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2004-R0022298

**DECLARATION OF
COVENANTS, CONDITIONS, ASSESSMENTS, CHARGES, LIENS,
RESERVATIONS AND EASEMENTS
THE RESERVE**

This Declaration of Covenants, Conditions, Assessments, Charges, Liens, Reservations and Easements (the "Declaration") is made this 7 day of May, 2004 by NEPTUNE PROPERTIES LTD. (herein called "Declarant").

Declarant owns those certain 263.29579 acres out of the Matthew Colwell Survey, A-186 and the Jacob Herrin Survey, A-442, in Smith County, Texas.

Declarant desires to subject the Property to the covenants, conditions, assessments, charges, liens, reservations and easements, hereinafter set forth (the "Covenants") to implement a general plan of development and accomplish the development of such lands as a residential development of high quality which interfaces with the natural beauty of the east Texas landscape.

Declarant therefore declares that the Property shall be held, sold and conveyed subject to the following:

ARTICLE I

Definitions

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

- A. "Assessment" shall mean the charge levied and assessed from time to time by the Association against each Lot or any portion or subdivision of the Property.
- B. "Design Review Committee" shall mean a committee, appointed or established by the Association for the purpose of exercising architectural control, all as set forth in the Article XIII below.
- C. "Assessable Property" shall mean each of the Lots, except such Lots as may from time to time constitute Exempt Property.
- D. "Assessment Lien" shall mean the lien created and imposed by Article VII hereof.
- E. "Association" shall refer to THE RESERVE HOMEOWNERS ASSOCIATION, a Texas non-profit corporation.
- F. "Covenants" shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations and easements set forth herein.
- G. "Declarant" shall mean NEPTUNE PROPERTIES, LTD, and any successor or assign of Declarant's obligations rights and powers hereunder. No successor or assign shall be deemed to be a "Declarant" unless such successor or assign is designated as such pursuant to a written instrument signed by Declarant and filed of record in the Real Property Records of Smith County, Texas, designating that part of the Property to which it relates. Any such successor or assign shall only have those rights and powers of Declarant which are specifically assigned to such successor or assign pursuant to such written instrument.

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H. "Declarant Land" shall mean such parts of the Property, including but not limited to the easements, Reserved Areas, roadways, and 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 so long as the Declarant is the Owner thereof.

I. "Declaration" shall mean this Declaration of Covenants, Conditions, Assessments, Charges, Liens, Reservations and Easements as may be amended or supplemented from time to time.

J. "Deed" shall mean a deed or other instrument conveying a freehold estate or a fee estate to all or any portion of the Property.

K. "Design Guidelines" shall refer to a certain document prepared by the Design Review Committee establishing the method of submission of matters for approval (prior to commencement of construction) to the Design Review Committee and guidelines for design, location, materials, and other relevant matters. The Design Review Committee shall have the authority to add, delete or change such Design Guideline from time to time at its discretion.

L. "Dwelling Unit" shall mean any portion of a building situated on a Lot designed and intended for use and occupancy as a residence.

M. "Exempt Property" shall mean the following parts of the Property: (i) all land and Permanent Improvements owned by or dedicated to and accepted by the United States, the State of Texas, the County of Smith, (ii) pipeline easements and other easements shown on the subdivision Plat (but not the portion of a Lot encumbered by an easement), and (iii) all of the Declarant Land as described above.

N. "Lot" shall mean any numbered lot shown on the Plat.

O. "Maintenance Charge" shall mean any and all costs assessed pursuant to Section 5.01 hereof.

P. "Owner" shall mean the person or persons, entity or entities who either owns a recorded freehold estate or a fee estate to a Lot, or a successor or assignee thereof, or has entered into a Contract for a Deed with Declarant to purchase a Lot. "Owner" shall exclude any person or persons, entity or entities, having an interest in a Lot merely as security for the performance of an obligation. For the purposes hereof, the term "Contract for Deed" shall be a contract pursuant to which a person or entity is acquiring a Lot on an installment basis whereby Declarant does not transfer the freehold estate or fee estate to the Lot until such purchaser has satisfied all of the terms and conditions of such contract.

Q. "Permanent Improvements" shall mean with respect to any Lot or portion or parcel of the Property, any and all improvements, structures, boathouses and other materials and things placed, installed or constructed on a Lot, including, but without limitation, trees, shrubs, flowers, hedges and fences.

R. "Plat" shall mean the plot or plats describing the residential subdivisions and roads located in Smith County, Texas, and known as THE RESERVE, in one or more sections or phases, recorded or to be recorded in the Plat Records of Smith County, Texas, as same may be amended or supplemented from time to time.

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S. "Property" shall mean the 263.29679 acres as described in attached Exhibit "A" and such additional land as Declarant may, in its sole discretion, annex to the Property by recorded instrument from time to time, expressly indicating Declarant's intention to annex said land to the Property and to subject such land to the terms and provisions of this Declaration.

T. "Reserved Areas" shall mean those areas of the Property, including without limitation, all easements, (including landscaping easements) which are designated as Reserves, Parks, Open Spaces or Common Areas on the Plat or reserved herein to Declarant and its successors and assigns or to the Association.

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 Covenant shall be binding upon and inure to the benefit of each Owner and the Owner's heirs, executors, administrators, personal representatives, successors and assigns, whether or not so provided or mentioned in the Deed, except with respect to the Exempt Property, and each Owner, for itself, its heirs, executors, administrators, personal representatives, successors and assigns, expressly agree to pay and become personally liable for the Assessments provided for hereunder and to 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 the Owner has transferred title to the Lot(s) for the amount of assessments, together with interest, costs and attorneys fees as provided herein which became due prior the transfer of title. No Owner shall escape personal liability for Assessments by nonuse of the Reserved Areas, or by transfer or abandonment of a parcel or Lot.

ARTICLE III

General Restrictions

3.01 Single Family Residential Purposes. All Lots in the Property shall be used only for single family residential purposes. Family shall mean related by blood, marriage or adoption, or not more than two persons who are not so related. No obnoxious or offensive activity of any sort shall be permitted, nor shall any thing be done on any Lot, which may be or become an annoyance or nuisance to the neighborhood. No Lot shall be used for any commercial, business or professional purposes. The renting or leasing of any improvements thereon or a portion thereof without the prior written consent of the Association is prohibited.

3.02 Type of Structures. No building shall be erected, altered or permitted to remain on any Lot other than one (1) detached single family residential dwelling not to exceed three (3) stories in height, or a maximum height of thirty-six feet (36') according to the Design Guidelines. Each such Dwelling Unit shall have a minimum of a two (2) car side or rear entry garage enclosure with automatic door closures. A single family residential dwelling garage may be detached from the main residential structure but shall be fully enclosed, covered and maintain the architectural integrity of the single family residence located on the same Lot, unless otherwise approved by Design Review Committee. Under no circumstances will outbuildings (storage buildings) or other structures be allowed to be moved onto or built upon the Lot without prior written consent of the Design Review Committee. All garage entrances shall be covered with industry standard garage doors, except where other doors are approved by the Design Review Committee.

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3.03 Minimum Square Footage. The living area of such residence (exclusive of porches, patios, garage, terraces or driveways) on each forested lot shall not be less than 1,800 sq ft (HVAC) for a single story residence, or 2,200 sq ft (HVAC) for a two (2) story residence. Lots on the private lakes in The Reserve shall not be less than 2,400 sq ft (HVAC) for a single story residence or 2,800 sq ft (HVAC) for a two (2) story residence. On all two (2) story residences, the first floor must have a minimum of 60% of all HVAC sq footage up to a maximum of 75% of all HVAC sq footage.

3.04 Setbacks. No permanent improvement, or any part thereof, including roof overhang (but excluding walls, fences, planters, hedges or other screening material), shall be nearer than twenty-five (25) feet to any side street line or rear property line, nor nearer than twenty (20) feet to any adjacent property line. All lakefront lots will have a minimum setback of fifty (50) feet from the water. Front line setbacks will vary from fifty to seventy-five (50-75) feet according to the Plat. All setbacks are subject to Design Review Committee approval. In the event setback lines established on the Plat are more restrictive than the foregoing, such setback lines established on the Plat shall control.

If an Owner owns two (2) or more adjacent Lots, setback lines between the adjacent Lots may be waived by the Design Review Committee so long as the Owner records a covenant acceptable to the Committee and binding on Owner and its successors and assigns, providing that only one residence may be built on the Lots then under common ownership.

3.05 Walls, Fences, Hedges and Other Screening Material. No wall, fence, planter, hedge or other screening material shall be placed, installed or constructed on the Property without the approval of the Design Review Committee (prior to the commencement of construction).

3.06 Driveways. All driveways shall be entirely of concrete, asphaltic paving or a paving material approved by the Design Review Committee and shall be paved before any Dwelling Unit may be occupied. No driveway or other roadway may be constructed on any Lot in such a manner as to furnish access to any adjoining Lots or other property without the prior written consent of the Design Review Committee. All driveways shall be constructed in such a manner that all run-off will not cause erosion problems to adjacent Lots or create dusting upon entry and exit.

3.07 Walks. Walks shall be constructed that are parallel with curb lines at such locations, and under such specifications as set forth in the Design Guideline prescribed by the Design Review Committee. Walks from the street curb to the Dwelling Unit shall be constructed at such locations and under such specifications as set forth in the Design Guideline prescribed by the Design Review Committee. All walks on Lots or on street right-of-way easements contiguous to Lots shall be maintained by Owner and will be constructed with materials that are compatible with the Property.

3.08 Construction Materials. All materials used in the construction of the exterior of any Dwelling Unit or other structure shall be as prescribed in the Design Guidelines and must be approved by the Design Review Committee. Solar collectors and panels must be incorporated into the design of the Dwelling Unit and will not be allowed to be visible from the street, and must receive specific approval from the Design Review Committee prior to the commencement of construction. Only new construction materials shall be used (except for used brick, if and as approved by the Design Review Committee on a case by case basis). In no event shall any used or new building be moved onto any Lot. Any construction building, or temporary building used for the sole purpose of facilitating the construction of a new home must be approved by the Design Review Committee as to location on the site and the Owner must agree that the structure (temporary structure) will be removed prior to occupancy of the completed home or removed within twelve (12) months of commencement of construction of the new home.

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3.09 Prosecution of Construction. Any Dwelling Unit or other structure commenced upon any Lot shall be completed as to its exterior and all temporary structures removed with reasonable diligence, and in all events within twelve (12) months from the commencement of construction, unless completion is prevented by war, labor strike or by an act of God.

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 Dwelling Unit.

3.11 Utilities. Each and every Dwelling Unit shall be required to be connected to THE RESERVE water distribution system furnished to the subdivision. Individual underground electrical, phone, cable and gas services must be installed to service 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 the applicable utility company rules, regulations and terms and conditions of service, as same may be amended from time to time without notice. Each Lot shall be impressed with a 10 foot utility easement for the installation of a water meter and for the installation of other utilities.

3.12 Cutting of Trees. Each home shall be required to submit a detailed site plan which includes (1) a tree survey of any trees exceeding six (6") inches in diameter at three (3') feet above natural ground elevation, (2) a layout (site plan) of the house, driveways and walkways, and (3) a preliminary layout of landscaped areas. Cutting of trees in excess of six (6") inches is not allowed without the written approval of the Design Review Committee.

3.13 Sprinkler Systems. All homes will be required to install and maintain a sprinkler system which will be used on a regular basis for the maintenance of and perpetuation of the vegetation associated with each Lot. The system shall include a rain sensor device to interrupt irrigation during rain, and be designed and operated to minimize water waste.

3.14 Gas Appliances. All homes are required to have as a minimum four (4) appliances that use either propane or natural gas. These appliances include, but are not limited to, Outdoor Grills, Fireplaces, Furnaces, Water Heaters, Stoves, Dryers, and Air Conditioning units.

All dwellings will be allowed an unrestricted number of natural gas burning/solid fuel fireplaces or appliances. LP gas tanks must be certified to be buried and not exposed above ground. The proposed tank must be approved by the DRC and submitted with construction plans.

ARTICLE IV

The Reserve Homeowners Association

4.01 Association. The Reserve Homeowners Association (the "Association") shall be established to enforce and administer these Covenants, maintain the private roadways and other amenities (including but not limited to facilities at the Lodge at The Reserve at Lake Tyler), and to preserve and enhance the value of the Property and the quality of life for the mutual benefit of all Owners. All of the business and affairs of the Association shall be conducted by the Board of Directors of the Association. Until such time as Declarant has sold eighty-five percent (85% of all Lots in the Property (including any land annexed to the Property as provided for in Article I, Paragraph S above, all members of the Board of Directors shall be appointed by Declarant. All Owners shall be obligated to pay Assessments to the Association annually on such dates and in amounts as are established by its Board of Directors from time to time to fund the activities of the Association.

ARTICLE V**Maintenance**

5.01 Owner's Failure to Maintain. In the event any portion of the Assessable Property or any Dwelling Unit thereon, is in the judgment of the Association so maintained by the Owner thereof (i) as to present a public or private nuisance, (ii) as to substantially detract 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) in such a manner as to constitute a breach of the Covenants, the Association, in any such instances, 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 Association will cause such action to be taken at such Owners cost. If after the expiration of said ten (10) day period of time the requisite corrective action has not been taken, the Association shall be authorized and empowered to cause such action to be taken and the cost thereof, including but not limited to the cost of collection, court costs and attorneys fees (such costs being herein collectively called the "Maintenance Charge"), together with the interest accruing thereon from the expiration of such ten (10) day period, at the rate of Ten (10%) percent per annum shall be assessed against the Lot and the Dwelling Unit of the offending Owner. The Maintenance Charge, together with all interest accruing thereon, shall be referred to as an Assessment on such Lot, secured by the Assessment Lien provided in Article VII herein and enforced as provided in Article VIII herein and other provisions 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.

5.02 Actions of Declarant. Declarant, at Declarant's discretion, may beautify, improve, construct, maintain and install Permanent Improvements in, upon and under the Reserved Areas, and in addition thereto, the Declarant may perform such other construction, alteration, maintenance, provisions and operations as provided in Article IX hereof.

ARTICLE VI**Assessments**

6.01 Association's Right to Levy Assessments. In order to provide funds for the purposes and uses specified in Section 5.02 hereof, the Association shall have the right to levy Assessments against the Assessable Property to be prorated among said Assessable Property on a per Lot basis. The Association shall also have the right and authority to increase or decrease said Assessment as the Association may deem necessary from time to time and payable at such times and places as the Association may in its sole discretion determine.

ARTICLE VII**Imposition of Lien; Exemptions; Owner's 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 Assessments levied and assessed against each such Lot for the purposes set forth in Article V hereof, for any interest accrued on any Assessments and for any and all costs, including court costs and attorney's fees incurred by the Association in collecting same.

7.02 Subordination to the First Mortgage or Deed of Trust. The lien provided for herein (the "Assessment Lien") shall be subordinate to any first mortgage or deed of trust held by an institutional lender which is chartered or licensed by the United States or any State within the United States. The Assessment Lien shall be superior to any and all other charges, liens, or encumbrances, which hereafter in any manner

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may arise or be imposed on each such Lot except liens for taxes and other public charges which by applicable law are expressly made superior. The sale or transfer of any Lot shall not affect the Assessment Lien. Upon a sale or transfer pursuant to foreclosure of such mortgage or deed of trust, the purchaser at the mortgage-foreclosure or deed of trust sale shall acquire the Property subject to the Assessment Lien which shall immediately become and remain superior to any and all other charges, liens and encumbrances except as provided above. At such mortgage or deed of trust foreclosure sale, purchases or Grantee shall (i) take subject to all Assessments and other Assessment Liens accruing subsequent to the date of the issuance of a sheriff's or trustee's deed; and (ii) be and remain personally liable for all Assessments, together with interest, costs and attorney's fees as provided herein which may fall due subsequent to the foreclosure.

7.03 Owner's Promises. Each Owner, for itself, its heirs, executors, administrators, personal representatives, successors and assigns, covenants and agrees: (i) to pay to THE RESERVE HOMEOWNERS ASSOCIATION when due the Assessments levied against each Lot owned; (ii) that title to each Lot is subject to the Assessment and the Assessment Lien, as same may exist from time to time; and (iii) that by accepting a Deed to any Lot, Owner shall be and shall remain, personally liable for any and all Assessments assessed against the Lot while owned, 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 Assessment Charges and Assessment Lien

8.01 The Association as Enforcing Body. The Association shall have the exclusive right to enforce the provisions of this Declaration.

8.02 The Association's Enforcement Remedies. If an Owner fails to pay any of the Assessments when due, or pay any interest accrued or costs (including Court costs and attorneys fees) incurred by The Association in collecting same, The Association may enforce the payment of the Assessments and all interest accrued thereon and costs incurred by The Association in collecting same, and/or enforcing 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 Association does not prejudice its exercise of any other remedy) (i) bring an action at law and recover judgment against the Owner personally obligated to pay the Assessments; (ii) enforce the Assessment Lien against the Lot by any means available at law or in equity including, without limitation, a nonjudicial foreclosure sale of the Lot, such sale to be conducted in the manner as set forth in the Property Code of the State of Texas as the same may be amended or supplemented from time to time. Declarant, the Association or any Owner may be the Purchaser at any such foreclosure sale.

8.03 Costs to be Borne by Owner in Connection With Enforcement. In an action taken pursuant to this Article, Owner shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of the Assessment together with interest and The Association's costs and attorney's fees.

ARTICLE IX**Use of Funds**

9.01 Purposes for Which Funds May be Used. The Association shall apply all funds collected and received from Assessments for the benefit of the Property (including the Reserved Areas), by devoting said funds among other things to the purposes set forth in Article V, Section 5.02 hereof, and for the formation and maintenance of the construction, alteration, maintenance, provision and operation by any manner or method whatsoever, of any and all land, amenities, properties, improvements, facilities, services, projects, programs, studies, landscaping, recreation, utilities, roadways, and safety. The Association may also establish such reserves as the Association may deem necessary to provide for future expenditures which may be needed to be made pursuant to this section. The Association may also expend Assessment funds for any purposes for which any municipality may expend its funds under the law of the State of Texas or such municipality's charter, including by way of illustration, all purposes (enumerated or implied) for which the Smith County, Texas, may expend its funds pursuant to law.

ARTICLE X**Rights and Powers**

10.01 Enforcement. The Association shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitude, 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 instrument recorded subsequent to the recordation of this Declaration shall at all times be subordinate and inferior to this Declaration whether or not provided in such instrument.

10.02 Right to Inspect. The Association shall have the right to enter all Lots for the purposes of inspecting whether or not the Owner thereof is in compliance with the Covenants. If, during the course of construction of a Dwelling Unit upon a Lot, Association determines that there is a violation of the Covenant, the Association may order a discontinuance of construction of the Dwelling Unit until such time as corrective measures have been taken to assure full compliance with the Covenants. If an Owner fails to immediately discontinue such construction, such failure shall constitute a violation of this Declaration by the Owner.

ARTICLE XI**Easements and Rights of Enjoinment in
Reserved Areas, Reservation of Declarant**

The following reservations are hereby made by Declarant:

11.01. Utility Easements. The utility easements shown on the 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. All Lots and roadways are hereby impressed with utility easements as necessary for installation and maintenance on behalf of utility companies.

11.02. Declarant Right to Change. 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 the foregoing section for the

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purposes of more efficiently installing utilities therein and thereon.

11.03. Title to Utility Lines and Equipment. The title conveyed to any part of the Property shall not be held or construed to include title to the water, gas, electricity, telephone, storm sewer or sanitary sewer lines, pipes, conduits, cable television lines or other appurtenance or utilities 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 locate such systems, utilities, appurtenances and facilities is reserved to Declarant, its successors and assigns.

11.04. Declarant Right to Sell or Lease. The right to sell or lease the lines, utilities, appurtenances and other facilities described in this Article to any municipality, governmental agency, public service corporation or other party is hereby expressly reserved to Declarant.

11.05. No Liability for Damage in Utility Easements. Neither Declarant nor its successors or assigns shall be liable for any damage done by any of the parties or any of their agents or employees to shrubbery, trees, flowers or other property of an Owner situated on the portion of the Lots covered by the above described utility easements.

11.06. Right to Enter and Use Easement Areas. The right to enter upon any Lot or Lots during the installation of streets, drainage and utilities for the purpose of performing excavation, construction and paving within the area of any utility easement is hereby reserved to Declarant, its successors and assigns, and neither Declarant, nor its successors or assigns shall be liable for any damage done to shrubbery, trees, flowers or other property of the Owner which is necessitated by such construction.

ARTICLE XII

Further Conveyances of and Modifications to Declarant Land

12.01 Declarant Rights Regarding Declarant Land. Declarant shall have the absolute, exclusive and unrestricted right, exercisable in its sole discretion, without consent from any other, 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 and any rights of Declarant under this Declaration, or otherwise deal with the Declarant Land or any part thereof, including the Reserved Areas and roadways, upon 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 easements reserved herein.

ARTICLE XIII

Architectural Control

13.01 Prior Approval. No building, fence, wall, sign, exterior light or other structural apparatus, either permanent or temporary shall be commenced, erected, placed or maintained upon any Lot, nor shall any exterior addition thereto, change therein or alteration, excavation, subdivision or resubdivision thereof, including, without limitation, changes in the alteration of grade, landscaping, 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 by The Design Review Committee. Such plans and specifications shall satisfy the format prescribed by the Design Review Committee and a fee shall be charged for such review.

13.02 Timely Review. In the event the Design Review Committee fails to approve or disapprove

the plans and specifications within thirty (30) days after a complete set or any required plans and specifications have been submitted, together with the applicable fee, approval will not be required and this Article will be deemed to have been fully complied with.

13.03 Non Waiver. Non-exercise of the powers herein reserved by the Design Review Committee 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 different plans and specifications.

13.04 Release of Liability. In the absence of gross negligence or willful misconduct attributable to the Design Review Committee, neither Declarant, the Association nor the Design Review Committee shall be liable for the improper enforcement or failure to exercise any of the powers reserved unto the Association or the Architectural Review Committee pursuant to this Article.

13.05 Not Responsible for Safety. In no event shall any approval obtained from the Design Review 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 items 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.

ARTICLE XIV

Use Restrictions

Except with respect to Exempt Property, including the Declarant Land, all Lots are hereby restricted as follows:

14.01 Antennas. No exterior television, radio or other antennae of any type shall be placed, allowed or maintained upon any Lot without the prior written approval and authorization of the Design Review Committee except small dishes less than 24" in size.

14.02 On Street Parking. On street parking is restricted to approved delivery, pick up or short time guests and invitees and shall be subject to such reasonable rules and regulations as shall be adopted by the Design Review Committee.

14.03 Storage. No exterior storage shall be permitted, except with prior written approval and authorization of the Design Review Committee. Any such storage as is approved and authorized shall be in areas attractively screened or concealed (subject to all required approvals by the Design Review Committee) from view from neighboring properties, Dwelling Units and streets. This provision shall apply without limitation to wood piles, camping trailers, boat trailers, travel trailers, boats, mobile homes and unmounted pickup camper units. No automobile, truck or other vehicle, regardless of type, ownership, age, condition or appearance, shall remain on any Lot outside of an enclosed garage or approved storage building if such vehicle could be construed as being stored, neglected, abandoned or otherwise not in frequent use except pursuant to written approval and authorization of the Design Review Committee. All of these exceptions under this clause shall be subject to all required setback provisions in Article III, 3.04.

14.04 Garbage. No garbage or trash shall be placed outside of an enclosed building, except in sixty (60) to eighty (80) gallon containers meeting the specifications of the Design Review Committee. The placement, maintenance and appearance of all such containers shall be subject to reasonable rules and

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regulations of the Design Review Committee. All rubbish, trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. The Reserve Homeowners Association may elect to contract with a common garbage firm for the benefit of the Members of the Association. If a common collection agreement is approved by a majority vote of members present at a meeting, all Owners will be obligated to contract with the approved firm.

14.05. Outside Lighting. No outside lighting shall be placed, allowed or maintained on any Lot without the prior written approval and authorization of the Design Review Committee.

14.06. Animals. No animals, reptiles, fish or birds of any kind shall be raised, bred or kept on any Lot, except pursuant to prior written approval of and in accordance with rules and regulations promulgated by the Association, provided, however, that dogs, cats, birds or fish, may be kept thereon as household pets so long as such pet is not or does not become a nuisance, threat or otherwise objectionable to other Owners.

14.07. Resubdivision. No Lot shall be further subdivided, and no portion less than all of such Lot or any easement or other interest therein shall be conveyed by any Owner without the prior written authorization of the Association and the Declarant.

14.08. Diseases and Insects. No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor plant disease or noxious insects.

14.09. 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 outside of an enclosed structure on any Lot except with prior written approval and authorization of the Association or Declarant. Approval will be granted only for placement in areas attractively screened or concealed from view of neighboring property, Dwelling units and streets.

14.10. Utility and Service Lines. No gas, electric, power, telephone, water, sewer, cable television or other utility or surface lines of any nature or kind, shall be placed, allowed or maintained upon or above the ground on any Lot, 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 surface pedestals and other ground switch cabinets and transformers where required.

14.11. Burning and Incinerators. No open fire shall be permitted on any Lot at any time, except for the burning of trees and brush by the contractor in clearing the site. This will be allowed if no burn ban is in effect. Construction scraps must be burned in a metal container. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

14.12. Signs and Mailboxes. No exterior signs or advertisements of any kind may be placed, allowed or maintained on any Lot, except that residential name plates and signs designating the contractor of the Dwelling Unit upon such Lot 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 Design Review Committee. All mailboxes shall satisfy such specifications and location as may be prescribed by the design guideline as established by the Design Review Committee.

14.13. Repairs. No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles shall be made upon any portion of any Lot within the view of neighboring property, Dwelling Units and streets.

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14.14 Oil, Gas and Mineral Activity. No oil or gas exploration, drilling, development or refining operations, and no quarrying or mining operation of any kind, including oil wells, surface tanks, tunnels or mineral excavations or shafts shall be permitted or pursued upon or under any Lot, and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

14.15 Septic Tanks and Sewage Disposal. No outside toilets of any kind are permitted except during the period of construction of a Dwelling Unit during which time chemically treated outside toilets may be maintained in a manner subject to Declarant's approval. No installation of any type of device for disposal of sewage shall be allowed which would result in raw or unsanitary sewage being carried into any body of water or water source.

14.16 Water Wells. At no time shall the drilling, usage or operation of any water well be permitted on any Lot without authorization of Declarant.

14.17 Firearms and Weapons. No Lot or any other portion of the Property shall be used or permitted 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.

14.18 Motor Vehicles. The operation of any and all motorized vehicles within the Property shall be subject to such rules and regulations as shall from time to time be established by the Association.

14.19 Change in Intended Use. No portion of the Property shall be developed or redeveloped otherwise than in accordance with its original intended use, without the prior written authorization of the Association.

14.20 Misuse and Mismanagement. No Lot 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 constitute a nuisance or unreasonable annoyance or to endanger the health of other Owners or residents of the Property, and no obnoxious or otherwise offensive condition or activity shall be allowed to exist or be conducted thereon.

14.21 Violation of Statutes, Ordinances and Regulations. No Lot 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.

14.22 Violation of Covenants, Conditions or Restrictions. No Lot shall be maintained or utilized in violation of this Declaration or of the rules and regulations of the Association of the Design Review Committee, or of any Covenants, Conditions or Restrictions applicable to and binding upon said Lots.

14.23 Governmental Requirements. All governmental requirements for the prosecution of construction of any structures will be the sole responsibility of the Owner of the Lot in question.

14.24 Gas Operated Recreational Vehicles. All unlicensed, gas operated recreational vehicles such as 4 wheelers, 3 wheelers, motorcycles, etc. are strictly prohibited from the roads and right-of-ways in The Reserve, as well as anywhere in the greenbelt area.

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ARTICLE XV

Term; Amendments; Termination

15.01 Term; Method of Termination. This Declaration shall be effective upon the date of the recordation hereof and as amended from time to time and shall continue in full force and effect to and including 5-7-2024. 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 the then Owners casting seventy-five (75%) percent of the total votes (each Owner having one vote per Lot owned), present at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period thereof or any ten (10) year extension.

15.02 Amendments. This Declaration may be amended or changed in whole or in part at any time by (i) the affirmative vote of fifty-one (51%) percent of the votes cast by Owners at a special meeting called for the purpose of considering such amendment (each Owner having one vote per Lot owned), and (ii) the written approval of the Declarant.

15.03 Right of Amendment. If requested by a governmental agency or federal 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 effected by the recordation, by Declarant, of a Certificate of Amendment signed by a duly authorized agent of Declarant with signatures acknowledged, specifying the Federal, State or local governmental agency, or the federally chartered lending institution requesting the amendment and setting forth the mandatory 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.

ARTICLE XVI

Miscellaneous

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

16.02 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 other provision hereof.

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

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

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16.05 Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out or that any land now owned or hereafter acquired by it is or will be subject to this Declaration, or that any such land is or will be committed to or developed for a particular purpose or use, or that if such land is once used for a particular use, such use will continue in effect.

16.06 Limitation of Liability. In the absence of gross negligence or gross 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 successors or assigns, pursuant to this Declaration.

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

16.08 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.

16.09 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.

16.10 Notice. Any notice required or permitted to be delivered as provided herein, shall be delivered either personally or by mail. If delivery is made by mail, delivery shall be deemed to have been made forty-eight (48) 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.

16.11 Prior Recorded Instruments. This Declaration and all of the provisions hereof are expressly subject to all prior recorded documents affecting the Property.

16.12 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 may be authorized by any proceeding 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 by injunction, whether prohibitive in nature or mandatory in commanding compliance with such provision; and it shall not be a 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 damages if such person has sustained damages by reason of the violation of such provisions.

16.13 Builder Exemptions. The Declarant shall have the right during the period of construction, development and sale, to grant reasonable and specifically limited exemptions from the Covenants to Declarant and any other developer or contractor. Any such exemption 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

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exemption shall be broader in terms of activity, location or time than is reasonably required.

Dated this 7 day of May 2004

NEPTUNE PROPERTIES LTD
By HWS Investments, Its General Partner

By: *[Signature]*
Mark G. Mahaffey, President

Filed for Record in
SMITH COUNTY, TEXAS
JUDY CARNES, COUNTY CLERK
On May 07 2004
At 4:17pm
Receipt # 306685
Recording # 42.00
Doc/Ann # 2004-189622-98
Doc/Type # REC
Deputy -Janis Farrell

STATE OF TEXAS _____ §
_____ §
COUNTY OF SMITH _____ §

This instrument was acknowledged before me on the 7 day of May 2004 by Mark G. Mahaffey, President of HWS Investment, Inc., general partner of NEPTUNE PROPERTIES LTD., Declarant.

[Signature]
HUEY C. KERNEY, JR.
Notary Public
STATE OF TEXAS
My Comm. Expires 08-01-05

After Recording Please Return To:

Huey C. Kerney, Jr.
100 E. Ferguson, Ste 912
Tyler, TX 75702

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 7 2004

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