

036637
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WALLER BETKA I

This DECLARATION, made this 22 day of August 2003, 2003, by Waller Betka, Ltd., a Texas Limited Partnership, hereinafter referred to as "Developer,"

WITNESSETH

WHEREAS, Developer is the owner of that certain real property (the "Tracts") located in Waller County, Texas, known as "Waller Betka I" as shown on the map attached hereto.

WHEREAS, Developer desires to provide for the preservation of the values and for enhancing the desirability and attractiveness of the Tracts;

NOW, THEREFORE, the Developer hereby declares that the Tracts, as shown on the map attached hereto, be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Tracts. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the above described Tracts, or any part thereof, their heirs, executors, successors, and assigns, and shall inure to the benefit of each Owner, herein so called hereof.

ARTICLE I

RESERVATIONS AND EXCEPTIONS

Title Subject to Easements---It is agreed and understood that expressly reserved and excepted from the title conveyed by Developer to any of the Tracts shall be subject to any easement of record affecting the Tracts for roadways, drainage, water line, gas, sewer, electric lighting, electric power, telegraph or telephone purposes and other easements hereafter granted affecting the Tracts. The Owner's of the respective tracts shall not be deemed to own pipes, wires, conduits or other service lines running through their tracts which are utilized for or service other tracts, but each Owner shall have access in and to the aforesaid easements as shall be necessary for the use, maintenance and enjoyment of his Tract(s), subject to the terms and conditions of such easements. The Developer may convey title to said easements to the public, a public utility company or other entity as is necessary to provide such services.

036637-2/CKS/KG
RETURN TO
STEWART TITLE CO.
840 13TH STREET STE. #201
MEMPHIS, TEXAS 77445

ARTICLE II

USE RESTRICTIONS

- A. Single Family Residential---No Building shall be erected, altered, placed or permitted to remain on any Tract other than one dwelling per each Tract to be used solely for residential purposes, except that one guest/servant house may be built, provided said /servant house must contain a minimum of five hundred (500) square feet and be built no more than six months before the main dwelling is being built. Detached garages, work shops, out-buildings, barns and/or barns with living quarters may be constructed on the Tract(s) prior to the main dwelling being built, so long as they are of good construction, kept in good repair, and made out of new wood or new metal. In any event, the construction of the main dwelling must begin within one (1) year of the completion of any nonresidential buildings. No private garage shall be constructed on any Tract(s) consisting of space for less than two (2) cars. As used herein, the term "residential purposes" shall be constructed to prohibit the use of said Tract(s) for duplex houses or apartment houses and no Tract(s) shall be used for business or professional purposes of any kind, nor for any commercial or manufacturing purposes. No pre-manufactured and/or mobile homes of any kind may be placed upon the Tract(s) for any purpose. All residential dwellings must be of new construction. The living area on the ground floor of the main structure exclusive of open porches and the garage shall not be less than seventeen hundred fifty (1750) square feet for one-story dwellings. The total square feet for a multi-story dwelling shall not be less than two thousand two hundred (2200) square feet. Any building, structure or improvement commenced on any Tract(s) shall be completed as to exterior finish and appearance within eighteen (18) months from the setting of forms for the foundation of said building or structure.
- B. Location of the Improvements Upon the Building Site---All residential buildings and/or any other improvements shall be built or placed on the Tract(s) no less than two hundred (200) feet from any public road and no less than sixty (60) feet from any property line. Any barn, out-building and/or stock pond shall be located no less than two hundred forty (240) feet from any public road and no less than sixty (60) feet from any property line. In any case, no improvements shall be built, placed or constructed less than sixty (60) feet from any existing property lines.
- C. Existing Improvements--- The existing barn located on Tract four (4) is exempt from the sixty (60) foot set-back requirements, construction set-back rules, and construction requirements outlined herein above. Any and all stock ponds located on the Tracts(s), which exist at the time of original purchase are exempt from the set-back requirements.
- D. Roofing Requirements---The roof of any dwelling shall be constructed of either composition shingles, copper, tile, slate, standing seam metal or other material commonly used for roof construction.

- E. Residential Foundation Requirements----All building foundations shall consist of either concrete slabs or pier and beams.
- F. Driveways----All driveways shall be constructed of concrete, asphalt, iron ore, crushed rock or gravel, and shall be completed within six (6) months of completion of the main dwelling. For these purposes, the completion date of the main dwelling shall be the date the Owner begins to occupy said dwelling or three (3) months after issuance of the applicable certificate of occupancy, whichever occurs first.
- G. Pools ---- No above ground pools will be permitted.
- H. Antennas and Satellite Dishes----No electronic antenna or devise for receiving or transmitting any signal other than an antenna for receiving normal television, marine signals, citizen band signals, cellular telephone signals and/or hand radio signals shall be erected, constructed, placed or permitted to remain on any Tract(s), house, garage or other buildings. A ground satellite dish may not exceed four (4) feet in diameter and must be mounted as close to the ground as practical. However, in no event may the top of the satellite dish or antenna be higher than six (6) feet from the grade level of the ground or more than two (2) feet from the roofline for roof mounted satellite dishes. All house or roof mounted satellite dishes shall not exceed thirty (30) inches in diameter. All dishes shall be on one solid color of black, white or earth tones of brown, gray, or tan. No advertising or the printing of names of any type shall be permitted. Not more than one satellite dish will be permitted on each tract. No transmitting device of any type, which would cause electrical or electronic interference in the neighborhood, shall be permitted.
- I. Solar Panels----All solar panels installed shall be framed in such a manner so the structure members are not visible. The framing material shall be one that is in harmony with the rest of the structure.
- J. Walls and Fences----All free standing walls or fences shall be constructed of brick, block, or other masonry, ornamental iron, wood, wire or electric wire, however, no such wall or fence shall be taller than six (6) feet.
- K. Architectural Control----Until August 1, 2005, no buildings or improvements of any character shall be erected, constructed, placed or erection begun on any Tract(s) until the construction plans and specifications and a site plan showing the location of the structure or improvements have been submitted to the Developer and approved as to compliance with these restrictions, as to quality of material, harmony of external design with existing and proposed structures, and as to location with respect to building set back lines. Developer shall review all plans and specification and site plans submitted within 14 days thereafter and, shall issue its approval or disapproval thereof. In the event the required documents and information are not approved or disapproved within 14 days after receipt thereof by Developer, then approval will not be required and the requirements for approval shall be deemed to have been fully satisfied. In the event of the death, resignation or inability of Developer to act, a two-thirds (2/3rds) majority vote of all

other owners shall substitute for Developer's right to approve or disapprove as provided herein. After August 1, 2005, all other owners collectively shall have the duty to approve or disapprove any and all construction and/or architectural changes as described herein above by a two-thirds (2/3rds) majority vote.

- L. Water Supply----All residential dwellings shall be equipped with and served by a water well installed, operated and continuously maintained by the Owner of each Tract(s) in accordance with the applicable governmental requirements, and no water wells shall be made, bored or drilled without obtaining the approval of the appropriate governmental authorities.
- M. Sanitary Sewers----No outside, open or pit type toilets will be permitted. Prior to occupancy, all dwellings constructed must have a septic or sewage disposal system installed and maintained by the Owner to comply with the requirements of the appropriate governmental agency. Further, during the period of the construction of any dwelling, the Owner or Owner's contractor must provide a portable toilet for workman.
- N. Electric Utility Service----Prior to beginning any construction on a Tract(s), each Tract Owner, at his sole expense, shall be required to install electric service lines from the transformer or source of feed to the meter location on said Tract(s). Further, each Tract(s) Owner may expect to pay a charge for connection to such electric utility service, and the Owner is obligated to contact an electricity provider to determine such charge and make arrangements for the installation of said electrical service lines and connection to the electrical distribution system. Owner shall also be responsible for all charges for all utility service furnished to Owner's Tract(s).
- O. Garbage and Trash Disposal----Garbage and trash or other refuse accumulated shall not be dumped at any place upon any Tract(s) where a nuisance to any Owner of any Tract(s) may be created. No Tract(s) shall be used or maintained as a dumping ground for rubbish or landfill. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. Burning of trash and rubbish shall be permitted on a reasonable basis so long as no violation of law or ordinance occurs and so long as no nuisance to any Owner of any Tract(s) occurs.
- P. Junked Motor Vehicles Prohibited----No Tract(s) shall be used as a depository for abandoned or junked motor vehicles, boats, motorcycles, etc. An abandoned or junked motor vehicle is one without a current, valid state vehicle inspection sticker and license plate. Abandoned or junked boats, motorcycles, etc., are defined as incapable of normal operation and lacking normal upkeep. No accessories, parts or objects used with cars, boats, buses, trucks, trailers or the like, shall be kept on any Tract(s) other than in a garage or other structure concealing it from public view.
- Q. Hazardous Substances----No Hazardous Substances shall be brought onto, installed, used, stored, treated, buried, disposed of or transported over the Tract(s), and all activities on the Tract(s) shall, at all times, comply with Applicable Law. The term "Hazardous Substance" shall mean any substance which, as of the date hereof, or from time to time hereafter, shall be listed as

"hazardous" or "toxic" under the regulations implementing the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9501 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq., or listed as such in any applicable state or local law or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under applicable law. The term "Applicable Law" shall include, but shall not be limited to, CERCLA, RCRA, The Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq. and any other local, state and/or federal laws or regulations that govern the existence, cleanup and/or remedy of contamination on Tract(s), the protection of the environment from spill deposited or otherwise in place contamination, the control of hazardous waste or the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials.

- R. Agricultural Use---Subject to the limitations contained herein, each Tract(s) may be used, in addition to other permitted uses, for the purpose of producing from such Tract(s) 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 agricultural uses and activities do not constitute a nuisance. Such agricultural products may be sold or marketed to the public, provided, however, that, except as hereinafter expressly approved, no such sales or marketing shall be conducted on any Tract(s). This prohibition shall be deemed to prohibit specifically, but without limitations, the placing of a sign or signs on any portion of an Owner's Tract(s) advertising or related to the marketing, sales, price or availability of such agricultural products; the construction or maintenance of any structure on a Tract(s) for the primary purpose of public display of any such agricultural products; and the conducting on a Tract(s) of any form of public auction of such agricultural products. However, nothing containing herein shall prohibit a third person or persons from entering upon a Tract(s) for the purposes of viewing or inspection of agricultural products or non harvested or growing crops, purchasing some by private purchase and/or carrying or transporting agricultural products off such Tract(s).
- S. Livestock and Animals---Tract(s) owners may own and raise horses and/or cattle on their tract(s). Other livestock, including dogs and cats, may be kept on the subject Tract(s) as pets or as a hobby, for domestic or family use only, however, livestock, dogs and/or cats may not be boarded, raised commercially or allowed to become a nuisance. No emus, peacocks, ostriches or reptiles will be permitted under any circumstances. FFA and 4-H Club projects shall not be considered commercial so long as not a public nuisance or nuisance to other Tract(s) owners. Tract(s) owners may have an aggregate number of livestock not to exceed 1.5 animals per acre owned. The term livestock as used herein shall mean horses, cattle, goats and sheep.
- T. Mineral Development---No commercial oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Tract(s), nor shall any structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Tract(s).
- U. Drainage---Any natural or established drainage patterns of streets, Tract(s) or roadway ditches will not be impaired by any person or persons and Developer or its assigns may enter upon any

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Tract(s) to maintain such natural drainage areas. Driveway culverts must be installed prior to beginning construction of any building or dwelling on the Tract(s) and must be sufficient size to afford proper drainage of ditches without backing water up into ditch or diverting flow. No drainage shall be constructed that will adversely affect a neighboring Tract(s). The size and type of driveway culverts must also be approved by the Waller County Engineer's office.

- V. Subdivision----Tract(s) may not be subdivided into parcels smaller than five (5) acres.
- W. Annoyance or Nuisances---- Noxious or offensive activity shall not be permitted or carried on upon any Tract(s), nor shall anything be done thereon which may become an annoyance or a nuisance.
- X. Tract(s) Maintenance----All Tract(s) at Owner's sole cost and expense, shall be kept at all times in a neat, attractive, and sanitary condition and the Owner shall keep all grass cleared open yard areas on said tract cut. In no event shall an Owner use any tract for storage of materials or equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted. All yard equipment or storage shall be kept in an enclosed area so as to prevent it from being in public view as herein otherwise provided. All tracts must be kept in such manner as to prevent fire hazards and/or health risks.
- Y. Enforcement----Any Owner who has purchased a Tract(s) and in the area known as Waller Betka I, shall have the right to enforce by any proceeding at law or in equity, all reservations, restrictions, covenants and conditions now or thereafter imposed by provisions of these deed restrictions. Failure by any Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE III

GENERAL PROVISIONS

- A. Duration of the Above Restrictions----The provisions hereof shall run with all Tract(s) in Waller Betka I as shown on the attached map, and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than one hundred (100) percent of the then Owners of the Tract(s) has been recorded agreeing to cancel, amend or change, in whole or part, this Declaration.

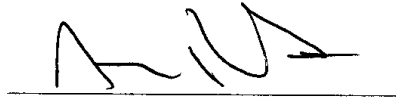
- B. Amendments----This Declaration may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners (including the Developer) entitled to cast not less than one hundred (100) percent of the votes of all of the Owners. If the Declaration is amended by a written instrument signed by those Owners entitled to cast not less than one hundred (100) percent of all of the votes of the Owners, such amendment must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facia evidence of the date of execution of said amendment by such Owner. Those Members (Owners, including the Developer) entitled to cast not less than one hundred (100) percent of all of the votes of the Owners may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members (Owners, including the Developer) duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. A quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all of the Members (in person or by proxy) entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of Waller County, Texas, accompanied by a certificate, signed by a majority of the Members, stating that the required number of Members (Owners, including the Developer) executed the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for said purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Owner calling for an amendment for a period of not less than three (3) years after the date of filing of the amendment or termination.
- C. Severability----Each of the provisions of this 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. The invalid or unenforceable provision shall be stricken as if it were never included.
- D. Liberal Interpretation----The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.
- E. Successors and Assigns----The provisions hereof shall be binding upon and inure to the benefit of the Owners and the Developer, and their respective heirs, legal representatives, executors, administrators, successors and assigns.
- F. Terminology----All personal pronouns used in the 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. 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.

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IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto set its hand on

this 22 day of August, 2003.

Waller Betka, Ltd.,

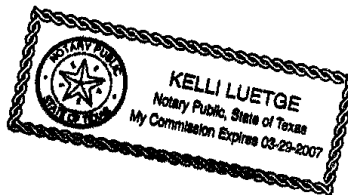


ARCHIE BENNETT, III
President of Waller Betka I, Inc.,
General Partner of Waller Betka, Ltd.,
Developer

STATE OF TEXAS §
COUNTY OF WALLER §

This instrument was acknowledged before me on the 22 day of August, 2003, by ARCHIE BENNETT, III, President of Waller Betka I, Inc., a Texas Corporation, General Partner of Waller Betka, Ltd., a Texas Limited Partnership.


NOTARY PUBLIC



JOINDER BY EXISTING LENDER

HEMPSTEAD REAL ESTATE FINANCE, L.P. (the "Existing Lender"), has joined in the execution hereof for the following purposes, but none other.

- (a) To acknowledge that Existing Lender is presently the holder of a lien on the Subject Property;
- (b) To accept the rights, benefits and burdens hereby established by subjecting the Subject Property to the restrictive covenants and other provisions contained in this Agreement; and
- © To evidence its agreement that notwithstanding any foreclosure under any document that evidences the liens to secure payment of the indebtedness owing to the Existing Lender, or any conveyance or reconveyance in lieu of such foreclosure and/or cancellation of all or any part of the indebtedness secured by such liens, the restrictive covenants and the other provisions of this Agreement shall remain in full force and effect.

Existing Lender (i) was not a party to the negotiations involved in establishing the restrictive covenants and other provisions of this Agreement, (ii) is not liable or responsible for the impact of the restrictive covenants and other provisions of this Agreement in respect of all or any part of the Subject Property and (iii) has no obligation to enforce such restrictive covenants or other provisions of this Agreement.

HEMPSTEAD REAL ESTATE FINANCE, L.P.

By: *David A. Brooks*

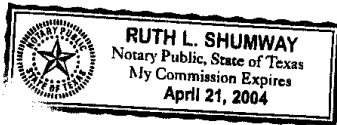
Name: David A. Brooks

Title: Vice President

THE STATE OF TEXAS

COUNTY OF DALLAS

This instrument was acknowledged before me on this 19th day of August, 2003 by David A. Brooks, Vice President of HEMPSTEAD REAL ESTATE FINANCE, L.P., a Texas Limited Partnership, as the act and deed of such Limited Partnership.



Ruth L. Shumway
Notary Public, State of Texas

RUTH L. SHUMWAY
Printed Name of Notary

My Commission Expires: 4/21/04