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2004-106136

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CHINA GROVE VILLAGE**

THIS DECLARATION, made as of September 17, 2004, by Royal Guard Properties, Inc., hereinafter referred to as "Developer".

**WITNESSETH**

WHEREAS, Developer is the owner of certain tract of land consisting of 328.192 acres in the Jose Dela Garza Survey, A-15, recorded under County Clerk's file numbers 2003-103223 and 2003-103225 of the Official Public Records of Real Property of Montgomery County, Texas (said property being hereinafter known as China Grove Village), according to the Map Records of Montgomery County, Texas at File Cabinet W, Sheet 152, 153 and 154.

WHEREAS, Developer desires to develop the Property for residential purposes and to provide and adopt a uniform plan of covenants, easements, restriction, conditions, reservation, charges and liens designed to govern, control and preserve the values and amenities of the Property for the better development, improvement, sale, use and enjoyment of the Property.

NOW, THEREFORE, Developer hereby declares that the Property shall be developed, improved, held, used, sold and conveyed in accordance with and subject to the following easements, restriction, reservations, covenants, conditions and stipulations, all of which are hereby adopted for and placed upon said Property and which shall run with the Property and be binding on all parties, now and at any time hereafter, having or claiming any right, title or interest in the Property or any part thereof, their heirs, executors, administrators, successors and assigns, regardless of the source of or the manner in which any such right, title or interest is or may be acquired, and all of which shall inure to the benefit of each owner of any part of the Property.

WHEREAS, These covenants and restrictions shall apply to all lots in said subdivision except Lot 4 and Reserve A.

**ARTICLE 1-DEFINITIONS**

The following words, when used in the Declaration, shall have the following meanings:

**SECTION 1.** "Builder" shall mean and refer to any person or entity undertaking the construction of a residence on a Lot.

**SECTION 2.** "Corner Lot" shall mean and refer to a Lot which abuts on more than one Street.

**SECTION 3.** "Developer" shall mean and refer to Royal Guard Properties, Inc., its successors or assigns.

**SECTION 4.** "Lot" shall mean and refer to any of the numbered lots shown on the Subdivision Plat intended for the construction or placement of a residence.

**SECTION 5.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation or those owning an easement right, a mineral interest, or a royalty interest.

**SECTION 6.** "Properties" shall mean and refer to the real property within the jurisdiction of the Association including the property included in the plat of the Subdivision and additional lands added to the jurisdiction of the Association as provided herein.

**SECTION 7.** "Street" shall refer to any street, drive, boulevard, road, alley, lane, avenue, or thoroughfare as shown on the Subdivision Plat.

**SECTION 8.** "Subdivision" shall mean and refer to China Grove Village, as set forth in the subdivision plats thereof recorded in Cabinet W, Sheets 152,153 and 154 of the Map Records of Montgomery County, Texas, and together with any other real property made a part of the Subdivision.

**SECTION 9.** "Subdivision Plat" shall mean and refer to the recorded maps or plats of the Subdivision, and the plat of any other property that becomes subject to this Declaration and any replat, partial replat, or amendment of the above-described plats.

**SECTION 10.** "Original Homeowner" shall mean and refer to any purchaser of a Lot from Declarant or a Builder on which a residence has been placed or constructed.

## **ARTICLE II-ARCHITECTURAL CONTROL COMMITTEE**

**SECTION 1. CREATION, PURPOSE AND DUTIES.** There is hereby created an Architectural Control Committee (herein referred to as the "Committee") comprised of Tom Aikin and Justin Kahn, each of whom shall serve until his successor is appointed as hereinafter provided. The Committee shall be responsible for enforcing and maintaining the architectural integrity of improvements constructed on the Lots and the quality of workmanship and materials utilized in the construction of such improvement in conformance with the restrictions herein. An action approved by a majority of the members of the Committee shall be deemed to be an act of the Committee. The duties and powers of the Committee, its successors and the designated representatives as provided for hereinbelow, shall cease on the earlier of December 31, 2030. In the event of the death or resignation of any person serving on the Committee, the Declarant, by recorded written instrument, shall designate a successor, or successors, who shall have all of the authority and power of his or their predecessor(s). Until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to exercise the powers herein granted to the Committee.

The Committee shall meet from time to time as is necessary to perform its duties hereunder. No person serving on the Committee shall be entitled to compensation for services performed.

**SECTION 2. POWERS OF THE COMMITTEE.** No building, structure or other improvements shall be commenced, erected, maintained or constructed on any Lot until the site plan (including a description of the trees to be cleared on the Lot) and the final working plans and specifications have been submitted to and approved in writing by the Committee as to conformity with the restrictions herein contained and harmony of external design and location in relation to existing structures and topography. In the event the Committee fails to approve or disapprove the site plan and plans and specifications for proposed improvement or clearing within thirty (30) days after submission of all such materials to the Committee, approval thereof shall be deemed to have been given; provided, however, failure to approve or disapprove such site plan and final working plans and specifications shall not be deemed to permit the construction of any improvements in a manner prohibited under the terms of this Declaration.

The committee shall have the right to specify architectural and aesthetic requirements for building sites, minimum setback lines, the location, height, and extent of fences, walls or other screening devices, the orientation of structures with respect to streets, walks paths and structures on adjacent property and acceptable exterior materials, colors and finishes that may be utilized in construction or repair of improvement. The Committee shall have full power and authority to reject any site plan or final working plans and specification that do not comply with the restriction herein contained or that do not meet its minimum construction or architectural design requirements or that, in the sole and uncontrolled discretion and opinion of the Committee, will not be compatible with the overall character and aesthetics of the Subdivision.

Where specifically granted the power by the provisions hereof, the Committee shall have the right, exercisable at its sole discretion, to grant variances to certain restriction in specific instances where the Committee in good faith deems that such variance does not adversely affect the architectural and environmental integrity of the Subdivision. The Committee may require the

submission to it of such documents and items as it shall deem appropriate in connection with its consideration of a request for a variance. If the Committee shall approve such request for a variance, it shall evidence such approval, and grant its permission for such variance, only by written instrument addressed to the Owner of the property relative to which such variance has been requested, describing the applicable restriction(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, and describing (when applicable) the conditions on which the variance has been approved. Any request for a variance shall be deemed to have been disapproved in the event of either (a) written notice of disapproval from the Committee or (b) failure by the Committee to respond to the request for variance.

**SECTION 3. NON-LIABILITY FOR COMMITTEE ACTION.** No member of the Committee, or Declarant shall be liable for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Committee, except to the extent caused by the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the Committee shall not be responsible for reviewing, nor shall its approval of any plans or specifications be deemed an approval of, from any building or improvement from the standpoint of safety, whether structural or otherwise, or conformance with existing building codes, governmental laws or regulations. Furthermore, no member of the Committee or the Declarant shall be personally liable for any torts committed by or on its members.

### **ARTICLE III - USE RESTRICTIONS**

**SECTION 1. RESIDENTIAL USE.** Each and every Lot is hereby restricted to residential usage for single family residential dwellings. No business, professional, commercial or manufacturing use shall be made of any Lot. A lot owner may use the property for home occupation so long as there is no external evidence thereof (such as signs, advertising of business, etc. No commercial signs will be allowed on homesites, except for real estate signs (No larger than three (3) square feet or signs denoting lot owners installed by Declarant.

**SECTION 2. ANIMALS AND LIVESTOCK.** No hogs of any kind shall be raised, bred or kept on any Lot. Consistent with its use as a residence, a maximum of five (5) dogs, cats or other household pets may be kept on a Lot, provided that they are not kept, bred or maintained for any business purposes. And Further provided that one horse per acre will be permitted for all Lots that are 1 acre or more in size, 4-H or FFA project may be kept by children of an Owner. Additionally, all county leash laws related to animals shall apply.

**SECTION 3. NUISANCE** No noxious or offensive trade or activity shall be carried on upon any lot, which could become a nuisance to residents of the Subdivision.

**SECTION 4. STORAGE AND REPAIR OF VEHICLES.** No junk vehicles may be kept on any lot. This includes cars, trucks, boats, etc. No Owner of any Lot or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles on Streets other than work of a temporary nature. For the purposes of the foregoing term "temporary" shall mean that the vehicle shall not remain in Streets in excess of seventy-two (72) hours.

**SECTION 5. PERMITTED HOURS FOR CONSTRUCTION ACTIVITY.** Except in an emergency or when other unusual circumstances exist, as determined by the Declarant, its successors or assigns outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. and 10:00 p.m.

**SECTION 6. DISPOSAL OF TRASH.** No trash, rubbish, garbage, manure, debris, or offensive material of any kind shall be kept or allowed to remain on any Lot, nor shall any Lot be used or maintained as a dumping ground for such materials. All such matter shall be placed in sanitary refuse containers constructed of metal, plastic or masonry materials with tight-fitting sanitary covers or lids and placed in an area adequately screened from the view of any streets. Equipment used for the temporary storage and/or disposal of such material prior to removal shall be kept in a clean and sanitary condition and shall comply with all current laws and regulations and

those which may be promulgated in the future by any federal, state, county, municipal or other governmental body with regard to environmental quality and waste disposal. In a manner consistent with good housekeeping the Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense.

**SECTION 7. BUILDING MATERIALS.** Unless otherwise approved by the Committee, no Lot shall be used for the storage of any materials whatsoever, except that material used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced. Building materials may remain on Lots for a reasonable time, so long as the construction progresses without undue delay after which time these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. Under no circumstances shall building materials be placed or stored on the Street.

**SECTION 8. SUBDIVIDING LOT.** Any Lot that may be re-subdivided, in accordance within Montgomery County Regulations.

**SECTION 9. BUILDING OF RESIDENCE IN FLOOD PLAIN PROHIBITED.** All residences will be constructed outside the boundaries of the 100 year flood plain as reflected on China Grove Subdivision Plat as Recorded in Cabinet w. Sheets 152-154 of the Montgomery County Plat Records.

#### **ARTICLE IV - ARCHITECTURAL RESTRICTION**

**SECTION 1. TYPE OF RESIDENCE.** Only one residence shall be built or placed on each Lot. A residence is defined as either a site built single family home, (not more than three stories). No building shall be erected or placed on said property that has not been first approved by the Committee. All structures shall be of new construction and no structure shall be moved from another location onto any Lot without the approval of the Committee. Mobile homes or modular housing are prohibited from being placed on the property. Any temporary structure such as a camper may be used, but may not be used as a primary residence. No stay over seven (7) days at any one time. A tent may be used on a temporary basis, but must be removed after stay (Not to exceed seven (7) days). However an RV or Camper may be used as a temporary residence during the time of home construction. All residences must be kept in good repair and must be painted when necessary to preserve their attractiveness. Temporary structures must not be visible from the street.

**SECTION 2. LIVING AREA AND CONSTRUCTION REQUIREMENTS.** All residences shall contain not less than fifteen hundred (1500) square feet of living area, excluding garages and porches unless otherwise approved by the Committee

**SECTION 3. GARAGES.** All residences must be constructed with an enclosed garage suitable for automobiles. The garage must be approved by the Committee prior to construction.

**SECTION 4. LOCATION OF RESIDENCE ON LOT AND SET BACK LINES.** The location of each residence on a Lot will be approved by the Committee with its approval of the site plan and the final working plans and specifications. No building shall be located on any Lot nearer than seventy five (75) feet to any street and no building shall be located on any utility easement. No residence shall be located nearer than ten (10) feet to an interior lot line. No residence or attached or detached garage shall be located nearer than forty (40) feet to the rear lot line.

**SECTION 5. TEMPORARY BUILDINGS.** Unless otherwise approved by the Committee, temporary buildings or structures shall not be permitted on any Lot. Declarant may permit temporary toilet facilities, sales and construction offices and storage areas to be used by Builders in connection with the construction and sale of residences. Builders in the Subdivision may use garages as sales offices for the time during which such Builders are marketing homes on lots within the Subdivision. At the time of the sale of a residence by a Builder any garage appurtenant to such residence used for sales purposes must be reconverted to a garage.

**SECTION 6. FENCES.** The construction or installation of walls, fences and hedges by Owners shall be subject to the approval by the Committee. The owner will be responsible for maintaining in first class condition all fences on his property.

**SECTION 7. SIGNS.** No signs, billboards, posters, or advertising devices of any kind shall be permitted on any Lot without the prior written consent of the Committee other than one sign of not more than three (3) square feet advertising the particular Lot on which the sign is situated for sale or rent. The right is reserved by Declarant to construct and maintain, or to allow Builders within the Subdivision to construct and maintain, signs, billboards and advertising devices as is customary in connection with the sale of newly constructed residential dwellings. In addition, the Declarant shall have the right to erect identifying signs at each entrance to the Subdivision.

**SECTION 8. TRAFFIC SIGHT AREAS.** No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the Street shall be permitted to remain on any Corner Lot within ten (10) feet of the point formed by the intersection of the building set back lines of such Lot.

**SECTION 9. MINIMUM LOT SIZE IN RELATION TO RESIDENCE.** Any person owning two or more adjoining Lots may consolidate such Lots into building sites with the privilege of constructing improvements permitted herein. Only the exterior building lines will apply.

**SECTION 10. INTERFERENCE.** No radio or television signals or any other forms of electromagnetic radiation shall be permitted to originate from any Lot that unreasonably interferes with the reception of television or radio signals upon any other Lot.

**SECTION 11. WATER SUPPLY.** It is not contemplated that a central water well system shall be constructed in the subdivision. Each Owner shall be responsible for the construction and operation of a water well on their lots. These wells shall be constructed and maintained in accordance with the rules and regulation established by the Committee and the Montgomery County Health Department.

**SECTION 12. SOUND DEVICES.** No horns, whistles, bells or other sound devices except for security systems used excessively to protect a residence, shall be placed or used on any Lot or in any residence. This paragraph shall not preclude the use of outdoor speakers for hi-fis, stereos, or radios if the sound level is maintained at a reasonable low level with respect to the adjoining property.

**SECTION 13. PROPANE OR NATURAL GAS STORAGE TANKS.** All storage tanks which are placed upon a lot for the purpose of storing butane, propane or natural gas, must be set at least 25 feet behind the front line of the residence and reasonably screened from street view by buildings, lattice-work or shrubbery.

**SECTION 14. CLOTHES LINES.** All clothes lines must be set behind any residence, out of view of any street.

#### **ARTICLE V - EASEMENTS**

**SECTION 1. GENERAL.** Easements for the installation and maintenance of utilities, including cable television, are reserved as shown and provided for on the Subdivision Plat or as dedicated by separate instruments. Neither Declarant nor any utility company or authorized political subdivision using the easements referred to herein shall be liable for any damages done by them or their assigns, agents, employees or servants. to fences, shrubbery, trees, flowers, improvements or other property of the Owner situated on the land covered by such easements as a result of construction, maintenance or repair work conducted by such parties or their assigns, agents, employees or servants.

**ARTICLE VI - ENFORCEMENT**

Any Owner or the Committee have the right to enforce, by any proceeding at law or in equity, the covenants, conditions and restrictions contained herein. Failure of the Owner or Committee to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**ARTICLE VII - GENERAL PROVISIONS**

**SECTION 1. DURATION.** This Declaration shall remain in full force and effect until December 31, 2030 and thereafter shall, as then in force, be extended automatically and without further notice, and without limitation, for successive periods of five (5) years each, unless modified or terminated in the manner hereinafter set forth.

**SECTION 2. MODIFICATION OR TERMINATION** This declaration may be modified or terminated at any time in any particular or terminated in its entirety by the recording in the Official Public Records of Real Property of Montgomery County, Texas of an amendment or termination instrument, signed by Owners representing 2/3rds of the Owners.

**SECTION 3. NOTICES.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as Owner on the records of the Official Public Records of Real Property of Montgomery County at the time of such mailing and any notice or submittal for approval required to be sent to the Committee under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, Registered or Certified Mail, return receipt requested, to the following address: China Grove Village Architectural Control Committee P.O. Box 2804, Conroe, Texas 77305

**SECTION 4. VIOLATION OF RESTRICTIONS.** Enforcement of the provisions hereof shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants, either to restrain or prevent such violation or proposed violation by an injunction, either prohibitive or mandatory, or to obtain any other relief authorized by law. Such enforcement may be by the Owner of any Lot or by the Declarant, its successors or assigns. The failure of any person entitled to enforce any of the provisions hereof to enforce the same shall in no event be deemed a waiver of the right to enforce this Declaration thereafter.

**SECTION 5. VALIDITY OF DECLARATION.** Invalidation of one or more of the covenants, conditions, reservation, or restrictions herein contained by judgment or court order or otherwise, shall in nowise affect any other of the covenants, conditions, reservations or restrictions which shall continue and remain in full force and effect.

**SECTION 6. GOOD-FAITH LENDERS CLAUSE.** Any violation of these restriction shall not affect any lien or deed of trust of record held in good faith, upon any Lot or any part thereof, which liens may be enforced in due course, subject to the covenants, conditions, reservations, and restrictions contained herein.

**SECTION 7. CONFLICT WITH DEEDS OF CONVEYANCE.** If any part of this Declaration shall be in conflict with any covenant, condition or restriction within a previously recorded deed of conveyance to any portion of the Property, the covenants, conditions or restrictions within the prior deed of conveyance shall control to the extent of such conflict.

**SECTION 8. SEVERABILITY.** Invalidation of any one of these covenants by judgment or other court order shall in no wise affect any other provisions, which shall remain in full force and effect except as to any terms and provisions which are invalidated.

**SECTION 9. GENDER AND GRAMMAR.** The singular whenever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes

required to make the provisions hereof apply either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

**SECTION 10. TITLES.** The titles of this Declaration of Articles and Sections contained herein are included for convenience only and shall not be used to construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

**SECTION 11. REPLATTING.** Declarant shall have the right, but shall never be obligated, to re-subdivide into Lots, by recorded plat or in any lawful manner, any reserve tracts contained within the Subdivision and such Lots as replatted shall be subject to these restriction as if such Lots were originally included herein.

**SECTION 12. RETENTION PONDS.** Tracts 2, 12 and 26 will have retention ponds constructed in the area designated on the plat of the subdivision. These retention ponds will be constructed to depths to provide year round water in the ponds and to allow additional capacity for water retention. The owners of these lots shall be responsible for maintaining and repairing the ponds so as to provide the proper capacity for water retention. The owner shall maintain the retention ponds to prevent unsightly appearance. If the ponds are not properly maintained, the County may repair and maintain the retention ponds at the owners expense.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 17<sup>th</sup> day of September, 2004

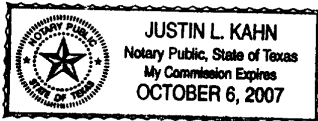
ROYAL GUARD PROPERTIES, INC.

BY: J. Richie Field  
J. Richie Field

STATE OF TEXAS           X  
  X  
COUNTY OF MONTGOMERY X

BEFORE ME, the undersigned authority, on this day personally appeared J. Richie Field, President of Royal Guard Properties Inc., a Nevada Corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 17<sup>th</sup> day of September, 2004.



[Signature]

Let to:

ROYAL GUARD PROPERTIES  
P.O. BOX 2804  
CONROCK TX 77305

**RECORDS MEMORANDUM**

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.

FILED FOR RECORD

2004 SEP 21 PM 1:47

*Mark Turbell*  
COUNTY CLERK  
MONTGOMERY COUNTY TEXAS

STATE OF TEXAS  
COUNTY OF MONTGOMERY  
I hereby certify this instrument was filed in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Records of Real Property at Montgomery County, Texas.

SEP 21 2004



*Mark Turbell*  
County Clerk  
Montgomery County, Texas