



SP-33

HOUSTON TITLE

# DECLARATION OF RESTRICTIVE COVENANTS

File No. 03304645

THIS DECLARATION OF RESTRICTIVE COVENANTS (hereinafter "Declaration") is made by MHI Partnership, LTD. (hereinafter "Declarant"), a Texas limited partnership, as follows:

## RECITALS

- A. Property Address: 17214 TRACE GLEN LANE  
HOUSTON, TX 77083  
(hereinafter "Property" consisting of the real property and all improvements thereon).
- B. Buyer(s): DEMETHRIA EMETUCHE  
(hereinafter "Buyer" whether one or more).
- C. Legal Description: LOT ELEVEN (11), in BLOCK ONE (1), of PARK AT MISSION GLEN, SEC. 3, an addition in Fort Bend County, Texas, according to the map or plat thereof recorded in Slide No. 2397/A, of the Map/Plat Records of Fort Bend County, Texas.  
(include applicable lot, block, subdivision, section and county).
- D. Closing Date: February 03, 2005  
(hereinafter "Closing Date").
- E. On the Closing Date, Declarant sold and conveyed the Property to Buyer.
- F. The contract through which Buyer purchased the Property from Declarant ("Contract") contains the arbitration provisions set forth in Exhibit A attached hereto, which shall run with the land.
- G. Declarant makes this Declaration for the purpose of subjecting the Property to one or more restrictive covenants as more particularly described below. Buyer joins herein to evidence Buyer's acceptance of the Property subject to this Declaration and Buyer's agreement to the terms and conditions hereof.

NOW, THEREFORE, Declarant hereby subjects the Property to certain covenants, conditions and restrictions as more particularly described below.

## DECLARATION

- 1. Recitals. The Recitals set forth above are incorporated herein as a substantive part of the Declaration.
- 2. Arbitration. The Contract contains the arbitration provisions set forth in Exhibit A hereof, which are incorporated herein as a substantive part of this Declaration.
- 3. Applicability. Buyer and Buyer's successors and assigns, and any future owner or occupier of the Property, shall be bound by the terms and conditions of the arbitration provisions set forth in Exhibit A and all references to "Buyer" in such arbitration provisions shall apply equally to the Buyer(s) named herein, together with Buyer's successors and assigns, and any future owner or occupier of the Property.

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CONTINUATION OF DECLARATION OF RESTRICTIVE COVENANTS

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4. Term. This Declaration shall have a term of fifteen (15) years commencing on the Closing Date, after which time it shall automatically expire in accordance with arbitration provisions recited in Exhibit A. Notwithstanding the foregoing, if Declarant becomes the owner of the Property, this Declaration shall terminate and be of no further force or effect as to Declarant or the Property.

5. Miscellaneous

- (a) Successors and Assigns; Covenants Running with the Property. The benefits of this Declaration shall inure to the benefit of the parties and their respective successors and assigns (including any future owner or occupier of the Property), and the burdens and obligations of this Declaration shall be binding upon the parties and their respective successors and assigns (including any future owner or occupier of the Property), and shall be deemed to be covenants that run with the Property.
- (b) Invalidity. If any portion of this Declaration is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Declaration shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure of either party to enforce against the other party any term or provision of this Declaration shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other term or provision.
- (c) Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Texas (except as to construction and enforcement of the foregoing arbitration provisions, which shall be governed by the laws of the United States).
- (d) Counterparts. This Declaration may be executed in multiple counterparts, each of which shall constitute an original and all of which when taken together shall constitute one instrument.
- (e) Attorney's Fees. Declarant shall be entitled to recover from the Buyer or any subsequent transferee of the Property, Declarant's reasonable and necessary attorney's fees and litigation expenses incurred in enforcing this Declaration.
- (f) Recording. This Declaration shall be recorded in the Real Property Records of each county in which the Property is located.

IN WITNESS WHEREOF, this Declaration of Restrictive Covenants has been executed to be effective as of the Closing Date stated above.

**DECLARANT:**

MHI PARTNERSHIP, LTD., a Texas limited partnership by,

McGuyer Homebuilders, Inc., a Texas corporation, its general partner

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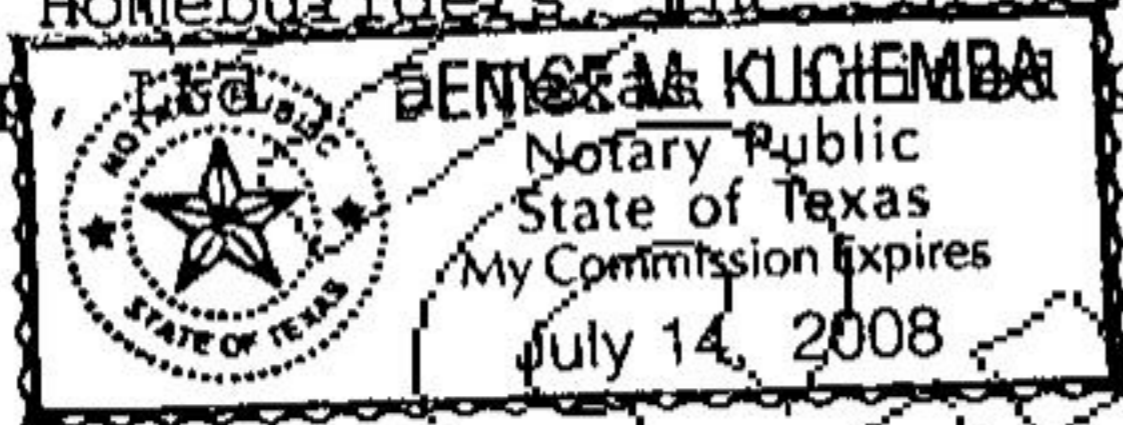
CONTINUATION OF DECLARATION OF RESTRICTIVE COVENANTS

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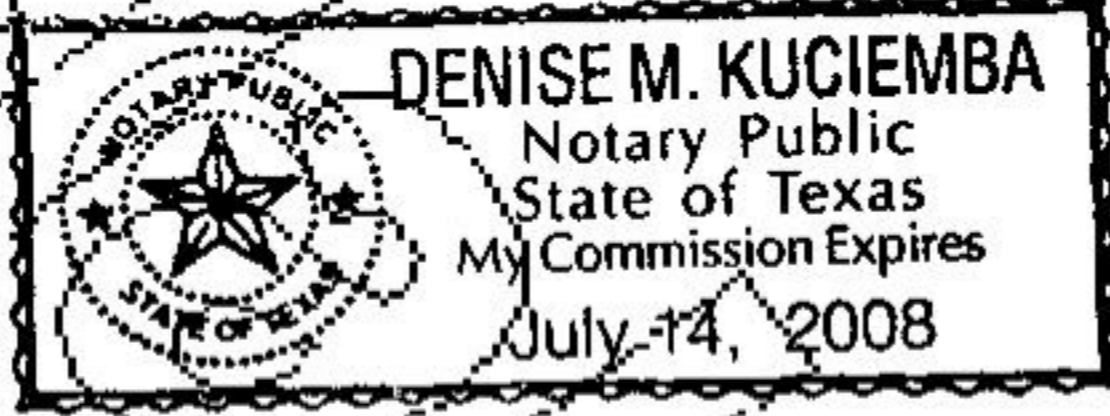
By: [Signature]  
Name: \_\_\_\_\_  
Title: KENNETH CHAPMAN  
CLOSING AGENT

State of Texas  
County of Harris

This instrument was acknowledged before me on February 3rd, 2005,  
by [Signature], Closing agent  
of McGuyer Homebuilders, Inc., a Texas corporation and general partner of MHI  
Partnership, [Signature] partnership, on behalf of said corporation.



[Signature]  
Notary Public in and for the State of Texas  
My commission expires: \_\_\_\_\_

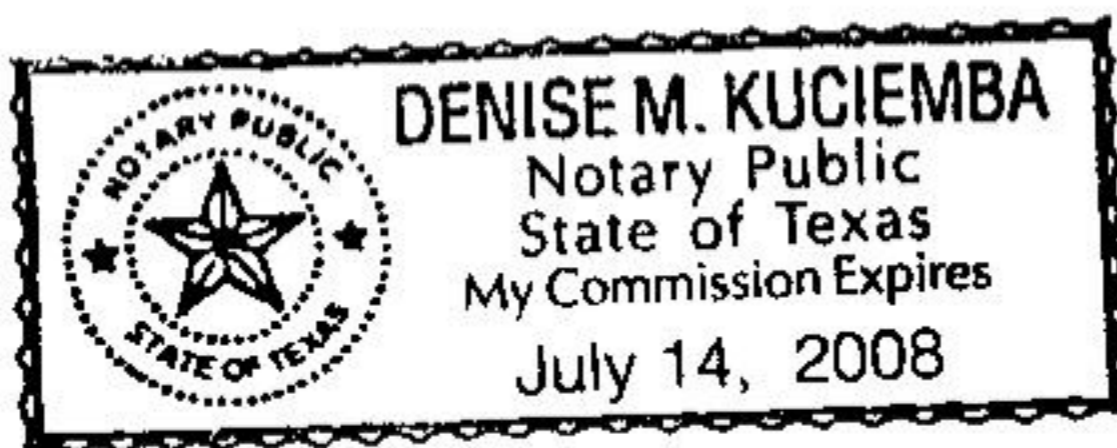


ACCEPTED AND AGREED:

[Signature]  
DEMETHRIA EMETUCHE

STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on February 2nd, 2005, by DEMETHRIA  
EMETUCHE ("Buyer(s)").



[Signature]  
Notary Public in and for the State of Texas  
My commission expires: \_\_\_\_\_

AFTER RECORDATION  
RETURN ORIGINAL TO:

Ray Holan  
McGuyer Homebuilders, Inc.  
7676 Woodway, Suite 104  
Houston, Texas 77063

**RECORDED**

# DECLARATION OF RESTRICTIVE COVENANTS

## EXHIBIT A

### 25. ARBITRATION:

- A. BROAD FORM AGREEMENT TO ARBITRATE: ANY CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS CONTRACT, THE BREACH THEREOF, OR RELATING DIRECTLY OR INDIRECTLY TO THIS CONTRACT, THE PURCHASE, CONSTRUCTION OR REPAIR OF THE HOME AND IMPROVEMENTS WHICH ARE THE SUBJECT OF THIS CONTRACT, AND/OR THE PROPERTY, INCLUDING ANY AND ALL CLAIMS AGAINST SELLER AND/OR SELLER'S AGENTS, PARTNERS, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, MATERIALMEN OR SUPPLIERS, SHALL BE SETTLED BY BINDING ARBITRATION UNDER THE FEDERAL ARBITRATION ACT, 9 U.S.C. § 1, ET SEQ. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE TRANSACTION MADE ON THE BASIS OF THIS CONTRACT INVOLVES AND AFFECTS INTERSTATE COMMERCE. AT CLOSING, BUYER SHALL EXECUTE A RESTRICTIVE COVENANT ("COVENANT") FOR RECORDATION IN THE REAL PROPERTY RECORDS OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED, CONFIRMING THAT THE ARBITRATION PROVISIONS OF THIS CONTRACT ("ARBITRATION PROVISIONS") SHALL BE BINDING UPON BUYER, BUYER'S SUCCESSORS AND ASSIGNS, AND ANY FUTURE OWNER OR OCCUPIER OF THE PROPERTY, FOR A PERIOD OF FIFTEEN (15) YEARS FOLLOWING CLOSING ("COVENANT PERIOD"). AT THE CONCLUSION OF THE COVENANT PERIOD, THE COVENANT SHALL AUTOMATICALLY EXPIRE AND BE OF NO FURTHER FORCE OR EFFECT, EXCEPT AS TO ARBITRATION AND/OR LEGAL PROCEEDINGS WHICH ARE IN PROGRESS AT THE TIME OF ITS EXPIRATION. IN THOSE INSTANCES, THE ARBITRATION PROVISIONS SHALL SURVIVE ONLY AS TO THE PROCEEDINGS IN PROGRESS UNTIL THEY ARE CONCLUDED BY ENTRY OF A FINAL, NON-APPEALABLE ARBITRATION AWARD OR JUDGEMENT.
- B. WAIVER OF JURY TRIAL: THE PARTIES ACKNOWLEDGE THAT BY EXECUTING THIS AGREEMENT, THEY WAIVE VALUABLE LEGAL RIGHTS, INCLUDING THE RIGHT TO TRIAL IN A COURT OF LAW AND THE RIGHT TO TRIAL BY JURY.
- C. ARBITRATION OF CONSTRUCTION DEFECT DISPUTES: IF THE DISPUTE IS FOR ONLY (I) ONE OR MORE ALLEGED "CONSTRUCTION DEFECTS" (AS DEFINED BY THE ACT), (II) THE CLAIMANT(S) SEEKS ONLY THOSE REMEDIES APPLICABLE TO CONSTRUCTION DEFECTS AVAILABLE UNDER THE ACT, AND (III) THE CLAIMANT(S) ASSERTS NO OTHER CLAIMS AND SEEKS NO OTHER REMEDIES APART FROM (I) AND (II), THEN THE ARBITRATION SHALL BE CONDUCTED AND ADMINISTERED IN ACCORDANCE WITH THE BUILDER LIMITED WARRANTY.
- D. ARBITRATION OF ALL OTHER DISPUTES: IN ALL CASES WHICH ARE NOT GOVERNED BY PART C ABOVE (INCLUDING WITHOUT LIMITATION ALL INSTANCES WHERE CONSTRUCTION DEFECT CLAIMS ARE JOINED WITH OTHER CLAIMS), THE ARBITRATION SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN ACCORDANCE WITH ITS CONSTRUCTION INDUSTRY ARBITRATION RULES (AS SUPPLEMENTED BY AAA SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES, WHERE APPLICABLE) IN EFFECT AT THE TIME THE DEMAND FOR ARBITRATION IS FILED. AAA FAST TRACK PROCEDURES SHALL APPLY ONLY UPON THE FURTHER WRITTEN CONSENT OF ALL PARTIES TO THE ARBITRATION PROCEEDING.

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CONTINUATION OF DECLARATION OF RESTRICTIVE COVENANTS - EXHIBIT A

- E. GENERAL PROVISIONS: WITHIN A REASONABLE TIME AFTER THE CONTROVERSY HAS ARISEN, THE PARTY REQUESTING RELIEF SHALL FILE A WRITTEN DEMAND FOR ARBITRATION AND PAY APPLICABLE FILING FEES. THE ARBITRATION PROCEEDING SHALL BE CONDUCTED IN THE FEDERAL JUDICIAL DISTRICT WHERE THE PROPERTY IS LOCATED, UNLESS OTHERWISE AGREED BY THE PARTIES. IN ALL INSTANCES, THE PARTIES MAY AGREE UPON ONE (1) ARBITRATOR, BUT IN THE EVENT THE PARTIES CANNOT AGREE, THERE SHALL BE THREE (3) NEUTRAL ARBITRATORS APPOINTED IN ACCORDANCE WITH THE APPLICABLE ARBITRATION RULES. IN THE EVENT THE APPLICABLE ARBITRATION RULES MANDATE THAT THE DISPUTE SHALL BE SUBMITTED TO A SINGLE ARBITRATOR AND THE PARTIES CANNOT AGREE AS TO THE SELECTION OF SUCH ARBITRATOR, THEN THERE SHALL BE THREE (3) NEUTRAL ARBITRATORS APPOINTED IN ACCORDANCE WITH THE APPLICABLE ARBITRATION RULES, WITH THE COST OF THE TWO (2) ADDITIONAL ARBITRATORS BEING ADVANCED BY THE SELLER. UNLESS THE APPLICABLE ARBITRATION RULES MANDATE OTHERWISE, ALL ARBITRATORS SHALL BE ATTORNEYS AT LAW, LICENSED TO PRACTICE IN THE STATE OF TEXAS, WITH SUBSTANTIAL EXPERIENCE IN THE SINGLE FAMILY RESIDENTIAL CONSTRUCTION INDUSTRY. IF THERE IS ONLY ONE (1) ARBITRATOR, HIS CONCLUSIONS SHALL BE BINDING AND CONCLUSIVE ON THE PARTIES. IF THERE ARE THREE (3) ARBITRATORS, THE DECISION OF ANY TWO (2) SHALL BE BINDING AND CONCLUSIVE. COSTS OF ARBITRATION SHALL BE ALLOCATED BETWEEN OR AMONG THE PARTIES AS PROVIDED BY THE APPLICABLE ARBITRATION RULES, OR IN THE ABSENCE OR INAPPLICABILITY OF SUCH RULES, AS DETERMINED BY THE ARBITRATOR(S). IF ANY PARTY COMMENCES LITIGATION IN VIOLATION OF THIS AGREEMENT, OR FAILS OR REFUSES TO TIMELY SUBMIT TO ARBITRATION IN ACCORDANCE WITH THIS AGREEMENT, SUCH PARTY SHALL REIMBURSE THE OTHER PARTY FOR THE COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES: (A) INCURRED IN SEEKING A STAY, ABATEMENT OR DISMISSAL OF SUCH LITIGATION; OR (B) INCURRED IN JUDICIALLY COMPELLING ARBITRATION. THE FOREGOING DOES NOT PRECLUDE A PARTY FROM SEEKING EMERGENCY RELIEF FROM A COURT OF COMPETENT JURISDICTION AND THE PROSECUTION OF A REQUEST FOR EMERGENCY RELIEF WILL NOT BE DEEMED A WAIVER OF THE ARBITRATION PROVISIONS CONTAINED HEREIN.
- F. JOINDER: THE PARTIES AGREE THAT SELLER MAY JOIN IN ANY ARBITRATION PROCEEDING CONDUCTED HEREUNDER, ONE OR MORE OF SELLER'S SUBCONTRACTORS, SPECIALTY CONTRACTORS, MATERIAL SUPPLIERS, ENGINEERS, DESIGNERS AND/OR SUCH OTHER PERSONS OR ENTITIES (COLLECTIVELY WHETHER ONE OR MORE "THIRD-PARTY") WHERE: (A) THE SERVICES PROVIDED, WORK PERFORMED OR MATERIALS SUPPLIED BY SUCH THIRD-PARTY FORMS THE BASIS, DIRECTLY OR INDIRECTLY, IN WHOLE OR PART, OF THE CLAIMS MADE THE SUBJECT OF THE ARBITRATION PROCEEDING; (B) SUCH THIRD-PARTY IS SUBSTANTIALLY INVOLVED IN A COMMON QUESTION OF FACT OR LAW; OR (C) THE PRESENCE OF SUCH THIRD-PARTY IS REQUIRED TO ACCORD THE PARTIES COMPLETE RELIEF IN THE ARBITRATION.
- G. FINANCIAL CAPACITY: BUYER AND SELLER EACH REPRESENT THAT THEY HAVE ADEQUATE FINANCIAL CAPACITY TO AVAIL THEMSELVES OF THE ARBITRATION REMEDIES PROVIDED HEREIN AND THAT PARTICIPATION IN ARBITRATION WILL NOT CONSTITUTE A FINANCIAL HARDSHIP.
- H. MANAGEMENT APPROVAL: BUYER UNDERSTANDS AND AGREES THAT SELLER'S MANAGEMENT'S APPROVAL AND ACCEPTANCE OF THIS CONTRACT PURSUANT TO PARAGRAPH 31 HEREOF IS CONDITIONED IN PART AND IN RELIANCE UPON BUYER'S ACKNOWLEDGMENT OF AND AGREEMENT WITH THE PROVISIONS OF THIS PARAGRAPH 25.
- I. SURVIVAL: THE PROVISIONS OF THIS PARAGRAPH 25 SHALL SURVIVE THE CLOSING OF THIS TRANSACTION.

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dr. Dianne Wilson*

2005 Feb 07 03:59 PM

2005015429

DA \$15.00

Dianne Wilson, Ph.D. COUNTY CLERK

FT BEND COUNTY TEXAS

UNOFFICIAL DOCUMENT