

THE STATE OF TEXAS

§

COUNTY OF CONCHO

§

DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
GATTLING CREEK SUBDIVISION

RECITALS:

GATTLING SPRINGS DEVELOPMENT CO., INC., as trustee ("Developer"), has subdivided the real property located in Concho County, Texas, described in Exhibit "A" attached to this Declaration (the "Property"). The name of the subdivision is GATTLING CREEK SUBDIVISION. The plat of the subdivision is recorded in Volume 2, Page 43 of the Plat Records of Concho County, Texas.

Developer desires to provide for the preservation of the values and amenities in the subdivision and for the maintenance of any common facilities and, to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens set forth herein all of which are for the benefit of the Property and each owner in the subdivision.

Developer believes that it is desirable for the efficient preservation of the values and amenities in the subdivision to create an agency that would have the powers of maintaining, administering and enforcing the covenants, conditions, and restrictions and collecting and disbursing the assessments and charges established herein. Developer has incorporated under the laws of the State of Texas a non-profit corporation by the name of GATTLING CREEK OWNERS ASSOCIATION, (the "Association"), to serve as such agency.

Developer contemplates constructing certain roads or streets as Common Properties in the subdivision which shall be maintained by the Owners through the Association.

There are certain limitations to title which are common to the Lots that Developer contemplates selling to third parties and which, for the sake of notice, clarity and consistency, are set forth herein.

Now, therefore, Developer declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, limitations, charges and liens set forth herein, all of which shall run with the land.

ARTICLE I

Definitions

Section 1. The following words when used in this Declaration, unless the context shall prohibit it, shall have the following meanings:

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- (a) "Association" shall mean and refer to the GATTLING CREEK OWNERS ASSOCIATION, a non-profit corporation duly organized in the State of Texas.
- (b) "Common Properties" shall mean and refer to all streets, roads and alleys and any other areas of land shown on the recorded subdivision plat of the Property that is intended to be devoted to the common use and enjoyment of the owners of Lots in the subdivision.
- (c) "Lot" shall mean and refer to any plot of land shown on the recorded map or plat of the subdivision with the exception of any Common Properties.
- (d) "Owner" shall mean and refer to the contractual purchaser or the record owner, whether one or more persons or entities, of the surface estate of any Lot in the subdivision but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure. At such time as Developer has executed and delivered a Contract for Deed or a Contract for Sale to sell a Lot to a buyer, the buyer thereof shall be deemed to be the Owner of such Lot, as opposed to the Developer who has retained legal title thereto. However, the Developer shall become the Owner of such Lot in the event the buyer should default and the Developer should cancel the buyer's rights under the Contract for Deed or Contract for Sale as provided under the terms of such contract.
- (e) "Member", without other specification, shall mean and refer to each Owner who is a member of the Association as provided in Article V, Section 1, hereof.
- (f) "Committee" shall mean the Architectural Control Committee as provided in Article IV hereof.

## ARTICLE II

### Limitations to Title

All of the Property shall be subject to the following limitations, exceptions and conditions, or pertinent parts thereof:

Section 1. Title is subject to all easements, rights-of-way, restrictions and covenants of record in Concho County, Texas, prior to the recording hereof or apparent from an examination of the land, and title shall be subject to all matters reflected on the recorded map or plat of the subdivision and to all matters in this Declaration.

Section 2. Title is subject to all of the oil gas and other minerals, which are reserved by Developer, and any leases of such minerals that may hereafter be granted. However, Developer intends to waive its' rights of ingress and egress and the use of the surface for exploring, developing, and producing such minerals, as to each Lot that Developer sells. Any such waiver of rights shall be provided in the contract or in the deed of conveyance and will allow Owners to control any mineral activities conducted on the surface of their Lots and to receive any surface damages paid for such activities. Developer further hereby covenants not to sell exchange, lease, drill, develop or produce Developer's mineral interest in and to the Property or any part thereof in a manner that would allow any such activity on the surface of the Property so long

as the Property is subject to this Declaration or a substantial part thereof.

### ARTICLE III Covenants, Conditions, and Restrictions

In addition to all other covenants, conditions, and restrictions provided in or by this Declaration, the Property shall be, unless otherwise expressly exempt therefrom in this Declaration, subject to the following covenants, conditions, and restrictions running with the land which shall be binding on all parties having any right, title or interest in the surface of the Property, or any part thereof, their heirs, representatives, successors and assigns:

Section 1. No mobile home or house trailer shall be placed, stored, or maintained permanently or temporarily on the Property on or off the streets except that any mobile home or house trailer owned by a contractor for the purpose of constructing a permanent residence or building thereon may be maintained on any Lot by such contractor only during the period of construction.

Section 2. No ready-built or modular homes or similar prefabricated structures shall be placed, stored or maintained permanently or temporarily on the Property on or off the streets unless with the written permission of the Committee.

Section 3. No trailer camper, pickup camper, recreational vehicle with interior sleeping accommodations, or tent shall be placed, maintained, or used permanently or temporarily on the Property on or off the streets, except that an Owner may store a trailer camper, pickup camper, recreational vehicle, or tent on a Lot. However, any such storage shall be subject to the direction and control of the Committee as to location and concealment if the Committee should determine at any time that the location or concealment of any such camper, vehicle, or tent for storage purposes is inconsistent with the policies and guidelines determined by the Committee pursuant to Section 7 of Article IV hereof. Notwithstanding the foregoing, tents may be used on a temporary and recreational basis by children only.

Section 4. Any dispute or question as to what constitutes a mobile home, house trailer, ready-built home, modular home, trailer camper, pickup camper, recreational vehicle, tent, or structure thereto, and the appropriate or inappropriate use thereof, shall be resolved conclusively by the determination of the Committee.

Section 5. All buildings and structures of whatever nature, other than water wells and pump houses, must be set back at least forty (40) feet from all roads and streets and at least twenty (20) feet from any other Lot on the side or in the rear of the Lot. However, an Owner may build or locate a building or structure less than twenty (20) feet from an adjoining Lot if the Owner secures the prior written consent of the Committee and the adjoining Owner in recordable form. Water wells and pump houses are not subject to these specific set-back requirements, but Owners must obtain the approval of the Committee for the location of all water wells and pump houses.

Section 6. All privacy fences shall be a maximum of six feet in height and shall be limited to an area even with or behind the front of the residence, within ten feet on each side of the residence, and within 40 feet of the back of the residence. Any other fence on a lot shall be chain without any materials added that restrict vision, limited to four feet in height. All fences shall be subject to the approval of the Committee, and the Committee may control the

final placement of all fences, taking into account any visual obstruction of any proposed fence, the location of other Lots and improvements, and the aesthetics that the Committee is attempting to achieve or maintain for the subdivision. These fencing restrictions may be changed at any time by a two-thirds vote of the Owners conducted in an equitable manner by the Association. In the event of a change in this manner, the Association will document and file the change for record.

Section 7. No buildings or improvements, including, but not limited to, residential buildings, garages, carports, patios, sleeping porches, fences, walls, barbecue pits, storage houses, swimming pools, or other facilities of whatever nature, whether permanent or temporary, shall be constructed until the construction plans and specifications, including exterior color and material, and a plat showing the location of the proposed structure have been approved in writing by the Committee as to quality of design and materials, harmony of external design with existing structures on the Property and with the natural surroundings, and as to location with respect to the topography, the finished grade of elevation, and the preservation or enhancement of the natural surroundings.

Section 8. No noxious or offensive activity shall be conducted upon the Property, nor shall anything be done thereon which may become an annoyance or nuisance to any Owner, especially including, but not limited to, loud music whether produced for the private enjoyment of persons or for a party of persons. In the event the Association, or any committee or representative thereof, determines that any such activity reasonably constitutes an annoyance or nuisance to any other Owner or Owners, the Association may assess a fine of One Hundred Dollars (\$100.00) for the first offense, Two Hundred Dollars (\$200.00) for the second offense, etc., in increments of an additional One Hundred Dollars (\$100.00) to be added to each time for each additional offense, and such time or times shall constitute a personal debt of the Owner which shall be secured by a lien against the Owner's Lot. The Association may, at its' election, have foreclosure of the lien for the payment and satisfaction of such debt. For this purpose, the Owner of the Lot from which such annoyance or nuisance arises shall be liable for such debt, notwithstanding that the cause may be attributed to other members of the Owner's family or to any guests or invitees.

Section 9. All electrical wiring and all plumbing installations in any building or structure shall be installed in a good and workmanlike manner and in compliance with all applicable rules and regulations of the Texas Department of Health or other regulatory authority. Electric service will be underground, where feasible, from the point of the main service supply in the service company's right of way to the house or structure in the subdivision. The Committee shall have the authority to determine feasibility.

Section 10. All residences shall be connected to either a city sewer system, if available, or a permanent septic tank system for sewer disposal. Each septic tank system shall comply with the minimum standards required or recommended by the State of Texas, Concho County, and any regulatory authority with jurisdiction, and in the event of conflict among any such standards, the most stringent standards shall apply. Design standards for individual septic systems shall be based on percolation tests made by a registered sanitarian or other person approved by the Committee to determine requirements on each Lot prior to construction of any septic system.

Section 11. No abandoned or inoperative motor vehicle, boat, or other vehicle or machinery shall be placed, or permitted to remain on the Property on or off the streets. No

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part of the Property shall be used or maintained as a dumping or storage ground for junk, rubbish, trash, garbage or other waste material, and no such items or material shall be kept or permitted on the Property except temporarily in containers adequate for that purpose. All such containers or receptacles shall be placed either indoors or in an area screened by natural vegetation, terrain, or artificial structure so that it is not visible from the roads or streets or from the neighboring Lots. Every Owner shall be responsible for keeping his Lot in a reasonably clean condition.

Section 12. No boat may be stored on any residential Lot, except for the private use of the Owner.

Section 13. No antennas, towers, or other similar structures attached to a house, building, or other structure shall exceed a height of six feet above the roof line.

Section 14. No satellite dishes or antennas, tanks, or other large objects that usually or often stand alone and are separate from a house or other building shall be placed or constructed on any Lot without obtaining the approval of and complying with the requirements of the Committee regarding its' location and the need for visual barriers, if any.

Section 15. Garages and outbuildings shall be constructed from the same or similar materials as the main residence or building, and the approval of the Committee must be obtained prior to such construction.

Section 16. No discharge of any firearms shall be permitted on any of the Property for hunting or any other purpose, except in the defense of person or property as permitted by law.

Section 17. No Lot shall be subdivided without written consent of the Committee. A lot may be subdivided one time, and one time only into no more than two lots, and all subdivided lots shall be at least two acres in size. Once a lot is subdivided, no further subdivision shall be allowed.

Section 18. No multi-family dwelling shall be constructed on any Lot. No dwelling other than a single-family dwelling may be constructed on a Lot, and no more than one single-family dwelling may be constructed on a Lot without the written consent of the Committee.

Section 19. No quarrying or mining operations of any kind or character shall be conducted on or under any Lot subsequent to the sale of any such Lot from the Developer to a buyer either by Contract for Deed, deed, or otherwise. Likewise, the Owner shall not grant an easement for, nor permit the use of his Lot for, the ingress and egress for any such quarrying or mining whether conducted on or off such Owner's Lot and whether with or without a valuable consideration provided therefor. However, nothing herein shall be construed as refuting the oil, gas and other mineral interests and related rights described in Article II, Section 2. The Developer may make reasonable use of any part of the Property prior to sale thereof for purposes of furnishing caliche, rock or similar building material for the construction of roads and other improvements for the general benefit of the subdivision.

Section 20. All Lots, other than those designated as commercial Lots in this Section, shall be limited to residential and non-commercial recreational uses only, except as is specifically authorized in Section 22 of this Article III of the subdivision, are hereby designated as commercial Lots and may be used for light commercial purposes, such as convenience stores, cafes, and bait stands. The Committee shall determine, in each case, whether a proposed commercial activity will be allowed.

Section 21. No swine shall be permitted on the Property for any purpose. Household

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pets, excluding any type of swine, may be permitted on the Property, provided that they are not used for any business or commercial purpose and that they are not an annoyance or nuisance to any Owner. All pets must be confined at all times to the owner's Lot, by fence or otherwise. No commercial bird or animal operation of any kind shall be permitted.

Section 22. As exceptions to Sections 20 and 21 above, the following uses of the Property shall be permitted.

- (a) An Owner may sell trade, or otherwise dispose of the offspring of any such household pets, provided that Owner does not regularly engage in the business of breeding such household pets on the Lot.
- (b) An Owner may conduct on a Lot professional work or any work of art, crafts, journalism, or other personal fabrication, design or construction, provided that no third-party employees are required on the Lot in connection with such work, no retail sales are conducted on the Lot, and no annoyance or nuisance is caused by such work.
- (c) The Association may make such commercial use of the Common Properties as the Committee shall determine from time to time, provided that such use shall not constitute an annoyance or nuisance to any Owner.

Section 23. No one-story residential building shall contain less than one thousand two hundred (1,200) square feet of living area, and no residential building with more than one story shall contain less than eight hundred (800) square feet of living area on the main floor.

Section 24. All residential buildings must be completed within a period of twelve (12) months following the beginning of construction. For this purpose, the beginning of construction shall be deemed to be the pouring of concrete for the foundation of the residential building, and it shall be deemed to be completed at such time as all construction is finished, under lock, and fully habitable as residential property. Failure to complete such construction within such time shall subject Owner to a penalty of not more than One Hundred Dollars (\$100.00) per diem for each day of delinquency for so long as it shall continue. Such penalty may be assessed at the sole discretion of the Committee after giving such Owner at least ten (10) days' written notice of its' intent to impose any such penalty, and such penalty shall be a personal liability of the Owner committing such default and shall be secured by a lien against the Lot, effective upon the Committee's filing of an affidavit, stating the existence of such penalty and lien, in the real estate records of Concho County, Texas.

Section 25. Each Owner shall comply and cause his Lot(s) to comply with all the rules, regulations, and requirements of the Colorado River Municipal Water District and with the provisions of the flood easement established in the condemnation proceeding, No. 2891-B, in the 119th District Court, Concho County, Texas.

Section 26. The board of directors of the Association is hereby vested with the authority to waive, release or otherwise relinquish any lien provided or established by and under this Declaration of Covenants, Conditions, and Restrictions in whole or in part for full or valuable consideration or in settlement of any dispute or in removing cloud from title as it may, in its' sole discretion, deem advisable from time to time. Such authority may be delegated by the board of directors to the Association's president or vice-president.

Section 27. All Lots, and the exterior of all improvements thereon, shall be maintained in a reasonably good condition at all times.

Section 28. In the event an Owner should at any time fail or refuse to adhere to or

comply with any of the covenants, conditions, and restrictions of this Declaration, the Association, or any committee or representative thereof, after giving reasonable notice thereof shall require such Owner to remedy such violation or breach; and, if such Owner continues to fail or to refuse to adhere to or comply with such covenant, condition, or restriction, the Association may proceed to remedy same by appropriate action at the cost of Owner including the Association's reasonable attorney's fees, costs of court, and interest at the rate of ten percent (10%) per annum thereon. Any such liability shall be the personal liability of the Owner, and the Association shall have a lien against the Owner's Lot to secure the payment thereof.

Section 29. These covenants, conditions, and restrictions shall be effective for a term of thirty years from date of recording during which time they may be amended, altered or revised by an instrument signed by Owners of not less than eighty percent (80%) of the Lots and duly recorded. Following such thirty year period, all such covenants and restrictions shall be automatically extended for successive periods of ten years unless otherwise amended, altered or revised by an instrument signed by Owners of not less than seventy-five percent (75%) of the Lots and duly recorded.

#### ARTICLE IV

##### Architectural Control Committee

The Association shall permanently maintain an Architectural Control Committee which shall be governed by the following rules and regulations:

Section 1. Committee Members. The Committee shall consist of three members. The initial members of the Committee shall be William S. Noelke, James Bunyard and Mike Eckert.

Subject to the initial election, Committee members shall serve until death, resignation, or removal. The other members of the Committee shall select a successor to any Committee member who has died, resigned, or been removed until the first annual meeting of the members of the Association following the termination of Class B membership in the Association. Immediately following such meeting, the board of the Association shall elect the members of the Committee and shall thereafter, fill any vacancies on the Committee. The designation of new Committee members, from time to time, shall be documented and duly recorded in the deed or other real estate records of Concho County, Texas.

Section 2. Resignation and Removal of Committeemen. Any Committee member may resign by filing with the Committee a ten day written notice thereof. Any Committee member may be removed for good cause by the board of the Association. If a Committee member delivers to the board a written request for a hearing within ten days after receiving written notice of his removal he shall be given a hearing before the board to reconsider whether good cause exists. If the board determines after hearing that no good cause exists, then the Committee member shall be reinstated.

Section 3. Responsibilities. It shall be the responsibility of the Committee to preserve the value of the Property and to encourage its' prudent and proper development. It shall review the construction plans and specifications and proposed location of improvements as required in Article III, Section 7, and shall make prompt rulings thereon. All rulings or recommendations

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shall be in writing, and a copy shall be delivered to the Owner or his agent and a copy shall be retained for the permanent records of the Committee.

Section 4. Timeliness. In the event the Committee should fail to issue its' written ruling in response to an Owner's request within thirty (30) days from receipt of such request properly supported with adequate plans and specifications and location data, then it shall be presumed that the Committee has approved such request.

Section 5. Violation of Construction Requirements. In the event an Owner fails to submit a request properly accompanied with construction plans and specifications and location data but proceeds with the construction thereof, or proceeds with construction following the disapproval of the Committee, or proceeds with construction that is inconsistent with the plans and specifications or location that have been approved by the Committee, or otherwise fails to comply with the construction requirements of this Declaration, the Committee shall have the right, at its' election, to secure injunctive relief against such construction or failure, including judicial relief requiring the removal of any such construction and compliance with any such construction requirements, by bringing suit thereon prior to the expiration of six (6) months following completion of any such construction or six (6) months following the failure to comply with any other construction requirement, whichever is later.

Section 6. Policies and Guidelines. The Committee shall, by a majority vote, determine such policies and guidelines as it shall deem to be appropriate in assisting Owners in planning the construction of their improvements. The Committee may adopt new policies and guidelines, from time to time, when prior rulings, policies, or guidelines have, in the opinion of the Committee, turned out to be detrimental to the purposes and responsibilities of the Committee.

Section 7. Delegation. The Committee may, in its' discretion and from time to time, delegate its' duties of review, approval, and rulings to one or more of its' members. Any ruling by either the Committee or its' delegate shall be final and conclusive unless, upon receipt of written request for review from the Owner within ten days from a ruling rendered by a delegate, the Committee should determine to grant a review of the ruling. If such request for review is denied by the Committee, the matter shall be final. If such request is granted, the Committee shall set a time and place for a full Committee review, the decision of which by a majority of its' members shall then be final.

Section 8. Fees and Compensation. Members of the Committee shall serve without remuneration for their personal services except that they shall be reimbursed for all reasonable expenses, including automobile mileage, incurred by them in the performance of their duties and the Committee shall compensate any delegate for his reviewing and issuing a ruling on the plans and specifications and location data, including an inspection of the site of the proposed improvement. The Committee may, at its' discretion, charge an Owner a fee not to exceed Fifty Dollars (\$50.00) for each separate item to be constructed to defray its' expenses. Any additional financial needs of the Committee shall be funded by the Association upon the presentation of requests by the Committee and approval thereof by the board of directors of the Association, which shall not be unreasonably withheld.

Section 9. Enforcement. It shall be the primary responsibility, but not the duty, of the Committee to enforce strict compliance by Owners of the covenants, conditions, and restrictions provided in this Declaration. As an exception to the discretionary funding provisions of Section 9 above, the Association shall fund all reasonable and necessary legal expense of the Committee

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in pursuing such enforcement. Said covenants, conditions, and restrictions may be enforced by proceedings at law or in equity, including injunctive relief to prevent construction, to remove improvements, and otherwise to compel compliance, and by any other remedy allowed by law. Owner waives notice of noncompliance and agrees that all terms and conditions of this Declaration shall be construed liberally for the best interest and welfare of the Association and the subdivision. If the Committee should notify Owner in writing of the violation of any covenant, condition, or restriction and Owner fails to cure the violation within ten days after delivery of such notice, the Committee, or its' agent, shall be authorized to enter upon Owner's Lot to correct such violation at the expense and cost of Owner which shall become due and payable to the Committee on demand, shall bear interest at the rate of ten percent (10%) per annum from date of demand, and shall be secured by a lien against the Lot. Owner further shall become liable for the Committee's reasonable attorney's fee and court costs incurred in enforcement which shall likewise become payable to the Committee on demand, bear interest at the rate of ten percent (10%) per annum from date of demand, and be secured by a lien against the Lot. All remedies in this Declaration shall be cumulative. Failure of the Committee to enforce any covenant, condition, or restriction shall not be deemed a waiver of any prior, subsequent, or continuing violation of any such covenant, condition, or restriction, except for the time limitations provided for construction requirements in Section 6 of this Article. Enforcement of strict compliance with the covenants, conditions, and restrictions may also be pursued by the board of directors of the Association or by any Owner. An Owner who is successful in obtaining judicial relief for a violation shall be reimbursed by the Association for the cost and reasonable expense of obtaining such relief, to the extent the cost and expense are not recovered from the violator.

## ARTICLE V

### Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who has an ownership interest in the surface of any Lot, whether by Contract of Sale, deed, Contract for Deed, or otherwise, in the subdivision shall be a member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member. In the event of a sale, transfer or delivery of title in and to a Lot from any Owner to another Owner, whether such other Owner has already been an Owner or thereupon becomes an Owner, the membership shall thereupon pass with such sale, transfer or delivery to the new Owner.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A member shall be all those Owners as defined in Section 1 with the exception of the Developer. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than

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- one vote be cast with respect to any such Lot.
- Class B. The Developer is the Class B member. The Class B member shall be entitled to three votes for each Lot in which it holds the interest required for membership by Section 1 until such Lot is sold by deed or contract, provided that the Class B membership shall cease and become converted to Class A Membership on the happening of either of the following events, whichever first occurs:
- (a) When the total votes outstanding in the Class A membership equal or exceed one-third of the total votes outstanding in the Class B membership; or
  - (b) On January 1, 1999.

After the earlier of such events, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot in which it holds the interest required for membership under Section 1. The Developer shall give written notice to the members of such event. The notice shall refer to the members' right to elect the Association's board of directors at the annual meetings for members.

Section 3. Quorum for Meetings of the Members. The quorum for any meeting of the Members that is not specified elsewhere in this Declaration shall be as follows:

At the first such meeting, the presence at the meeting of Members, or of provides, entitled to cast one-fifth of all the votes of all Members, both Class A and B but not each, shall constitute a quorum. If the quorum required is not present at any such meeting, another meeting may be called, pursuant to the regular notice requirements of the Association under its' bylaws, and the quorum at the subsequent meeting shall be one-half of the quorum required at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty days after the preceding meeting.

## ARTICLE VI

### Property Rights in the Common Properties

Section 1. Owners' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Owner shall have, and is hereby granted, a permanent right and easement of enjoyment in and to the Common Properties for the purposes shown or reflected by the subdivision plat, and such easement shall be appurtenant to and shall pass with the title to every Lot. The owner of the legal title to any streets, roads, alleys, and utility easements may dedicate such Common Properties, or any part thereof, to the public at any time or from time to time.

Section 2. Title to Common Properties. The Developer temporarily retains the legal title to the Common Properties. The Developer covenants that it shall convey the legal title to the Common Properties to the Association on or before January 1, 1999. In the event Developer fails to convey the Common Properties to the Association by that date, the legal title to the

Common Properties shall automatically pass to the Association on that date.

Section 3. Extent of Owners' Easements. The Owners' rights and easements of enjoyment in the Common Properties shall be subject to the following:

- (a) The right of the Association, as may be provided in its' Articles of Incorporation or Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid;
- (b) The right of the Association to suspend the enjoyment rights of any Member for any period up to six months for any infraction of its' published rules and regulations or the requirements of this Declaration;
- (c) The right of the Association, through action of its' board of directors, to terminate all or any rights of a Member in any of the Common Properties upon the fourth violation of the Association's published rules and regulations or the requirements of this Declaration by such Member or a member of the Member's family or a guest of any of them;
- (d) The right of the Association to charge reasonable admission and other fees for the use of any Common Properties other than streets, roads, and alleys; and
- (e) The right of the Association, through a vote of at least two-thirds (2/3) of each class of its' Members, to dedicate or transfer all or any part of the Common Properties other than streets, roads, alleys, and utility easements to any public agency, authority, or utility for such purposes and subject to such conditions as is determined by such vote. Such dedication or transfer shall not be effective unless written notice of the proposed action is sent to every Member at least 90 days in advance of the proposed action and the instrument of dedication or transfer has been signed by the required number of voters and placed of record. No suspension imposed under this Section shall relieve a Member of any personal liability to the Association or affect the lien securing such liability against the Member's Lot or Lots.

Section 4. Boat Ramp. Developer has constructed a boat ramp on land owned by the Colorado River Municipal Water District near the subdivision. Developer hereby grants permanently to all Owners the right to use the boat ramp, subject to all of the rights and authority of the Colorado River Municipal Water District. Such right to use shall be appurtenant to and shall pass with the title to each Lot. For the purposes of this Declaration and all other matters related to the subdivision, the boat ramp and related facilities that are constructed by the Developer shall be deemed a part of the Common Properties, except that the right to its' use may be shared in an equitable manner with the owners of other property that the Developer may hereafter develop.

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## ARTICLE VII

### Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. Developer for each Lot owned by Developer hereby covenants and each Owner of any Lot by acceptance of a Contract for Deed, Contract of Sale, or Deed therefor, whether or not it shall be so expressed in any such Contract for Deed, Contract of Sale, Deed or other conveyance, is hereby deemed to covenant and agree to pay to the Association:

- (1) Initiation fees;
- (2) Annual assessments or charges for maintenance;
- (3) Special assessments for capital improvements; and
- (4) Special assessments, penalties, and fines to compel compliance.

All such assessments above described, whether annual special or otherwise, shall be fixed, established, and collected from time to time as provided in this Declaration. All such assessments, together with interest thereon and cost of collection thereof, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof, shall also be the personal obligation of the Owner of such property at the time when the assessment accrues.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners in the subdivision and, more particularly, for the improvements and maintenance of property, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and for the enforcement of strict compliance with all the covenants, conditions, and restrictions set forth in this Declaration including, but not limited to, the maintenance of all streets, roads and alleys, garbage disposal, a sewage system or other utilities, taxes, insurance, both liability and casualty, repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3. Annual Assessments. An annual assessment is payable for each Lot each calendar year. The amount of the annual assessment shall be the same for each Lot. The annual assessment for the year beginning January 1, 1995 is Twenty-Five Dollars (\$25.00) for each Lot. The annual assessment for any subsequent year shall be the same as it was for the prior year unless the board of directors of the Association votes, during the six month period prior to the beginning of the year, to increase or decrease the assessment for such year. In determining changes to the annual assessment, the board shall consider current maintenance costs and the future needs of the Association. However, no increase in the amount of the annual assessment approved by the board that is more than Twenty-Five Dollars (\$25.00) per Lot above the prior year shall take effect unless approved by at least two-thirds (2/3) of the votes of all Members, both Class A and Class B but not each, who are voting person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 of this Article, the Association may levy in any calendar year a special assessment, applicable to that year only, for the purpose of defraying, in whole

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or in part, the cost of any construction or reconstruction, unexpected repair or replacement of any capital improvement upon the Common Properties or for the general benefit of Owners, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of all Members, both Class A and B but not each, who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Quorum For Action of the Members Under Sections 3 and 4. The quorum required for any action of the Members under Sections 3 and 4 of this Article shall be as follows:

At the first meeting of the Members called under Section 3 or 4, the presence at the meeting of Members, or of proxies, entitled to cast two-thirds (2/3) of all the votes of all Members, both Class A and B but not each, shall constitute a quorum. If a quorum is not present at any such meeting, another meeting may be called, subject to a new notice satisfying the requirements of such Sections, and the quorum required at any such subsequent meeting shall be one-half of the quorum required at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Due Dates of Assessments. During the calendar year 1995, the annual assessment of a Lot become due and payable by the purchaser on the date of purchase, without proration, in connection with the initial purchase of a Lot from the Developer during the year. Thereafter, the annual assessment on each Lot shall become due and payable by the Owner of the Lot on January 1 of each calendar year.

The due date of any special assessment under Section 4 of this Article shall be fixed in the resolution authorizing such assessment.

In addition to regular and special assessments, Developer shall have the authority to assess an initiation fee of Ten Dollars (\$10.00) at the time of entering into a Contract for Deed or Contract of Sale, or of conveying by deed if not previously assessed, which shall be transferred to the account of the Association for the initial capital and operational needs of the Association.

Section 7. Duties of the Board of Directors. The board of directors of the Association shall fix the amount of the assessments against each Lot for each assessment period and the date of commencement for each special assessment at least thirty (30) days in advance of such period or date and shall, at such times, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment for each Lot shall thereupon be sent to the Owner of the Lot.

The Association shall upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Bona fide purchasers and mortgagees, without notice, may rely on the status of assessments reflected in any such certificate.

Section 8. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner; The Lien, Remedies of Association. If the assessment of any nature is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as is hereinafter provided, thereupon become

secured by a continuing lien on the Lot or Lots related to the delinquency. The personal obligation of an Owner to pay an assessment shall remain his personal obligation until paid but shall not become the personal obligation of a successor in title unless the successor expressly assumes the obligation.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property or both, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of court.

Section 9. Subordination of the Lien to Mortgages. The lien for the assessments provided for herein shall be subordinate to the lien of any prior mortgage or mortgages now and hereafter placed upon any Lot subject to assessment provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- (a) All property to the extent of any easement or other interest dedicated and accepted by a local public authority and devoted to public use;
- (b) All Common Properties; and
- (c) All property exempted from taxation by the laws of the State of Texas upon the terms, and to the extent of such legal exemption.

## ARTICLE VIII

### Adding Other Property

Section 1. Authority to Add Property. Developer shall have the authority to add other property out of the original Noelke Ranch to the Property covered by this Declaration.

Section 2. Application of Declaration and Transitional Provisions. This Declaration and the authority of the Association shall apply to any property that is added, and the owners thereof, in the same manner that they apply to the Property and the Owners. However, Developer may provide for temporary, transitional provisions that are different for the added property, and owners thereof, in order to reasonably and equitably phase in the added property.

Section 3. Platting and Recording Requirements. Any property that is to be added under this Article shall be platted and filed for record in Concho County, Texas. Lot(s) and any commercial designations or Common Properties shall be shown on the plat. Developer shall execute and file for record a supplementary declaration that provides for adding the property and that describes any temporary, transitional provisions that apply during any phase in period.

MARGARET T. TAYLOR  
County & District Clerk

FIELD NOTES

353.804 Ac.

94-A-795  
September 15, 1994

Being an area of 353.804 acres of land out of John Minor Survey No. 48, Abstract No. 660, John Minor Survey No. 46, Abstract No. 658, Johann Weber Survey No. 1842, Abstract No. 977, Johann Weber Survey No. 1841 Abstract No. 976, Concho County, Texas and said 353.804 acre tract also being out of the southeast part of a certain 965.148 acre tract and said 353.804 acre tract being more particularly described by metes and bounds as follows;

Beginning at the southeast corner of this tract and said 965.148 acre tract and being the intersection corner of this north right-of-way line of F. M. Highway 1929 and the contour elevation of 1555.00 feet above mean sea level and being the limits of that certain tract to Colorado River Municipal Water District as described by deed recorded in Volume 143 at page 336 of the Deed Records of said Concho County;

Thence with the south or southwest line of this tract and said 965.148 acre tract and the north or northeast line of said F. M. Highway 1929 as follows, N. 89° 44' 25" W. 378.78 feet to a found concrete right-of-way marker, N. 89° 37' 18" W. 916.11 feet to a concrete right-of-way marker found for the beginning of a curve to the right;

Thence with said curve to the right, having a radius of 1849.86 feet, central angle of 38° 23' 09", arc length of 1239.33 feet and whose long chord bears N. 70° 25' 05" W. 1216.28 feet to a concrete right-of-way marker found for the end of this curve;

Thence continuing with said F. M. Highway 1929 right-of-way, N. 51° 13' 34" W. 7377.81 feet to a  $\frac{1}{2}$ " iron pipe set for the southwest corner of this tract;

Thence with the west or northwest line of this tract N. 38° 46' 06" E. 2038.40 feet to a  $\frac{1}{2}$ " iron pipe set for the northwest corner of this tract;

Thence with the north line of this tract, S. 81° 02' 53" E. 844.21 feet to a  $\frac{1}{2}$ " iron pipe set for angle corner of this tract and being on the said contour elevation of 1555.00;

Thence with said contour elevation of 1555.00 and its meanders as follows; S. 55° 34' 48" E. 198.64 feet, S. 74° 23' 14" E. 161.66 feet, N. 88° 51' 04" E. 418.88 feet, S. 69° 20' 18" E. 717.10 feet, S. 19° 51' 17" E. 509.16 feet, S. 36° 29' 06" E. 477.77 feet, S. 15° 17' 10" W. 390.08 feet, S. 65° 20' 43" W. 715.04 feet, S. 21° 09' 02" W. 41.22 feet, S. 04° 58' 34" W. 178.73 feet, N. 77° 57' 10" E. 144.14 feet, S. 79° 56' 00" E. 366.98 feet, S. 56° 30' 16" E. 559.68 feet, S. 17° 39' 46" W. 293.99 feet, S. 62° 27' 48" W. 172.77 feet, S. 78° 31' 45" W. 506.73 feet, S. 70° 31' 51" W.

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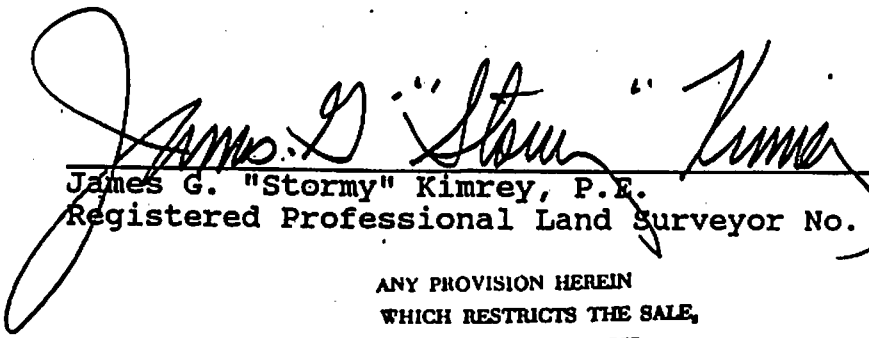
378.14 feet, S. 80° 51' 41" E. 343.18 feet, S. 74° 04' 40" E.  
434.55 feet, S. 14° 00' 00" E. 373.74 feet, S. 00° 20' 48" W.  
304.15 feet, N. 45° 42' 22" E. 303.08 feet, N. 65° 42' 58" E.  
902.43 feet, N. 89° 01' 59" E. 665.80 feet, S. 15° 52' 24" E.  
315.64 feet, S. 16° 28' 41" W. 192.68 feet to a  $\frac{1}{2}$ " iron rod found  
for the northeast corner of a "Pump Station Tract" to Colorado  
River Municipal Water District as described by deed recorded in  
Volume 143 at page 336 of the Deed Records of said Concho County;

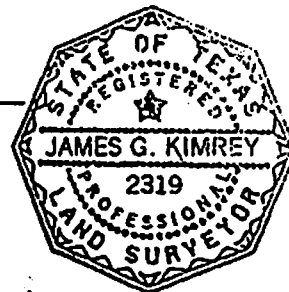
Thence with the north line of said "Pump Station Tract", N. 75° 22'  
49" W. 349.79 feet to a  $\frac{1}{2}$ " iron rod found for the northwest corner  
of said "Pump Station Tract";

Thence with the west line of said "Pump Station Tract" S. 14° 37'  
19" W. 600.09 feet to a  $\frac{1}{2}$ " iron rod found for the southwest corner  
of said "Pump Station Tract";

Thence with the south line of said "Pump Station Tract" S. 75° 23'  
10" E. 371.11 feet to a  $\frac{1}{2}$ " iron rod found for the southeast corner  
of said "Pump Station Tract" and being in the contour elevation of  
1555.00;

Thence continuing with contour elevation of 1555.00 as follows, S.  
16° 02' 28" W. 730.41 feet, S. 09° 40' 38" E. 201.26 feet, N. 49°  
51' 17" E. 157.76 feet, N. 64° 04' 54" E. 758.71 feet, N. 81° 48'  
00" E. 594.65 feet, N. 59° 04' 39" E. 120.31 feet, S. 28° 34' 16"  
E. 329.54 feet, S. 22° 02' 18" W. 443.80 feet, S. 33° 20' 40" W.  
326.58 feet, S. 11° 50' 29" E. 300.74 feet, S. 80° 25' 47" E,  
411.20 feet, S. 70° 50' 38" E. 166.99 feet, S. 89° 18' 20" E.  
204.06 feet, N. 35° 32' 18" E. 149.63 feet, S. 44° 20' 51" E.  
239.05 feet, N. 82° 37' 29" E. 317.35 feet, N. 25° 15' 15" E.  
289.53 feet, N. 45° 39' 51" E. 73.78 feet, S. 38° 05' 13" E. 142.80  
feet, S. 11° 57' 07" E. 176.04 feet, S. 03° 10' 36" E. 549.99 feet  
to the place of beginning an containing an area of 353.804 acres of  
land.

  
James G. "Stormy" Kimrey, P.E.  
Registered Professional Land Surveyor No. 2319



ANY PROVISION HEREIN  
WHICH RESTRICTS THE SALE,  
RENTAL OR USE OF THE  
DESCRIBED REAL PROPERTY  
BECAUSE OF COLOR OR RACE IS  
INVALID AND UNENFORCEABLE  
UNDER FEDERAL LAW.

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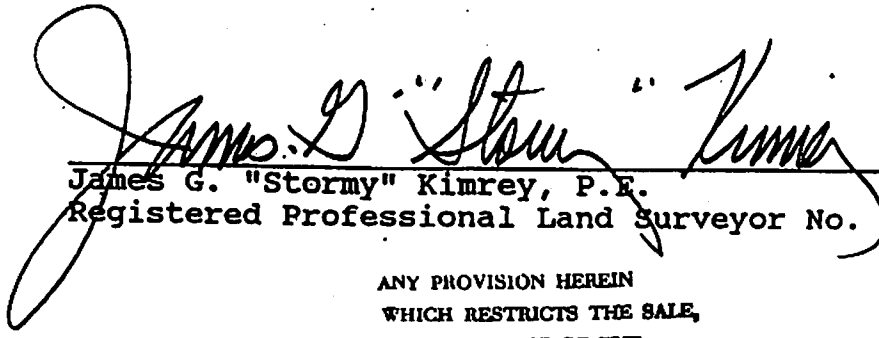
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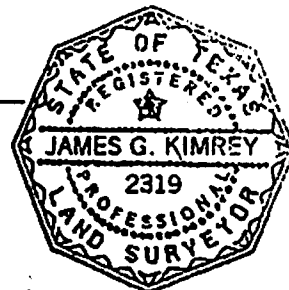
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Thence with the west line of said "Pump Station Tract" S. 14° 37'  
19" W. 600.09 feet to a  $\frac{1}{2}$ " iron rod found for the southwest corner  
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Thence with the south line of said "Pump Station Tract" S. 75° 23'  
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Thence continuing with contour elevation of 1555.00 as follows, S.  
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MARGARET T. TAYLOR  
County & District Clerk

## ARTICLE IV

### General Provisions

Section 1. Lien on Common Properties. The board of directors of the Association may, at its' discretion, deliver a valid lien on the Common Properties for the purpose of securing construction or improvement loans, provided that, in the opinion of the board, such loan may be retired in a reasonable period of time from the general and special assessments of the Association on its' Members.

Section 2. Notices. All notices required herein shall be deemed effective if delivered personally or if sent by United States Mail with adequate postage paid addressed to the sendee at his last known address.

Section 3. Severability. Invalidation of any one or more of the covenants, conditions, restrictions, or other provisions of this Declaration by judgment of a court of competent jurisdiction shall not affect any other covenant, condition, restriction, or provision, which shall remain in full force and effect.

Dated this 19<sup>th</sup> day of September 1964.

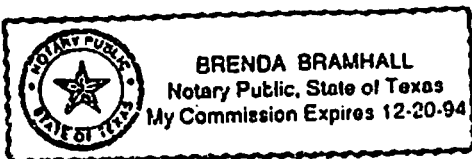
DEVELOPER  
GATTLING SPRINGS DEVELOPMENT CO., INC.

William S. Noelke  
BY: WILLIAM S. NOELKE  
ITS: PRESIDENT

STATE OF TEXAS                   §  
COUNTY OF TOM GREEN       §

This instrument was acknowledged before me this 19<sup>th</sup> day of September, 1964, by WILLIAM S. NOELKE, PRESIDENT of GATTLING SPRINGS DEVELOPMENT CO., INC. on behalf of said Company.

Brenda Bramhall  
Notary Public, State of Texas



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