



FIRST AMENDED
DECLARATION OF RESTRICTIONS, COVENANTS, AND CONDITIONS
FOR
ESTATES OF OYSTER CREEK

THIS DECLARATION (the "Declaration") is made this 1st of December, 2005 by The Estates Of Oyster Creek Property Owners Association, a Texas Corporation ("Declarant").

A. Declarant is the owner of certain real property situated particularly Situated in Fort Bend County, Texas, as more particularly described on the "Plat" (as hereinafter defined); such real property, together with additions thereto as may be made subject to the terms of this Declaration by any Covenants executed and filed, from time to time, by Declarant in the Deed Records of Fort Bend County, Texas, are herein collectively called the "Property." Declarant desires to create on the Property a residential community with residential lots and improvements, including, without limitation, irrigation system, street lighting, bridges, gazebos, landscaping, perimeter fences and walls, cluster or other mailboxes, open spaces, and other facilities and improvements for the mutual benefit of the "Owners," as hereinafter defined.

B. For the benefit of Declarant and each successive owner of the Property and each parcel thereof and to provide for the efficient preservation of the values and enjoyment of the amenities within the Property and for the maintenance of Common Property, as a part of the general plan of development, Declarant desires to impose upon the Property the covenants, conditions, restrictions, easements, charges, and liens contained in this Declaration and to create a nonprofit corporation to which will be delegated and assigned the power of maintaining and administering the Property and Common Property (and related facilities) in accordance with the terms of this Declaration.

C. Declarant has caused, or will cause, to be incorporated under the Nonprofit Corporation Act of the State of Texas (the "Act") a nonprofit corporation known as The Estates of Oyster Creek Property Owners Association (the "Association").

NOW, THEREFORE, for the benefit of, and to bind Declarant and its assigns and successors-in-interest, Declarant does hereby agree and declare that the Property, including any additions thereto as may hereafter be made hereof, is hereby and will be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens (sometimes referred to collectively as the "Covenants") hereinafter set forth which Covenants run with the Property and are binding upon Declarant and all parties having any right, title, or interest in or to the Property, or any part thereof, and their heirs, successors, representatives, and assigns, at lacer and in equity.

ARTICLE 1
DEFINITIONS

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

"Architectural Control Committee" means the New Construction Committee or the Modifications Committee which is applicable as described in Article IX of this Declaration.

"Assessments" means and refer to the regular annual assessments, the special assessments, and the default assessments levied for the Association as determined by the Board of Directors.

"Association" means and refer to the Estates of Oyster Creek Property Owners Association, Inc., a Texas nonprofit corporation, its successors and assigns.

"Board of Directors or Board" means the governing body of the Association, the elections and procedures of which are set forth in the Articles of Incorporation and the Bylaws of the Association.

"Builder" means and refers to any person or entity undertaking the construction of a Dwelling Unit on a Lot.

"Common Property" means and refers to all rights, titles, interests, properties, and improvements, real or personal, tangible or intangible, owned or held by the Association for the common use and enjoyment of the members of the Association, including, without limitation, any mailboxes, gazebos, irrigation system easements, restrictive reserves, perimeter fences, walls, securitized entry gates, landscaping, and monument

"Declarant" means and refers to the Estate of Oyster Creek Property Owners Association and its successors and assigns.

"Dwelling Unit" means and refers to any building on portion of a building situation upon the Property which is designated and intended for use and occupancy as a residence by a single person, a couple, a family, or a permitted family-size group of persons.

"Institutional Mortgage" means a mortgage or deed of trust creating a first lien on a Lot which is held by a third party institutional lender.

"Lot" or "Lots" means, with respect to any property for which a subdivision map or plat (including the Plat) has been recorded in the Map or Plat Records of Fort Bend County, Texas, each lot shown on such recorded subdivision map or plat which is or is to be improved with a Dwelling Unit.

"MC" refers to the Modifications Committee as described in Article IX of the Declaration.

"Member" means and refers to each Owner as provided herein in Article H of this Declaration.

"NCC" means and refers to the New Construction Committee as described in Article IX.

"Owner(s)" means and refers to the record owner (including Builders), whether one or more persons or entities, of the fee simple title of any Lot but, notwithstanding any applicable theory of mortgages or other security devices, does not mean or refer to any mortgagee or trustee under a mortgage or deed of trust unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any conveyance in lieu of foreclosure.

"Plat" means that plat of the Property filed in the Map or Plat Records of Fort Bend County, Texas, under Fort Bend County Clerk's File No. 20050241.

"Property" has the meaning given to it in paragraph A of the introductory statement above.

"Resident" means and refers to each person (not otherwise an Owner or Member) authorized by an Owner to reside within such Owner's Dwelling Unit.

"Two-Thirds Member Vote" means the approval of two-thirds (2/3) of all Members (regardless of class) entitled to vote who either (i) are voting in person or by proxy at a meeting duly called for this purpose and at which necessary quorum exists, or (ii) execute a written consent in lieu of a meeting for such purpose.

ARTICLE II
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION:
ADDITIONS TO THE PROPERTY

2.01. Membership. Each and every Owner automatically is and must remain a Member of the Association, subject to the terms of this Declaration, the Articles of Incorporation, and the Bylaws of the Association and the Association's rules and regulations. Membership of an Owner in the Association is appurtenant to and may not be separated from the interest of such Owner in and to a Lot. Ownership of a Lot is the sole qualification for being a Member; provided, however, a Member's privileges in the Common property may be regulated or suspended as provided in this Declaration, the Bylaws of the Association, and/or the Association's rules and regulations. Any person or entity that holds an interest in and to a Lot merely as security for the performance of an obligation can not be a Member until such time as the holder or its successor acquires title to the Lot through foreclosure or conveyance in lieu thereof.

2.02. Transfer. Membership of an Owner in the Association may not be severed from or in any way transferred, pledged, mortgaged, or alienated except upon the sale or assignment of said Owner's interest in a Lot and then only to the purchaser or assignee as the new Owner thereof. Such membership can not be severed by the encumbrance by an Owner of a Lot. Any attempt to make a prohibited severance, transfer, pledge, mortgage, or alienation shall be void and of no further force or effect. Owners shall notify the Association of any transfer of the fee title to a Lot. Such transfer automatically operates to transfer the membership to the new Owner thereof. In the event an Owner fails or refuses to provide written evidence of transfer of such Owner's interest in a Lot, the Association shall have the right to record the transfer upon the books and records of the Association.

2.03. Classes of Membership. The Association has two classes of voting membership:

CLASS A. Class A Members are all Members with the exception of Declarant. Class A Members are entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one (1) person or entity holds such interest or interests in any Lot, all such parties are Members, and the vote for such Lot may be exercised as they, among themselves, determine, but in no event can more than one (1) vote be cast with respect to any such Lot.

CLASS B. The Class B Member is the Declarant. The Class B Member is entitled to five (5) votes for each Lot owned by the Class B Member. However, at such times as the total number of Lots owned by the Class A Members equals or exceeds five (5) times the total number of Lots owned by the Class B Member, the Class B Member is, during the time such equality or excess continues, entitled to only one (1) vote for every Lot owned by it.

2.04. Addition to the Property. Additional tracts of land, together with the improvements situated thereon, may become subject to this Declaration and added to the Property in any of the following manners:

(a) Declarant may, without the consent of any Owner and at its sole option, at any time and from time to time within ten (10) years from the date of recordation of this Declaration, add to the Property and to the concept of this Declaration, all or any portion of any other real property (the "Additional Property"), by filing of record, one or more Supplemental Declarations of Covenants, Conditions, and Restrictions, which extends the coverage and/or concept of the covenants, conditions, and restrictions of this Declaration to such property. Any such Supplement Declaration may contain such complementary additions and modifications of the covenants, conditions, and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added Property and as are not inconsistent with the concept of this Declaration. In no event, however, shall such Supplement Declaration modify or add to the covenants established by this Declaration for the Property existing prior to the filing of any such Supplement Declaration unless such modifications and additions are approved by a Two-Third Member Vote. Declarant may make any such addition even though at the time such addition is made Declarant is not the Owner of any portion of the Property. Each Supplement Declaration shall designate the number of separate plots or tracts comprising the Additional Property which are to constitute lots, and each such separate plot or tract shall constitute a "Lot" within the meaning of this Declaration. All or any part of the Additional Property and improvements located thereon owned by Declarant or any interest held by Declarant in the Property may be conveyed, transferred, or assigned to the Association and Designated as Common Property by the Declarant at its sole discretion and without the approval, assent, or vote of the Association or of its Members; provided that any property so conveyed must be free and clear of any and all mechanics' and materialmen's liens and that all taxes and governmental assessments against any such property which are then due and payable have been paid prior to the date of such conveyance. Notwithstanding any other provision hereof, nothing contained

herein shall be deemed to require Declarant to add any Additional Property to the Property. Moreover, Declarant reserves the right to subject any Additional Property or any part thereof to the plan or one or more separate declarations of covenants, conditions, and restriction which subjects the real property to the functions, powers, and jurisdiction of an association or other entity with powers and obligations similar to the Association and which may or may not be subject to the provisions of this Declaration.

(b) The annexations of Additional Property authorized by this Declaration can be accomplished by executing and filing of record in the office of the County Clerk of Fort Bend County, Texas, a Supplemental Declaration or similar instrument, with respect to any Additional Property which shall extend the plan of this Declaration to such real property. Any such Supplemental Declaration contemplated above may contain such additions, deletions, and/or tax modifications of the covenants, conditions, restrictions, easements, liens, and charges contained in this Declaration as may be necessary to reflect the different character, if any, of such Additional Property and as are not substantially inconsistent with the plan of this Declaration. In no event however, shall any such of the covenants, conditions, restrictions, easements, liens and charges contained in this Declaration as may be necessary to reflect the different character, if any, of such Additional Property and as are not substantially inconsistent with the plan of this Declaration. In no event, however, shall any such Supplemental Declaration, or any merger or consolidation revoke, modify, or add to the covenants, conditions, restrictions, easements, liens, or charges established by this Declaration, as same relate to and affect that portion of the Property previously subject to this Declaration. Further, the method of determining Assessments for the Additional Property shall not result in an Assessment substantially less than that affecting the Property unless such Additional Property and the Owners thereof do not enjoy substantially all of the benefits enjoyed by Owners of other Property previously subject to this Declaration. Any annexation, merger, or consolidation made pursuant to this Declaration, when made, automatically extends the functions, powers, and jurisdiction of the Association to the real property so added. Upon the filing of any Supplemental Declaration, each Owner of a Lot within the portion of the Additional Property added to the Property (other than Declarant) shall become a Class A Member, as herein defined, and becomes liable for assessments as provided for herein. Declarant shall continue to be the Class B Member with the number of votes per Lot (including any new Lots added pursuant to a Supplemental Declaration) as provided for in this Article II.

(c) Upon written approval by a Two-Thirds Member Vote, the owner of any property who desires to add it to the concept of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplemental Declaration of Covenants, Conditions, and Restrictions as described in paragraph (a) of this Article. Any additions made pursuant to paragraphs (a), (b), or (c) of this Section 2.04, when made, automatically extends the jurisdiction, functions, duties, and membership of the Association to the Property added. Upon acceptance in writing by the Association following approval by a Two-Thirds Member Vote, any person may convey, transfer, or assign real property, improvements located thereon, or an interest therein to the Association and designate the same as Common Property.

(d) Declarant or the Association, upon the written approval or assent of sixty-seven percent (67%) of the outstanding votes of Members, has the right and option to cause the Association to

merge or consolidate with any similar association or associations. Upon a merger or consolidation of the Association with another association, the Property, rights, and obligations of the Association, may, by operation of law or otherwise, be transferred to the surviving or consolidated association or, alternatively, the Property, rights, and obligations of another association may, by operation of law or otherwise, be added to the Property, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants, conditions, restrictions, easements, liens, and charges established by this Association within the Property, together with the Covenants established upon any other real property as one plan.

ARTICLE III PROPERTY RIGHTS IN THE COMMON PROPERTY

3.01. Members' Easements of Enjoyment. Subject to the provisions of Section 3.03 of this Article, every Member and every Resident has a right and easement of use and enjoyment in and to the Common Property and such easement is an appurtenance to the Property and passes with the title to every Lot; provided, however, such easement does not give such person the right to make alterations, additions, or improvements to the Common Property.

3.02. Title to the Common Property. The Declarant shall convey, by Special Warranty Deed, fee simple title to the Common Property to the Association, or in the case where easements constitute part of the Common Property, Declarant shall assign and transfer such easements to the Association; in each case free and clear of all encumbrances and liens, other than the lien of current taxes and assessments not in default, utility easements, pipelines, setback lines, mineral interests, and other matters filed in the public records of Fort Bend County, Texas.

3.03. Extent of Members' Easement. The rights and easements of enjoyment created hereby are subject to the following:

- (a) The right of the Association to prescribe regulations governing the use, operation, and maintenance of the Common Property (including limiting the number of guests of Members);
- (b) Following the approval by a Two-Thirds Member Vote, the right of the Association, in accordance with its Articles, to borrow money for the purpose of improving the Common Property and facilities and in aid thereof to mortgage the Common Property;
- (c) The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure;
- (d) The right of the Association, as may be also provided in its Bylaws, to suspend the voting rights of any Member and to suspend the right of any individual to use any of the Common Property for any period during which any assessment against a Lot owned by such Member or resided upon by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;
- (e) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities (if any) on the Common Property;