to the main dwelling structure and which shall be fully enclosed and covered, together with permanent accessory structures shall be constructed or permitted to remain on any Lot. Accessory structures, such as porta cocheres, cabanas and tool sheds, shall be permitted, provided however, such accessory structures shall be subject to prior written approval of the Declarant, must be of the same material as the Unit on the same Lot and, in any case, may not be portable or constructed of metal or plastic.

Section 3.03 of the Declaration is hereby deleted and the following is substituted therefor:

- 3.03 Minimum Square Footage. The heating and cooled area of each Unit (exclusive of porches, patios, garage, terraces or driveways) on each Lot shall contain not less than 2,200 square feet.
- 3.04 Setbacks. As to any Lot, except with respect, to walls, fences, planters, hedges or other screening material, no Permanent Improvement or any part thereof may be nearer to any street line than 50 feet, nearer to any side Lot line than 30 feet and nearer to any rear lot line than 50 feet.
- 3.05 Walls, Fences, Hedges and Other Screening Material. As to any Lot, the following (as to any permitted wall, fence, planter, hedge or other screening material) shall apply, except as hereinafter provided: No wall, fence, planter, hedge or other screening material in excess of two (w) feet high shall be erected or maintained nearer to the front lot line than the front building setback line, nor on corner lots nearer to the side lot line than the building setback line parallel to the side street. No rear or side fence, wall, hedge or other screening material other than those built by Declarant shall be more than six (6) feet high. Notwithstanding the foregoing, no wall, fence, planter, hedge or other screening material shall be permitted to unduly interfere with the view from any other Lot, as determined by the Architectural Control Committee in its sole discretion. All walls and fences shall be constructed of brick, stone and/or wrought iron so as to be constructed of the same material as the Unit constructed or to be constructed on the Lot so as to be compatible, in the sole discretion of the Architectural Control Committee, with such Unit.
- 3.06 Construction Materials. All materials used in the construction of the exterior of any Unit or other structure or accessory building must be approved by the Architectural Control Committee before commencement of construction. Any exposed exterior walls, exclusive of doors, windows and gabled areas, shall be constructed of brick, brick veneer, stone or stone or stucco types veneer with all other exterior construction materials to be of standard grade and quality. All solar collectors and panels to be incorporated into the design of any Unit must receive specific approval from the Architectural Control Committee prior to commencement of construction. Only new construction materials shall be used (except for used brick if and as approved by the Architectural Control Committee on a case by case basis). All Units shall be built on a slab or solid concrete beam foundation (provided no such slab shall be exposed above the ground level), approved by the Architectural Control Committee. No mobile home, metal or temporary buildings shall be placed on or constructed on any Lot.
- 3.07 Walks. Walks to any Unit shall have a minimum width of three (3) feet and shall be constructed entirely of concrete (except however, some other material may be used with the prior written consent of the Architectural Control Committee).
- 3.08 Prosecution of Construction. By acceptance of a deed for a Lot, each Owner covenants and agrees to complete the construction on such Lot, in accordance

with this Declaration and all applicable governmental ordinances and requirements, within two (2) years from the date of such deed (the "Construction Period"). The Declarant reserves the right, title and privilege to repurchase the Lot and all improvements thereon, at any time within one (1) year after the end of the Construction Period, if Owner fails to comply with the foregoing covenant. Such repurchase option shall be exercised by the Declarant's giving thirty (30) days prior written notice to Owner, at Owner's last known address, of the Declarant's election to repurchase the Lot. Such election notice shall specify the time date and place of repurchase of the Lot and shall have attached thereto the form of deed to be used to convey the Lot to developer. Such deed shall be substantially similar in form as the deed to the Owner, containing the same warranties of title and be subject to any and all exceptions of record.

- 3.09 Water Wells. Water wells are permissible, provided there shall be no more than one (1) well per Lot and each Owner shall comply with all applicable laws and regulations with respect to any such water well.
- 3.10 Air Conditioners and Heaters. No window or wall type air conditioner or heater shall be permitted to be used, erected, placed or maintained on or in any Unit.
- 3.11 Driveways. As to any portion of the Property, all driveways shall be entirely of concrete (except however, some other material may be used with the prior written consent of the Architectural Control Committee). The concrete finish and color shall be compatible with the Unit on the Lot, in the sole discretion of the Architectural Control Committee. No driveway or other roadway may be constructed on any portion of the Property in such a manner as to furnish access to any other property without the prior written consent of the Architectural Control Committee. All driveways shall have a minimum width of ten (10) feet.
- 3.12 Septic Systems. Sewage will be disposed of by individual septic system on each Lot. Each septic system must meet or exceed State of Texas regulations applicable thereto. The spray from any aerobic septic system shall not encroach on to the area between any building set back line (set forth in Section 3.04 hereof) and any street, rear or side Lot line. In the event a sanitary sewer collection system is installed in the Property in the future, each and every Unit shall be required system is installed in the Property in the future, each and every Unit shall be required, at the cost of each Owner, to be connected to such system.
- 3.13 Utilities. Each and every Unit shall be required to be connected to the water distribution system, the natural gas distribution system, and the electrical system in the easements adjacent to or within the respective Lot upon which the Unit is located. Individual underground electrical service drops must be installed to each Dwelling Unit. Each Owner shall comply with the requirements of the applicable utility company regarding such underground service installations, including without limitation the payment of any lawful charges which might be incurred for the installation of the underground service as set forth in applicable utility

company rules, regulations and terms and conditions of service, as the same may be amended from time to time without notice.

- 3.14 Mailboxes. Unless the Architectural Control Committee approves otherwise, the construction and installation of mailboxes shall A) be in accordance with specifications furnished by Declarant, and B) (i) be in locations chosen by Declarant or otherwise designated by Declarant, and (ii) shall be constructed with the same or similar materials as the Unit so as to be compatible therewith, in the sole discretion of the Architectural Control Committee.
- 3.15 Garages. Garages shall be attached to the main Unit, fully enclosed, under the same roof as the main Unit, and shall be built for a minimum of two (2) automobiles. Each garage shall be either side or rear entry and, in any event, shall not be visible from any street.
- 3.16 Satellite Dishes. Any satellite dishes shall be the newer small dishes. They shall not be mounted on the front side of any Unit where they would be visible from any street.
- 3.17 Damage. Each Owner shall be responsible for any damage to any street, easement, utility, amenity, Reserved Areas, or Declarant Land during construction on any Lot.
- 3.18 Roofs. Unless otherwise approved by the Architectural Control Committee in writing prior to construction, all roofs shall be constructed of slate tile or other heavy composition shingles.
- 3.19 Wiring. All electrical wiring in any Unit or other building shall strictly comply with all governmental requirements.
- 3.20 Trees. In the planning/construction process, every effort shall be made to preserve and protect as many trees as possible. Trees in excess of four (4) inches in diameter may not be removed without the consent of the Architectural Control Committee.
- 3.21 Approval of Builder. Owner shall not permit any builder to commence construction of a Unit on owner's Lot or Lots until and unless each builder (A) appears on Declarant's approved builder's list, or (B) obtains the written consent of the Architectural Control Committee.

ARTICLE IV

SPECIAL RESTRICTIONS

- 4.01 Greenbelt. No trees or other vegetation may be removed or cleared within 100 feet of the rear property lines of Lots 24 through 31 and within 100 feet of the west and north property lines of Lot 32, such areas to function as a greenbelt.
- 4.02 Tree Removal – Set Back Lines. No trees shall be removed from the area between any building set back line (set forth in Section 3.04 hereof) and any street, rear or side Lot line. No other vegetation of any kind shall be removed from the area within fifteen (15) feet of any side or rear Lot line.

ARTICLE V

IMPROPER MAINTENANCE BY OWNER

In the event any portion of the Property (other than Declarant Land) or any Lot or Unit thereon is, in the judgement of the Declarant, so maintained by the Owner thereof (i) as to present a public or private nuisance, (ii) as to detract (including but not limited to detractions caused by debris and/or weeds) from the appearance or quality of the surrounding Lots or other areas of the Property or any adjacent land owned by Declarant or its successors or assigns, not presently included in the Property but which is substantially affected thereby or related thereto, or (iii) as to not comply with these Covenants, the Declarant may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto deliver notice thereof to the offending Owner that unless corrective action is taken within ten (10) days, the Declarant will cause such action to be taken at such Owner's cost. If after the expiration of said ten (10) day period of time the requisite corrective action has not been taken, the Declarant shall be authorized and empowered to cause such action (including entering upon such portion of the Property without liability for any damage that may be caused in the absence of gross negligence or willful misconduct) to be taken and the costs thereof, including but not limited to the costs of collection, court costs and attorneys' fees (such costs being herein collectively called the "Maintenance Charge"), together with interest accruing thereon from the expiration of such ten (10) day period at the rate specified in Section 6.01 hereof, shall be assessed against the Lot of the offending Owner. The Maintenance Charge, together with all interest accruing thereon, shall be secured by the Assessment Lien as provided in Article VII hereof. Written notice of such assessment shall be delivered to the offending Owner which notice shall specify the amount of such Maintenance Charge and shall demand payment thereof within thirty (30) days after the date of said notice.

ARTICLE VI

ASSESSMENTS

- 6.01 Annual Assessments. In order to provide funds for the purposes and uses specified in Article IX hereof, the Declarant in each year, commencing with the year in which these Declarations are recorded, shall assess against the Assessable Property an Annual Assessment, in an amount per acre to be determined by

Declarant, in his sole discretion, subsequent to the date hereof and communicated to each owner, such amount to be prorated by the Declarant if the First Assessment Period (hereinafter defined) is less than twelve (12) months. At such time as any of Lots 25, 26, 28, 29, 30, 31 and/or 32 are used for any special purpose set forth in Section 3.02(b) hereof, the Annual Assessment for any Such Lot, for so long as it is used for any special purpose, shall thereafter be equal to three (3) times the Assessment (per acre) of the other Lots that are not used for a special purpose. The total number of acres comprising each Lot shall be as set forth in the Plat. In the event of any dispute, the final and conclusive determination as to the total number of acres comprising each Lot shall be made by the Declarant. The Annual Assessments may be increased by the Declarant following January 1 of each calendar year subsequent to the first Assessment Period by an amount not to exceed the lesser of (i) five percent (5%), (ii) the percentage change in the National Consumer Price Index for the United States, all Urban Customers, all Components, or its equivalent index as published by the Bureau of Labor Statistics or such other governmental body as may issue such official index, or (iii) such lesser amount as Declarant may permit. The Declarant shall make the calculations required by this Section and shall prepare and forward to the Lot Owners' Association for collection a statement setting forth the amount of the Annual Assessment assessed against each Lot. The Lot Owners' Association shall thereafter collect and pay to the Declarant the Annual Assessments, failing which Declarant shall have the right to collect the Annual Assessment pursuant to Section 7.02 hereof. All delinquent payments of Annual Assessments shall bear interest at the maximum rate of interest which may be charged under applicable law (including the laws of the United States of America) from such due date until paid (or at such a lesser rate as may be determined by Declarant in its sole discretion on a case by case basis from time to time), and the Owner shall be deemed to have agreed in writing to the payment of such interest and all costs, including court costs and attorneys' fees which may be incurred by the Declarant in collecting same.

- 6.02 Assessment Period. The Declarant shall establish either a calendar or fiscal year (herein called the "Assessment Period") for which the Annual Assessment is to be levied. The Declarant in its sole discretion may from time to time change the Assessment Period.
- 6.03 Rules Regarding billing and Collection Procedures. The Declarant shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the assessment provided herein and for the billing and collection of the Annual Assessments and the Maintenance Charges, provided that said procedures are not inconsistent with the provisions hereof.

ARTICLE VII

IMPOSITION OF LIEN; EXEMPTIONS; OWNERS' AGREEMENT

- 7.01 Imposition of Assessment Lien and Priority of the Lien. Except with respect to Exempt Property, each Lot shall be charged with and subject to a continuing servitude and lien from the date of recordation of this Declaration for the amount of the Annual Assessments assessed and levied against each such Lot, for Maintenance Charges, for any interest accrued on any Annual Assessments or Maintenance Charges provided for herein and for any and all costs, including court costs and attorneys' fees incurred by Declarant in collecting same. Except as provided in Section 8.03 hereof, the lien (herein called the "Assessment Lien") against each such Lot shall be superior to any and all other charges, liens, or encumbrances which hereafter in any manner may arise or be imposed upon each such Lot, except that such Assessment Lien shall be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. It is expressly intended by acceptance of a Deed or other conveyance or muniment of title to a Lot, each Owner acknowledges that title is accepted subject to the Assessment Lien which shall, in addition to the subrogation rights described in Section 7.02 below, be deemed to be an express contractual lien and shall be superior to any defense of homestead or other exemption, the Assessment Lien having been created prior to the creation or attachment of any homestead right with respect to any Lot.
- 7.02 Subrogation to Rights of Lot Owners' Association. The Lot Owners' Association shall include in its Bylaws an obligation running with the land obligating the Owner of each Lot to pay all Annual Assessments and Maintenance Charges (together with interest, costs and attorneys' fees as provided in Section 6.01) for which each Owner is obligated under this Declaration. Each such document shall impose and acknowledge a lien and charge on the Lot, which shall be a continuing lien upon the Lot for the benefit of the Lot Owners' Association against which each Annual Assessment or Maintenance Charge is made. In the event that the Lot Owners' Association shall fail to collect any Annual Assessment or Maintenance Charge, the Declarant may itself, at its election, but without any obligation to do so, collect such unpaid Annual Assessment or Maintenance Charge. Each Owner by acceptance of a Deed or other conveyance, whether or not it shall be so expressed in any such Deed or other Conveyance, is deemed to covenant and agree with the Declarant to pay to the Declarant or cause to be paid to the Declarant by the Lot Owners' Association the Annual Assessments and Maintenance Charges assessed and/or levied against his Lot. The Declarant shall be subrogated to all charges, and liens against each Lot which may be in favor of the Lot Owners' Association, and the Declarant shall have the right to enforce such liens for the collection of the Annual Assessments or Maintenance Charges.

7.03 Owners' Promises. Each Owner owning a portion of the Assessable Property, for himself, his heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees:

- (a) that he will pay to the Lot Owners' Association when due the Annual Assessments assessed by the Declarant in each year against his Lot, together with any Maintenance Charges imposed;
- (b) That he acquires his Lot subject to the Annual Assessments and Maintenance Charges and the Assessment Lien, as they may exist from time to time; and
- (c) That by accepting a Deed to his Lot, he shall be, and remain, personally liable for any and all Annual Assessments and Maintenance Charges assessed against his Lot while he is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether he signed the Deed.

ARTICLE VIII

ENFORCEMENT OF PAYMENT OF ANNUAL ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

8.01 Declarant as Enforcing Body. Except as otherwise provided herein, the Declarant shall have the exclusive right to enforce the provisions of this Declaration. However, if the Declarant shall fail or refuse to enforce this Declaration for an unreasonable period of time, after written request from an Owner to do so, then any Owner may enforce this Declaration at his sole cost and expense by any appropriate action, whether at law or in equity.

8.02 Declarant's Enforcement Remedies. If the Owner of any Lot constituting a portion of the Assessable Property fails to pay any of the Annual Assessments or installments when due, or to pay Maintenance Charges assessed, or to pay an interest accrued or any Annual Assessments or Maintenance Charges, and any and all costs (including court costs and attorneys' fees) incurred by Declarant in collecting same; the Declarant may enforce the payment of the Annual Assessments, Maintenance Charges, and all interest accrued thereon and costs incurred by Declarant in collecting same, and/or enforce the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Declarant does not prejudice its exercise of any other remedy):

- (a) Bring an action at law and recover judgment against the Owner personally obligated to pay the Annual Assessments or the Maintenance Charges;

- (b) Enforce the Assessment Lien against the Lot by any means available at law or in equity, including without limitation a non-judicial foreclosure sale of the Lot, such sale to be conducted in the manner set forth in Section 51.002 of the Texas Property Code, as same may be amended or supplemented from time to time. The Declarant of any other Owner may be the purchaser at any such foreclosure sale.

8.03 Subordination of the Lien to First Mortgage or Deed of Trust. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, an institutional lender which is chartered (or licensed) by the United States or any state within the United States. Sale or transfer of any Lot shall not affect the Assessment Lien, provided, however, that if the sale or transfer is pursuant to foreclosure of such a mortgage or deed of trust, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking any deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior and except to the extent stated herein with respect to any subsequent first lien financing), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall (i) take subject to all Annual Assessments, Maintenance Charges, and the Assessment Lien therefore accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure and (ii) be and remain personally liable for all assessments (together with interest, costs and attorneys' fees as provided in Section 6.01 hereof) which fall due while he is an Owner.

8.04 Costs to be borne by Owner in Connection with Enforcement. If any action taken pursuant to Section 8.02 of this Article, the Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual Assessments and Maintenance Charges together with interest and the Declarant's costs and attorneys' fees.

ARTICLE IX

USE OF FUNDS

9.01 Purposes For Which Declarant's Funds May Be Used. The Declarant shall apply all funds collected and received by it through its imposition of the Annual Assessments for the benefit of the Reserved Areas, the Owners, and residents of the Property by devoting said funds, among other things, to the acquisition, construction, alteration, maintenance, provision, and operation of and the landscaping and maintenance of the Reserved Areas. The use and application of

all funds collected and received by Declarant through its imposition of the Annual Assessments shall in no manner be limited or restricted by reason of other sources of funds available to Declarant, including those available through initiation, admission and other fees, dues or assessments charged by Declarant in connection with the use of any or all of the Declarant Land, including specifically but not by way of limitation the Amenities. Declarant shall have no duty to utilize any other funds otherwise available to Declarant from other sources prior to applying funds collected and received by it through its imposition of the Annual Assessments for the purposes herein stated. The Declarant shall not have the obligation to account to any Owner for the collection or use of any funds collected and received by Declarant through its imposition of the Annual Assessments.

- 9.02 Declarant's Rights in Spending Funds from Year to Year. The Declarant shall not be obligated to spend in any year all the sums received by it in such year, and may carry forward as surplus any balance remaining. Nor shall the Declarant be obligated to apply any such surpluses to the reduction of the amount of the Annual Assessment in the succeeding year, but may carry forward from year to year surplus as the Declarant in its discretion may determine to be desirable for the effectuation of the purposes set forth in this Article.

ARTICLE X

RIGHTS AND POWERS

- 10.01 Enforcement. The Declarant shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration, or other instrument affecting all or any part or parts of the Property. Any such instrument shall have been executed pursuant to, or subject to, the provisions of this Declaration, or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Declarant; provided, however, that any such instrument that is recorded subsequent to recordation of this Declaration shall at all times be subordinate and inferior to this Declaration whether or not so provided in such instrument.
- 10.02 Right to Inspect. The Declarant shall have the right to enter all Units, during the course of construction thereof, for the purpose of inspecting whether or not the Owner thereof is in compliance with the covenants. If during the course of construction of a Unit, Declarant determines in its sole discretion that there is a violation of the Covenants, the Declarant may order a discontinuance of the construction of the Unit until such time as corrective measures have been taken to assure full compliance with the Covenants, and an Owner's failure to immediately discontinue or cause the discontinuance of construction of the Unit, upon demand by Declarant, shall constitute a further violation of this Declaration by that Owner.

- 10.03 Delegation and Assignment of Rights and Powers. With respect to the Property, or any part thereof, and without assigning or transferring any portion of the Property, or any interest therein, the Declarant may, and hereby reserves the right to, delegate all rights and powers contained in this Declaration to (i) a committee appointed, empowered and constituted by Declarant whose members shall serve and may be replaced at the pleasure of Declarant or (ii) a corporation or association, profit or nonprofit, whose directors and officers may be elected and designated by Declarant. Any such delegation shall be made by written instrument filed of record in the Real Property Records of Smith County, Texas, and may be rescinded at any time by Declarant by filing an instrument so stating such act of rescission in such Real Property Records. As long as any such delegation is in effect, any person or entity owning any interest in the Property, or any part thereof shall be required to deal with such committee, corporation or association and not Declarant, and Declarant shall have no responsibility or liability for the actions of such committee, corporation or association as the case may be. In addition to the power to delegate set forth hereinabove, and as a separate right and power reserved unto Declarant, Declarant may, in conjunction with any conveyance of any interest in the Declarant Land, or any part thereof, to any other person or entity ("Assignee"), assign any and all of Declarant's powers and rights contained in the Declaration to the Assignee, following which Declarant shall have no further liability or responsibility with regard to any of the powers and/or rights assigned to the Assignee. Each such assignment must be expressed, in writing, and recorded in the Real Property Records of Smith County, Texas, and state to what portion of the Property such assignment applies. No such assignment shall be deemed to arise by implication.

ARTICLE XI

EASEMENTS AND RIGHTS OF ENJOYMENT IN RESERVED AREAS: RESERVATIONS OF DECLARANT

- 11.01 Rights of Enjoyment in Reserved Areas. No Owner, by reason of ownership of any interest in the Property, shall have a right or easement of enjoyment in and to any Reserved Areas.
- 11.02 Rules Regulating Use of Reserved Areas. All rights, easements and privileges, if any to enter upon or use any part of the Reserved Areas granted from time to time by Declarant, shall be subject to the exclusive right of the Declarant to adopt from time to time reasonable rules and regulations pertaining to the use thereof the use of which may include persons or entities other than Owners.
- 11.03 Fees Chargeable to Users of Reserved Areas. All rights, easements and privileges to enter upon or use any part of the Reserved Areas which may be granted and conferred by the Declarant shall be subject to the exclusive right of the Declarant to charge Owners and others initiation, admission, and other fees, dues or assessments in connection with the use of any or all of the Reserved Areas.

11.04 Reservations of Declarant. Reservations of Declarant. The following reservations are hereby made by Declarant:

- (a) Utility easements shown on any Plat are dedicated with the reservation that such utility easements are for the use and benefit of any public utility operating in Smith County, Texas, as well as for the benefit of Declarant to allow for the construction, repair, maintenance and operation of a system or systems of electric light and power, telephone lines, television cable lines, security, gas, water, sanitary sewers, storm sewers and any other utility or service which Declarant may find necessary or proper.
- (b) Declarant reserves the right from time to time to make changes in the location, shape and size of, and additions to, the easements described in Section 11.04(a) for the purpose of more efficiently or desirably installing utilities therein and thereon.
- (c) The title conveyed to any part of the Property shall not be held or constructed to include the title to the water, gas electricity, telephone, storm sewer or sanitary sewer lines, poles, pipes, conduits, cable television lines or other appurtenances or facilities constructed by Declarant or public utility companies upon, under, along, across or through such utility easements; and the right (but no obligation) to construct, maintain, repair and operate such systems, utilities, appurtenances and facilities is reserved to Declarant, its successors and assigns.
- (d) The right to sell or lease the lines, utilities, appurtenances and other facilities described in Section 11.04(c) to any municipality, governmental agency (including any water control or utility district created under Article XV, Section 59 of the Texas Constitution covering the Property as well as other lands), public service corporation or other party is hereby expressly reserved to Declarant.
- (e) Neither Declarant nor its successors or assigns shall be liable for any damage done by any of such parties or any of their agents or employees to shrubbery, trees, flowers or other property an Owner situated on the Property covered by the above-described utility easements.
- (f) An easement is hereby reserved by the Declarant to enter upon any Lot to render any service or perform any function or duty. In addition, an easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, postal service vehicles and other service vehicles, and to the operators thereof, to enter upon the Property in the performance of their duties.

- (g) A free, perpetual easement for the benefit of Declarant, its successors and assigns, over, across and through all roads and streets now or hereafter located on the Property for the purpose of ingress and egress to and from any real property abutting and/or adjoining the Property.

ARTICLE XII

FURTHER CONVEYANCES OF AND MODIFICATIONS TO DECLARANT LAND

The Declarant shall have the absolute, exclusive and unrestricted right, exercisable in its sole discretion, without consent from any Owner, to (I) sell, transfer, convey, lease, dedicate, encumber or in any manner alienate to any public or private entity the Declarant Land or any part thereof or otherwise deal with the Declarant Land, or any part thereof, including the Reserved Areas and any Permanent Improvements situated thereon, on such terms and in such manner as Declarant in its sole discretion may determine, or (ii) modify the nature, scope, location, configuration, construction, design or other characteristics of the Declarant Land, or any part thereof, including the Reserved Areas and any Permanent Improvements situated thereon.

ARTICLE XIII

ARCHITECTURAL CONTROL

13.01 Prior Approval. No building, fence, wall, sign, exterior light, landscaping or other structure or apparatus, either permanent or temporary, shall be commenced, erected, placed, or maintained upon any portion of the Property, nor shall any exterior addition thereto, change therein or alteration, excavation, subdivision, or resubdivision thereof, including without limitation changes in or alteration of grade, landscaping, trees, roadways, and walkways, be made until the plans and specifications showing the nature, kind, shape, height, materials, color, location, and other material attributes of the same shall have been submitted to and approved in writing by Declarant or by an Architectural Control Committee appointed by Declarant as to (i) compliance with the covenants herein contained and (ii) harmony of external design and location in relation to surrounding structures and topography which are now or hereafter existing or proposed, including, but not by way of limitation, as to architectural designs, setbacks, landscaping, color schemes and construction materials. In the event Declarant, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article XIII will be deemed to have been fully complied with. Non-exercise of the powers hereby reserved by Declarant in one or more instances shall not be deemed to constitute a waiver of the right to exercise such power in other or different instances. Likewise, approval of any one set of plans and specifications shall not be deemed to constitute approval of any other or different plans and specifications. In the absence of gross negligence or willful misconduct attributable to Declarant or the Architectural

Control Committee appointed by Declarant, neither Declarant nor such Architectural Control Committee shall be liable for the improper enforcement or failure to exercise any of the powers reserved unto Declarant pursuant to this Article. In no event shall any approval obtained from Declarant or the Architectural Control Committee pursuant to the terms of this Article, be deemed to be a representation of any nature regarding the structural safety or engineering soundness of the structure or other item for which such approval was obtained, nor shall such approval represent in any manner compliance with any building or safety codes, ordinances or regulations; nor shall such approval be construed as a representation or warranty as to any matter which is the subject of such approval.

13.02 Reservation of Architectural Control. Nothing contained in Section 13.01 above shall in any manner restrict or limit the rights and powers reserved unto Declarant as set forth in the Reservation of architectural Control, including the right to delegate the powers hereby and thereby reserved to (i) a committee appointed, empowered and constituted by Declarant, whose member or members shall serve and be replaced at the pleasure of Declarant, or (ii) a corporation or association, profit or non-profit, whose directors and offices may be elected and designated by Declarant, all as more fully set forth in the Reservation of Architectural Control.

ARTICLE XIV

MAINTENANCE

14.01 Declarant Land. The Declarant, its duly delegated representative, or at the discretion of the Declarant, the Lot Owners' Association shall maintain and otherwise manage all Declarant Land (including the Reserved Areas). The Declarant shall use a reasonable standard of care in providing for the repair, management, and maintenance of the Declarant Land.

14.02 Assessment of Costs of Maintenance and Repair of Utilities or Declarant Lands. In the event that the need for maintenance or repair of Declarant Land or utilities within the Property is caused by any Owner, his agents, tenants, family, guests or invitees, the cost of such maintenance or repairs at Declarant's option shall be added to and become a part of the Maintenance Charge of which such Owner's Lot is subject, payable and subject to interest as set forth in Article V hereof, and shall be sure by the Assessment Lien.

ARTICLE XV

USE RESTRICTIONS

15.01 All Properties. Except with respect to Exempt Property, including the Declarant Land, all Lots within the Property are hereby restricted as follows:

- (a) Antennas. No exterior television, radio, or other antenna of any type shall be placed, allowed, or maintained on any Lot without prior written approval and authorization of the Declarant.
- (b) On Street Parking. On street parking is restricted to approved deliveries, pick-up or short-time guests and invitees. No overnight parking on any street shall be permitted.
- (c) Storage. No exterior storage of any items of any kind shall be permitted, except with prior written approval and authorization of the Declarant. Any such storage as is approved and authorized shall be in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view from neighboring property, dwelling units, pathways, and streets. This provision shall apply, without limitation, to woodpiles, camping trailers, boat trailers, travel trailers, boats, mobile or motor homes, and pick-up camper units. Also, without limitation, no automobile, truck, or other vehicle, regardless of ownership, age, condition, or appearance, shall remain on any portion of the Property in any manner which could be construed as being stored, neglected, abandoned, or otherwise not in frequent use, except pursuant to written approval and authorization of the Declarant.
- (d) Garbage. No garbage or trash shall be placed at the exterior of any building, except in containers meeting the approval of the Declarant and the placement, maintenance, and appearance of all such containers shall be subject to reasonable rules and regulations of the Declarant. All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon.
- (e) Animals. No animals, reptiles, fish or birds of any kind shall be raised, bred or kept in, on or about any portion of the Property, except pursuant to prior written approval of and in accordance with rules and regulations promulgated by the Declarant, provided, however, that dogs, cats, birds, or fish may be kept as household pets so long as, in the sole discretion of the Declarant, such pet is not or does not become, a nuisance, threat, or otherwise objectionable to other Owners. Furthermore, household pets, including without limitation, dogs and cats, shall at all times be contained within the boundary of the Lot of their Owner and shall not be permitted to freely roam on the Property.
- (f) Re-subdivision. Except for the right of Declarant as set forth in Article XVII hereof, no portion of the Property shall be further subdivided and no portion less than all of any such portion of the Property, or any easement or other interest therein, shall be conveyed by any Owner without the prior written authorization and approval of the Declarant.

- (g) Diseases and Insects. No Owner shall permit any thing or condition to exist in, on or about any portion of the Property which shall induce, breed or harbor plant disease or noxious insects.
- (h) Machinery, Fixtures, and Equipment. No machinery, fixtures, or equipment of any type, including without limitation, air conditioning or refrigeration equipment and clothes lines, shall be placed, allowed, or maintained in, on or about any portion of the Property, except with prior written approval and authorization of the Declarant in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view of neighboring property, Units, pathways, and streets; and no such machinery, fixtures, or equipment shall be placed, allowed, or maintained anywhere other than on the ground (such as on the roof) except if screened or concealed (subject to all required approvals as to architectural control) in such manner that the screening or concealment thereof appears to be part of the integrated architectural design of the building and does not have the appearance of a separate piece or pieces of machinery, fixtures, or equipment.
- (i) Burning and Incinerators. Without the prior written approval and authorization of the Declarant, no open fires shall be permitted in, on or about any portion of the Property at any time and no incinerators or like equipment shall be placed, allowed, or maintained in, on or about any portion of the Property. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.
- (j) Signs. No exterior signs or advertisements of any kind may be placed, allowed, or maintained in, on or about any portion of the Property without prior written approval and authorization of the Declarant, except that mailboxes and residential nameplates may be placed and maintained in conformity with such common specifications, including without limitation, reasonable restrictions as to size, as may be adopted by the Declarant.
- (k) Repairs. No repairs of any detached machinery, equipment, or fixtures, including without limitation motor vehicles, shall be made within view of neighboring property, Units, pathways, and streets, without prior written approval and authorization of the Declarant.
- (l) Utility and Service Lines. No gas, electric, power, telephone, sewer, cable, television, or other utility or service lines of any nature or kind shall be placed, allowed, or maintained upon or above the ground on any portion of the Property, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service

pedestals and above ground switch cabinets and transformers where required.

- (m) Oil, Gas, and Mineral Activity. With respect only to the Property as defined herein (and excluding any additional land added pursuant to Article XVIII), it is expressly provided that no oil or gas exploration, drilling, development, or refining operations and no quarrying or mining operations of any kind, including oil wells, surface tanks, tunnels or mineral excavations or shafts shall be permitted or pursued by any Owner other than Declarant; and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted; provided, however, that with respect to any outstanding mineral interest affecting all or part of the Property owned by any person or entity as of the date hereof other than Declarant, Declarant shall attempt to cause such restrictions on exploration, drilling, development, refining, mining and quarrying to be placed on such part of the Property as Declarant in good faith can negotiate (with no monetary obligation required on the part of Declarant to be paid for such purpose). With respect to additional land which may be added pursuant to Article XVIII, such land shall be subject to the restrictions set forth in this Section 15.01(m) unless Declarant at the time of such addition does not own all of the mineral rights therein. If Declarant does not own all of the mineral rights, Declarant shall attempt to cause such restrictions on exploration, drilling, development, refining, mining and quarrying to be placed on such part of said additional land as Declarant in good faith can negotiate (with no monetary obligation required on the part of Declarant to be paid for such purpose), and such land shall be subject to the foregoing provisions of this Section 15.01(m) except to the extent of any conflict herein with the rights of the owners of such mineral rights. Notwithstanding anything to the contrary stated herein, as to any mineral interest which Declarant owns with respect to the Property or any such additional land which may be added pursuant to Article XVIII, Declarant reserves the right to explore, drill, develop, refine, mine and quarry any minerals in, on or under the Property or such additional land; provided, however, any such activities shall be subject to (i) Declarant's obtaining whatever permits or licenses are required from governmental authorities having jurisdiction with respect thereto, and (ii) Declarant's pursuing such activities in such a manner so as to not disrupt the surface rights of any Owner.
- (n) Septic Tanks and Sewage Disposal. No septic tank or other means of sewage disposal may be installed unless previously approved in writing by any governmental authorities having jurisdiction with respect thereto, and by the Declarant. No outside toilets of any kind are permitted, and no installation of any type of device for disposal of sewage shall be allowed which would result in raw or untreated or unsanitary sewage being carried into any body of water or water source.

- (o) Firearms and Weapons. No portion of the Property shall be used or permitted to be used for hunting or for the discharge of any pistol, rifle, shotgun, or any other firearm, or any bow and arrow or any other device capable of killing to injuring.
- (p) Motor Vehicles. Any and all motorized vehicles operated within the Property shall be operated in accordance with the laws of the State of Texas. All posted speed limits and other traffic signs placed on the Property by Declarant shall be complied with.
- (q) Storage of Flammable Liquids. The storage of gasoline, oils, heating or other fuels on any Lot is prohibited except for a reasonable amount for lawnmowers and similar tools and equipment.
- (r) Warehousing. The warehousing or other storage of goods or materials for commercial purposes is not allowed on any Lot.
- (s) Loud Noises/Yardwork. The use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device or the creation of any loud or obnoxious noises (including, without limitation, the use of non-licensed motorized vehicles) so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes, shall be prohibited. No use of power tools for yard or other work shall be permitted on any part of the Property on Sundays, or on any of the following holidays: Christmas Eve or Christmas.
- (t) Fireworks. The use and discharge of firecrackers and other fireworks on the Property, except for events designated by the Lot Owners' Association for special occasions, shall be prohibited.
- (u) Dumping. The dumping of grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potential hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Property shall be prohibited, except that fertilizers may be applied to landscaping on any Lot, provided care is taken to minimize runoff and Declarant and any builders may dump and bury rocks and trees removed from a building site on such building site.
- (v) Drainage. It is intended that the Property be developed in an orderly manner such that the Owner of the Lot shall absorb its share of drainage responsibility with respect to the surface water running across, from or to the Property as a whole. Without limiting the remedies otherwise described herein, to the extent any Lot should be developed in a manner which disproportionately diverts surface water onto another Lot or is otherwise developed so as not to absorb its proportionate share of

responsibility for the Property's surface water drainage, then, the Declarant shall be entitled to require the Owner of any such Lot to rectify such situation and, if the same is not timely rectified, to itself effectuate such maintenance or repairs as may be desirable to more equitably resolve any drainage problems. Without limiting the foregoing, the Declarant shall be entitled to install drainage services, culverts or other arrangements as the Declarant may, in its sole discretion, deem necessary or desirable. To the extent the Declarant deems the necessity for such maintenance to be the responsibility of only certain of the Lots, then, the Declarant may effectuate a special Maintenance Charge against only those Lots. To the extent the Declarant deems such drainage maintenance not to be attributable to only certain Lots, but, rather, the Property as a whole, then any such maintenance may be effectuated by way of Maintenance Charges against all Lots.

- (w) Sprinkler Systems. Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Property, are prohibited, except that Declarant and the Lot Owners' Association shall have the right to draw water from such sources.
- (x) Change in Intended Use. No portion of the Property may be developed or redeveloped otherwise than in accordance with its original intended use as described in Section 3.01 without the prior written authorization of the Declarant. In connection with Declarant's authorization to allow any Owner to develop or redevelop any portion of the Property otherwise than in accordance with its original intended use, Declarant shall have the right to further subject the Property to additional and/or different covenants, conditions, assessments, charges, servitudes, liens, reservations and easements, either by amending this Declaration or by filing a Subsidiary Declaration, and in either event all of the Owners of any portion of the Property shall join in the execution and filing of any such amendment or Subsidiary Declaration.
- (y) Misuse and Mismanagement. No portion of the Property shall be maintained or utilized in such manner as to present an unsightly appearance (including but not limited to clothes drying within public view) or as to unreasonably offend the morals of or as to constitute a nuisance or unreasonable annoyance to, or as to endanger the health of, otherwise Owners or residents of the Property; and no foul or obnoxious odors, noxious or otherwise offensive condition or activity shall be allowed to exist or be conducted therein.
- (z) Violation of Statutes, Ordinances, and Regulations. No portion of the Property shall be maintained or utilized in such manner as to violate any applicable statute, ordinance, or regulation of the United States of

America, the State of Texas, the County of Smith, or any other governmental agency or subdivision having jurisdiction over the Property.

- (aa) Violation of Rules or of Covenants, Conditions or Restrictions. No portion of the Property shall be maintained or utilized in violation of this Declaration or of the rules and regulations of the Declarant or of any covenants, conditions, or restrictions applicable to and binding upon said portion of the Property.

ARTICLE XVI

TERM; AMENDMENTS; TERMINATIONS

- 16.01 Term: Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect to and including December 31, 2029. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by (i) the Declarant and (ii) the then Owners casting seventy-five percent (75%) of the total votes (each Owner other than Declarant having one vote per Lot owned with Declarant having three votes per Lot owned), cast at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.
- 16.02 Amendment to Declaration. This Declaration may be amended or changed, in whole or in part, at any time by the written approval of Declarant, and pursuant to special meeting of the Owners, called pursuant to Section 16.03, at which the amendment is approved by not less than sixty-seven percent (67%) of the Owners (each Owner other than Declarant having one vote per Lot owned with Declarant having three votes per Lot owned) and by fifty-one percent (51%) of the First Mortgagees (as hereinafter defined). Such amendment shall be evidenced by a written instrument executed and acknowledged by such consenting Owners and First Mortgagees and filed of record in the county in which the Project is located. Any such amendment so effected shall be binding upon all of the Owners; provided, however, that no such amendment shall cause the alteration or destruction of a Unit unless such amendment has been consented to by the Owner and the First Mortgagee of the Unit which is to be altered or destroyed. The Lot Owners' Association shall give each First Mortgagee written notice of any proposed action or amendment which pursuant to the provisions hereof require the approval of First Mortgagees. For purposes hereof, the term "First Mortgagees, shall mean and include, collectively, any bank, insurance company, agency or instrumentality of the United States government, or other institutional

holder of any indebtedness secured by a first and prior lien or encumbrance upon a Unit.

- 16.03 Election Procedures for Amendments and Terminations. The affirmative votes required under Section 16.01 or 16.02 shall be obtained and evidenced by the requisite vote by the Owners (including Declarant) present at a meeting of Owners duly called by at least ten (10) days before the date of the meeting at which meeting the requisite percentage of Owners, in person or by proxy, vote to so amend or terminate this Declaration (and the Covenants herein). The notice of the meeting must set forth the proposal as to amendment of this Declaration (and/or the Covenants contained herein) and such affirmative vote of the requisite percentage of Owners must be evidence by minutes of the meeting duly certified by the Owners who called the meeting or the Declarant. In any event, a copy of the minutes must be delivered to the Declarant. There shall be no quorum requirements for any meetings held pursuant to this Section.
- 16.04 Recording of Amendments. Upon the requisite percentage of Owners duly voting to amend this Declaration (and/or the Covenants contained herein) and upon the other conditions set forth in Section 16.01 or 16.02 (as the case may be) and Section 16.03 of this Article being satisfied, then each amendment shall be executed by the Declarant, placed in recordable form, and filed of record in the Real Property Records of Smith County, Texas accompanied by a statement that the requisite percentage of Owners have voted to make such amendment to this Declaration.
- 16.05 Effect. Upon the filing of an amendment in accordance with Section 16.04, this Declaration and the Covenants, as amended, shall remain in full force and effect.
- 16.06 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending/Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by any federal, state, or local agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of the Property or any portion thereof. Any such amendment shall be effective by the recordation, by Declarant, of a Certificate of Amendment signed by a duly authorized agent of Declarant, with his signature acknowledged, specifying the federal, state, or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution.. Recordation of such a Certificate shall be deemed conclusive proof of the

agency's or institution's request for such an amendment, and such Certificate, when recorded, shall be binding upon the Property and all persons having an interest in the Property. Except as provided in this Section 16.06, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 16.02 hereof.

ARTICLE XVII

RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT RESERVED AREA AND LOTS

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time while it is the owner thereof to subdivide or resubdivide, as the case may be, and/or plat or replat, as the case may be, all or any portion of the Reserved Area and any portion of the Property without the consent of any Owner.

ARTICLE XVIII

SUBJECTING ADDITIONAL LANDS TO THE DECLARATION

From time to time the size of the Property may be increased, in the manner provided in this Article, by recording in the Real Property Records of Smith County, Texas, a supplement to this Declaration (hereinafter called "Supplemental Declaration"). The Supplemental Declaration shall be signed and acknowledged by or on behalf of the Declarant and by the owner of record of the additional land to be included within the Property and subjected to the Covenants set forth in this Declaration. Each such Supplemental Declaration shall:

- (a) describe the land to be included as a part of the Property; and
- (b) state that such land and the Permanent Improvements thereon are expressly subjected to all of the Covenants set forth in this Declaration.

ARTICLE XIX

OWNERSHIP OF UTILITIES, AMENITIES AND RESERVED AREAS

All of the Reserved Areas and the Permanent Improvements located therein and all utilities, if any, constructed by Declarant (including without limitation all such water, gas, electricity, telephone, television, storm sewer or sanitary sewer lined, security systems, poles, pipes, conduits or other appurtenances or facilities) shall be owned by Declarant and, as to all or any part thereof, may be sold, transferred, conveyed, leased, dedicated, encumbered or in any manner alienated by Declarant at any time to any private or public entity on such terms and in such manner as Declarant in its sole discretion may

determine. Declarant shall have the absolute right to charge fees, dues, assessments or other charges of any nature whatsoever for the use of any and all of the Reserved Areas and/or the Permanent Improvements located thereon and any and all of such utilities, it being understood that no Owner shall have any right to the use of same merely by reason of his or its ownership of any portion of the Property.

ARTICLE XX

MISCELLANEOUS

- 20.01 Interpretation of the Covenants. Except for judicial construction, the Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Declarant's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.
- 20.02 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.
- 20.03 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be:
- (a) those which would be used in determining the validity of the challenged interest, plus
 - (b) if applicable, those of the issue of the partners constituting the Declarant who are living at the time the period of perpetuities starts to run on the challenged interest.
- 20.04 Change of Circumstances. Except as otherwise provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.
- 20.05 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Declarant shall have the right to adopt rules and regulations with respect to all other aspects of the Declarant's rights, activities, and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

- 20.06 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the Real Property Records of Smith County, Texas, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Declarant Land, including the Property, can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.
- 20.07 Limitation of Liability. In the absence of gross negligence or willful misconduct attributable to Declarant or its successors or assigns, neither Declarant nor its successors or assigns shall have any liability arising out of the performance or nonperformance of any of the rights and powers reserved unto Declarant, its successor or assigns pursuant to this Declaration.
- 20.08 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assigns of any of Declarant's ownership, rights and powers hereunder.
- 20.09 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.
- 20.10 Captions and Titles. All captions, titles, or headings of the Articles and Sections in this Declaration are the for purpose of reference and convenience only, and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.
- 20.11 Notices. Any notice required or permitted to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, delivery shall be deemed to have been made twenty-four (24) hours after a copy of the notice has been deposited in the United States mail postage prepaid, registered or certified mail, addressed to each such person at the address given by such person to the party sending the notice or to the address of the Dwelling Unit of such person if no address has been given. Such address may be changed from time to time by notice in writing.
- 20.12 Prior Recorded Instruments. This Declaration of all of the provisions hereof are expressly subject to all prior recorded documents affecting the Property, including without limitation, the Reservation of Architectural Control as defined in Article I hereof.

- 20.13. Enforcement of the Covenants. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions hereof, including any of the Covenants, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation of injunction whether prohibitive in nature of mandatory in commanding compliance with such provisions; and it shall not be prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions.
- 20.14. Suspension of the Covenants. The Declarant shall have the right, during the period of construction, development, and sale, to grant reasonable and specifically limited written exemptions from the Covenants to Declarant and any other developer or contractor. Any such exemptions shall be granted only upon specific written request, itemizing the exemption requested, the location thereof, the need therefore, and the anticipated duration thereof; and any authorization and approval thereof shall be similarly itemized. No such exemption shall be broader in terms of activities, location, or time than is reasonably required.
- 20.15. Approval of Supplemental Declaration. No Supplemental Declaration shall be entered into or made effective with respect to the Property unless same has been previously approved by Declarant in writing.
- 20.16. Use of Name "Kiepersol Estates". No person shall use the words "Kiepersol Estates" or any derivative in any printed or promotional material without Declarant's prior written consent, provided, however, the Lot Owners' Association shall be entitled to use the words "Kiepersol Estates" in its name.

IN WITNESS WHEREOF, KIEPERSOL ESTATE, LTD., a Texas limited partnership, has hereunto caused its name to be signed by the signature of its duly authorized official as of the day and year first above written.

KIEPERSOL ESTATE, LTD.,
A Texas Limited Partnership

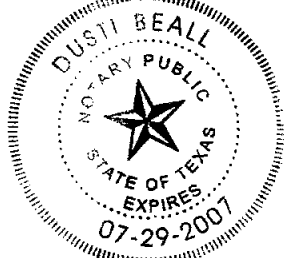
By: Agro Services, LLC, a Texas
Limited Liability Company
General Partner

By: 
Pierre de Wet, President

THE STATE OF TEXAS

COUNTY OF SMITH

This instrument was acknowledged before me on the 24th day of May, by Pierre de Wet, President of Agro Services, LLC, a Texas limited liability company and General Partner of and on behalf of Kiepersol Estate, Ltd., a Texas limited partnership.



Dusti Beall
Notary Public, State of Texas

As evidenced by the signatures below, the requisite percentage of Lot Owners and First Mortgagees have voted and approved this First Amended Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements (Kiepersol Estates).

APPROVED:

[Signature]
Pierre de Wet, Lotowner

[Signature]
Pierre de Wet, First Mortgagee

[Signature]
Southside Bank, First Mortgagee

[Signature]
Austin Bank, First Mortgagee

[Signature]
Bobbi de Wet, First Mortgagee

Filed for Record in:
SMITH COUNTY, TEXAS
JUDY CARNES, COUNTY CLERK
On May 27 2005
At 9:50am
Receipt #: 349621
Recording: 76.00
Doc/Num : 2005-00025505
Doc/Type : REC
Deputy -Rebeca Calderon

After recording return to:

Dusti Beall
Attorney at Law
3933 FM 344 E.
Tyler, Texas 75703

STATE OF TEXAS COUNTY OF SMITH
I hereby certify that this instrument was
filed on the date and time stamped hereon
by me and was duly recorded in the Official
Public records of Smith County, Texas.



MAY 27 2005

Judy Carnes
JUDY CARNES
COUNTY CLERK, Smith County, Texas

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,
ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS, AND
EASEMENTS
(KIEPERSOL ESTATES)**

THIS SECOND AMENDMENT TO DECLARATION of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements (herein called the "Second Amendment") is made as of the 4th day of January, 2006, by KIEPERSOL ESTATE, LTD., a Texas limited partnership (herein called "Declarant").

Background. The Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (Kiepersol Estates) dated November 2, 1999 (the "Original Declaration") for Kiepersol Estates, a subdivision located in the Vinson Moore Survey, A-15, Smith County, Texas, according to the plat thereof in Cabinet D, Slides 56C and 56D of the Plat Records of Smith County, Texas, is of record in Volume 5030, Page 298 of the Official Public Records of Smith County, Texas. Further, the First Amended Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements (Kiepersol Estates) dated May 24, 2005 (the "First Amendment") for said subdivision is of record in Volume 7800, Page 170 of the Official Public Records of Smith County, Texas. The Original Declaration and the First Amendment are sometimes collectively referred to herein as the "Declaration". Pursuant to Section 16.02 of the Declaration, not less than sixty-seven percent (67%) of the Owners and fifty-one percent (51%) of the First Mortgagees have approved amending the Declaration and the First Amendment as set forth in this Second Amendment and evidence their approval of the same by their execution of this Second Amendment. Those who execute this Second Amendment are 85% of the Owners and 67% of the First Mortgagees. Capitalized terms used herein shall have the meanings ascribed to them in the Declaration unless otherwise stated herein.

NOW, THEREFORE, in consideration of the premises, it is agreed that the Declaration and First Amendment be, and they are hereby, amended as follows:

Section 3.01(b) of the First Amendment is deleted and the following is substituted therefor:

(b) Designated Uses for Lots 24-32. Notwithstanding anything in this Declaration to the contrary, Lots 24 through 32 may be used either for single family residential purposes or for the purpose of developing a condominium community wherein all or any portion of such Lots, at the discretion of Declarant, may be developed as residential chalets; a bed and breakfast and restaurant (which has already been constructed on Lot 27 and is in use as of the date of this Declaration); medical rehabilitation spa; health spa; condominium units; vineyards and other common areas or any other purpose as Declarant determines is appropriate for the development of such condominium community.

If any of such Lots are used for single family residential purposes, such Lots shall be subject to and governed by the Covenants set forth in this Declaration. Declarant reserves the right to impose covenants, conditions and restrictions on Lots 24-32 in the future which relate to special purposes set forth above, without joinder, concurrence or approval from any other Owner, and to

subdivide and re-plat any or all of such Lots. In the event Declarant imposes any such covenants, conditions and restrictions to the extent of any conflict between such new covenants, conditions and restrictions and the Covenants set forth in this Declaration, the new covenants, conditions and restrictions shall prevail but only as to the Lots to which they relate. As to any of Lots 24-32 which do not, on December 31, 2015, have constructed or have under construction Permanent Improvements to be used for the special purposes designated for such Lots as above stated, such Lot shall thereafter be used only for single family residential purposes.

Section 3.04 is deleted and the following is substituted therefor:

3.04 Setbacks. As to any Lot, except with respect to walls, fences, planters, hedges or other screening material, no Permanent Improvement or any part thereof may be nearer to any street line than 50 feet, nearer to any side lot line than 30 feet and nearer to any rear lot line than 30 feet.

Section 3.08 is deleted and the following is substituted therefor:

3.08 Prosecution of Construction. By acceptance of a deed for a Lot, each Owner covenants and agrees to complete the construction on such Lot, in accordance with this Declaration and all applicable governmental ordinances and requirements, within five (5) years from the date of such deed (the "Construction Period"). Declarant reserves the right, title and privilege to repurchase the Lot and all improvements thereon, at any time within one (1) year after the end of the Construction Period, for the purchase price of such Lot paid by the Owner therefor, if Owner fails to comply with the foregoing covenant. Such repurchase option shall be exercised by Declarant's giving thirty (30) days prior written notice to Owner, at Owner's last known address, of Declarant's election to repurchase the Lot. Such election notice shall specify the time, date and place of repurchase of the Lot and shall have attached thereto the form of deed to be used to convey the Lot to developer. Such deed shall be substantially similar in form as the deed to Owner, containing the same warranties of title and subject to any and all exceptions of record.

Section 3.18 is deleted and the following is substituted therefor:

3.18 Roofs. Unless otherwise approved by the Architectural Control Committee in writing prior to construction, all roofs shall be constructed of slate tile, ceramic tile, other heavy composition shingles or approved metal construction.

Section 3.22 is hereby added to the Declaration and shall read as follows:

3.22 Applicability to Condo Lots. The provisions of this Declaration contained in Sections 3.02 through 3.21 shall not apply to any of Lots 24 through 32.

Section 6.03 of the First Amendment is deleted and the following is substituted therefor:

6.03 Rules Regarding Billing and Collection Procedures. Declarant shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the

assessment provided herein and for the billing and collection of the Annual Assessments and Maintenance Charges, provided that said procedures are not inconsistent with provisions hereof. With regard to assessing, billing and collecting of such assessments against Lots 24-32, the assessments shall be billed to and collected from the Condominium Owners' Association for such Lots, and such Condominium Owners' Association shall in turn be responsible for apportioning and billing such assessments to and collecting such assessments from the members of such Condominium Owners' Association in accordance with the governing documents for such Condominium Owners' Association.

IN WITNESS WHEREOF, KIEPERSOL ESTATE, LTD., a Texas limited partnership, has hereunto caused its name to be signed by the signature of its duly authorized official as of the day and year first written above.

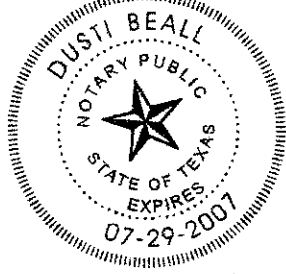
KIEPERSOL ESTATE, LTD.,
A Texas Limited Partnership

By: Agro Services, LLC, a Texas
Limited Liability Company
General Partner

By: 
Pierre de Wet, President

STATE OF TEXAS §
 §
COUNTY OF SMITH §

This instrument was acknowledged before me on the 4th day of January, 2006, by Pierre de Wet, President of Agro Services, LLC, a Texas limited liability company and General Partner of and on behalf of Kiepersol Estate, Ltd., a Texas limited partnership.



Dusti Beall
Notary Public, State of Texas

As evidenced by the signatures below, the requisite percentage of Lot Owners and First Mortgagees have voted and approved this Second Amendment to Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements (Kiepersol Estates).

APPROVED:

[Signature]
Pierre de Wet, Lot Owner

[Signature]
Pierre de Wet, First Mortgagee

Long R. Uzzell
Southside Bank, First Mortgagee

[Signature]
Austin Bank, First Mortgagee

[Signature]
Barbara de Wet, First Mortgagee

After recording, return to:

Randall L. Roberts
Potter Minton, A Professional Corporation
P.O. Box 359
Tyler, Texas 75710

STATE OF TEXAS COUNTY OF SMITH
I hereby certify that this instrument was
filed on the date and time stamped hereon
by me and was duly recorded in the Official
Public records of Smith County, Texas.



FEB 02 2006

Judy Carnes
JUDY CARNES
COUNTY CLERK, Smith County, Texas

Filed for Record in:
SMITH COUNTY, TEXAS
JUDY CARNES, COUNTY CLERK
On Feb 02 2006
At 4:13pm
Receipt #: 375625
Recording: 32.00
Doc/Num : 2006-R0005189
Doc/Type : REC
Deputy -Rebeca Calderon

{A46\4753\0008\W0291103.1 }