

RECORDED AT THE REQUEST
OF FIRST AMERICAN TITLE

005-11-2311

91

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
32.25 ACRES IN THE FRED KESSLER SURVEY, A-300
MONTGOMERY COUNTY, TEXAS**

2006-009986

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MONTGOMERY §

This declaration (hereinafter referred to as "Declaration") is made on the date hereinafter set forth by David P. Moran and Gail A. Moran (hereinafter referred to as "Declarant," whether one or more).

WITNESSETH:

Whereas, Declarant is the owner for that certain tract of land known as "12651 Pearson Road" 32.25 acres in the Fred Kessler Survey, A-300 Montgomery County Texas and it is the desire of Declarant to place certain restrictions, easements, covenants conditions and stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against such property in order to establish a uniform plan for the improvement and sale for the property and to insure the preservation of such uniform plan for the benefit of both the present and future owners of the tract.

Now therefore, Declarant hereby adopts, establishes and imposes upon the Property (as defined below) and declares the following shall run with said Property and title of interest therein, or any part thereof, and shall inure to the benefit of each Owner (as defined below) thereof.

ARTICLE I

As used in this Declaration and unless the context clearly indicates to the contrary, the following terms shall have the meanings attributed to them below, to-wit:

- (a) Property shall refer to the original 32.25 Acre in the Fred Kessler Survey, A-300 Montgomery County Texas, also known as 12651 Pearson Road, being more specifically described on Exhibit A attached hereto and made a part hereof for all purposes.
- (b) Owner shall mean and refer to the owner, whether one or more persons or entities, of the fee simple title to any Parcel but shall not mean or refer to any person or entity holding only a lien on a Parcel or owning only any easement or a mineral interest thereon or therein.
- (c) Declarant shall mean and refer to David P. Moran and Gail A. Moran.

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005-11-2312

- (d) Parcel shall mean all of the Property, until Declarant conveys a fee simple tract of land out of the Property, and at the time of the first conveyance of a fee simple tract of land out of the Property by a Declarant to a third party and thereafter, Parcel shall mean any fee simple tract of land out of the Property, whether owned by Declarant or other Owner.

ARTICLE II

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 2.1 Utility Easements.

- (a) Utility ground easements have been dedicated in accordance with a separate recorded easement document or documents.
- (b) No building shall be located over, under, upon or across any portion of any utility easement. The Owner of the Parcel which is subject to a utility easement shall have the right to construct, keep and maintain concrete drives, fences and similar improvements across the utility easement, and shall be entitled to cross such easement at all times for the purposes of gaining access to and from the Parcel.
- (c) The Owner of the Parcel subject to the utility easement shall be responsible for any and all repairs to Owner's own concrete drives, fences and similar improvements which cross or are located upon such utility easement and any damage to said improvements caused by any public utility in the course of installing, operating, maintaining, repairing or removing its facilities located within the utility easement.

Section 2.2 Drill Site. There are no existing drill sites affecting the Property and none shall be designated on the Property.

ARTICLE III

RESTRICTIONS

Section 3.1 Single Family Residential Purposes. Except as otherwise provided in this Declaration, no building shall be erected, altered, placed or permitted to remain on any Parcel other than a dwelling unit or units to be used for single family residential purposes. Detached garages, work shops and barns (collectively referred to as "Other Buildings") may be constructed on any Parcel either prior to or after the main dwelling is built, so long as they are of good construction, kept in good repair and are not used as the primary dwelling. The term "dwelling" does not include single or double wide mobile homes or manufactured or mobile homes or hotels or motels. All primary dwelling structures shall be at least 2500 square feet of living area excluding porches. The guest house currently located on the Property is not a primary structure for the purpose of this declaration. Each dwelling unit hereinafter constructed on a Parcel must

005-11-2313

be constructed with new construction material. Construction of new dwellings and Other Buildings should be constructed in a timely manner. As used herein, the term "residential purposes" shall be construed to prohibit any and all mobile homes, manufactured homes or trailers being placed on any Parcel, or the use of any Parcel for any duplex houses, condominiums, hotels, motels, townhouses, garage apartments, or apartment houses.

Section 3.2 Location of the Improvements. No building of any kind shall be located on a Parcel nearer than fifty (50') feet to any property line that is a shared property line with another Parcel. A dwelling located on a Parcel must be equipped with septic tank or other sewage disposal system meeting all applicable laws, rules standards and specifications and such dwelling must be served with water and electricity.

Section 3.3 Easements. Any utility easement that may be reserved in the Deed to which these restrictions are attached shall be for public use for the purpose of constructing, maintaining, and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utility across and/or under the Property. Any utility company serving any portion of the Property and/or any utility district serving any portion of the Property shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. No utility company, water district, political subdivision or other authorized entity using any easement herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the Parcel entered by said easements.

Section 3.4 Use of Temporary Structures. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on a Parcel at any time as a residence, either temporarily or permanently.

Section 3.5 No new overhead Power Lines. No new power or utility lines shall be permitted above ground on any Parcel. It is understood there is an existing power line that is above ground on the Property.

Section 3.6 Sanitary Sewers. No outside, open or pit type toilets will be permitted on the Property. All dwellings, whether now existing or hereinafter constructed, on any Parcel, prior to occupancy, must have a sewage disposal system installed to comply with requirements of Montgomery County, Texas and any other governing agency having jurisdiction.

Section 3.7 Business, Professional, Commercial or Manufacturing Use. Property may be used for professional, business or commercial purposes provided that:

There is no public access or regular traffic of customers and suppliers

There is no signage erected on the property

There is no offensive or noxious noise odor or activity

Use of any parcel as an orphanage, assisted living facility, or foster home for multiple children is expressly prohibited.

005-11-2314

Section 3.8 Garbage and Trash Disposal. Garbage, trash or other refuse accumulated on a Parcel shall not be permitted to be dumped at any place upon the Parcel where a nuisance to any residence in this area is or may be created. No Parcel shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be allowed to accumulate on a Parcel.

Section 3.9 Junked Motor Vehicles Prohibited. A Parcel shall not be used as depository for abandoned or junked motor vehicles defined as one without a current, valid state-vehicle inspection sticker or license plate. No junk of any kind or character, or dilapidated structure or building of any kind or character, shall be kept on a Parcel. This Section 3.9 shall not be construed to mean that personal campers, boats, tractors, farm or recreational vehicles in good and usable condition may not be kept on a Parcel.

Section 3.10 Permitted Agricultural and Livestock Uses. In addition to the use for single family residential purposes as provided in these Restrictions, a Parcel may be used for the following purposes:

- (a) **Agricultural Use.** Subject to limitations, contained in this subsection (a), any Parcel may be used, in addition to other permitted uses as contained in this Declaration, for the purpose of producing from such Parcel agricultural products such as vegetables, grains, hay, fruits, fibers, wood, trees, plants, shrubs, flowers and seeds in accordance with generally accepted agricultural practices, provided that such uses and activities do not constitute a nuisance.
- (b) **Livestock and Animals.** Animals, livestock, emus and ostriches, other than hogs, goats or poultry, may be kept, bred, and maintained on any Parcel under the following conditions:
 - (i) No livestock of an type shall be allowed to run loose except on the Owner's Parcel;
 - (ii) All horses, cattle, emus, ostriches or other livestock shall be kept enclosed by suitable fencing of the Parcel;
 - (iii) No swine may be bred, kept or maintained on any Parcel;
 - (iv) No chickens, turkeys, or other poultry may be kept or raised on the Parcel except for 4-H or FFA school sponsored programs;
 - (v) Though horses are permitted, public stables or boarding of horses are not permitted on any Parcel. Horses may be boarded in connection with personal breeding and training.
 - (vi) Though cattle are permitted, feed lots are not permitted on any Parcel;

005-11-2315

- (vii) A Parcel shall be maintained in such a manner as to prevent health hazards and shall not be offensive to any Owner; and
- (vii) The aggregate number of all large animals kept, bred or maintained on a Parcel shall not exceed the total number of whole acres within the Parcel. "Large Animals" shall mean a large animal such as a horse, cow, emu or ostrich.

Section 3.11. Oil and Mining Operations. No oil drilling or development operations, oil refining, commercial quarrying or mining of clay, sand, gravel, iron ore or similar materials shall be permitted upon any Parcel nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Parcel. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Parcel.

Section 3.12. Subdividing. The Property may be subdivided into smaller tracts of land, provided however, each Parcel must always contain at least five (5) acres of land. A private easement or easements may be granted by the Owner of a Parcel over and across such Parcel for the purpose of providing ingress and egress for another Parcel, provided however, no portion of the Property shall be used as a public access or public easement through or across the Property or any Parcel, or as a private easement for the benefit of priving ingress or egress for any property other than one or more of the Parcels.

Section 13. Drainage.

- (a) Each Owner agrees for Owner, Owner's heirs, legal representatives, assigns and successors-in-interest that Owner will not in any way interfere with the established drainage pattern over Owner's Parcel from the adjoining Parcel or Parcels and Owner will make adequate provisions for drainage of Owner's Parcel in the event it becomes necessary to change the established drainage over Owner's Parcel.
- (b) No utility tower over 30 feet tall shall be erected, constructed or placed on any of the Property.

3.14 Maintenance. Each Owner shall keep Owner's Parcel and all improvements and landscaping thereon in a well maintained, safe, clean and attractive condition at all times.

ARTICLE IV

GENERAL PROVISIONS

Section 4.1 Term. The provisions hereof shall run with the Property and shall be binding upon all Owners and all persons claiming under them for a period of thirty (30) years from the date this Declaration is recorded, after which time said Declarant shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by the

005-11-2316

Owners of not less than 4/5ths of the Parcels, has been recorded agreeing to cancel, amend or change in whole or part of this Declaration.

Section 4.2 Amendments. This Declaration may be amended or changed, in whole or in part, at any time by the written agreement of the Owners of not less than 4/5ths of the Parcels. Any amendment to this Declaration must be recorded in the real property records of Montgomery County, Texas.

Section 4.3 Severability. Each of the provisions of the Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

Section 4.4 Liberal Interpretation. The provisions of the Declaration shall be liberally construed as a whole to effectuate the purpose of the Declaration.

Section 4.5 Successors and Assigns. The provisions hereof shall be binding upon and inure to the benefit of the Owners, Declarant, and their respective heirs, legal representatives, executors, administrators, successors and assigns.

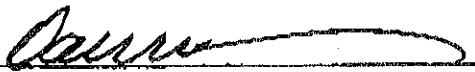
Section 4.6 Effect of Violations on Mortgages. No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

Section 4.7 Terminology. All personal pronouns used in this Declaration and all exhibits attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Title of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration itself. The terms "herein," "hereof" and similar terms, as used in this instrument refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear. All references in this Declaration to Exhibits shall refer to the Exhibits attached hereto.

005-11-2317

In Witness Whereof, the undersigned, being the Declarant herein, has hereunto set its hand as of this 17 day of January, 2006.

DECLARANT:



David P. Moran



Gail A. Moran

005-11-2318

STATE OF TEXAS
COUNTY OF MONTGOMERY

This instrument was acknowledged before me on this 17th day of January, 2006 by David P. Moran and Gail A. Moran.



Sheila K. Simmons

Notary Public
State of Texas

Sworn to and subscribed before me, the undersigned authority, that David P. Moran and Gail A. Moran personally appeared before me on this 17th day of January, 2006.



Sheila K. Simmons

Notary Public
State of Texas