

**PETITION FOR THE CREATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ALL SECTIONS OF KIPLING OAKS**

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

PREAMBLE

WHEREAS, the residential community known as Kipling Oaks Subdivision, in Montgomery County, Texas, consisting of six tracts of land according to the plats and maps thereof filed for record in the Montgomery County Clerk's office, does hereby wish to create covenants, conditions and restrictions for the following six tracts of said Subdivision to bring about uniformity in the regulation of all the land in said residential community for the benefit of present and future owners of property in said residential community;

KIPLING OAKS SUBDIVISION, SECTION ONE, being that certain tract of land subdivided and platted as Kipling Oaks, Section One, a subdivision in the John Raimon Survey, Abstract Number 472, as shown in the Plat and Map Records of Montgomery County, Texas.

KIPLING OAKS SUBDIVISION, SECTION TWO, being that certain tract of land subdivided and platted as Kipling Oaks, Section Two, a subdivision in the E.H.Coe Survey, A-158, the Buckman Canfield Survey, A-120, as shown in the Plat and Map Records of Montgomery County, Texas.

KIPLING OAKS SUBDIVISION, SECTION THREE, being that certain tract of land subdivided and platted as Kipling Oaks, Section Three, a subdivision in the E.H. Coe Survey, A-158, and the Buckman Canfield Survey, A-120, as shown in the Plat and Map Records of Montgomery County, Texas.

KIPLING OAKS SUBDIVISION, SECTION FOUR, being that certain tract of land subdivided and platted as Kipling Oaks, Section Four, a subdivision in the T. J. Stansbury Survey, Abstract Number 485, as shown in the Plat and Map Records of Montgomery County, Texas.

KIPLING OAKS SUBDIVISION, SECTION FIVE, being that certain tract of land subdivided and platted as Kipling Oaks, Section Five, a subdivision in the E.H. Coe Survey, A-158, and the Buckman Canfield Survey, A-120, as shown in the Plat and Map Records of Montgomery County, Texas.

KIPLING OAKS SUBDIVISION, SECTION SIX, being that certain tract of land subdivided and platted as Kipling Oaks, Section Six, a subdivision in the T. J.

Stansbury Survey, Abstract Number 485, as shown in the Plat and Map Records of Montgomery County, Texas.

NOW THEREFORE, the undersigned, Owners of tracts in Sections 1, 2, 3, 4, 5, and 6 of the Subdivision, do hereby covenant and agree with each other to adopt the following covenants, conditions and restrictions to apply uniformly to the use, occupancy and conveyance of all Lots in KIPLING OAKS, SECTIONS 1, 2, 3, 4, 5, and 6 (hereinafter collectively referred to as the "Subdivision").

Each contract or deed which has heretofore been or may hereafter be executed with regard to any of the Lots in said Subdivision shall be conclusively held to have been executed, delivered, and accepted subject to the following covenants, conditions, restrictions, easements, liens and charges, regardless of whether or not said covenants, conditions, restrictions, easements, liens and charges are set out in full in said contract or deed. These covenants, conditions and restrictions shall run with the real property, and shall bind all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

- (1) "Association" shall mean and refer to Kipling Oaks Civic Club, Inc., a.k.a., KIPLING OAKS HOME OWNERS ASSOCIATION, a non-profit corporation organized under the laws of the State of Texas. Membership in the Association shall be regulated according to the Articles of Incorporation and Bylaws.
- (2) "Common Area" shall mean and refer to all property owned by the Association for the common use and benefit of the Owners, if any.
- (3) "Declaration" shall mean and refer to this instrument and any amendments thereto. The terms "Declaration" and "Deed Restrictions" may be used interchangeably herein.
- (4) "Deed Restrictions" shall mean and refer to the restrictions, covenants and conditions contained herein, unless otherwise indicated.
- (5) "Lot" shall mean and refer to any numbered Lot or Tract as per the Maps or Plats of the Subdivision referred to herein. The terms "Lot" and "Tract" may be used interchangeably herein.
- (6) "Owner" shall mean and refer to the record Owner (whether one or more persons or entities) of a fee simple title to the surface estate in any Lot that is a part of the Subdivision and that is subject to these Deed Restrictions, but excluding those having such interest merely as security for the performance of an obligation.

- (7) "Subdivision" shall mean and refer to all property in Sections 1, 2, 3, 4, 5, and 6 of KIPLING OAKS SUBDIVISION, more specifically identified as in the Map or Plats thereof filed in the Map Records of Montgomery County, Texas, and such additions thereto as may hereafter be brought within the jurisdiction of the Subdivision.
- (8) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Kipling Oaks Civic Club, Inc., as filed with the Secretary of State of Texas, which is attached hereto as Exhibit A and incorporated herein by reference.
- (9) "Bylaws" shall mean and refer to the Bylaws of the Kipling Oaks Civic Club, Inc. attached hereto as Exhibit B and incorporated herein by reference, as they may be amended from time to time.

ARTICLE II
CONSTRUCTION AND USE RESTRICTIONS AND CONDITIONS

- (1) All Lots of said Subdivision as evidenced by the Map or Plat on file thereof, shall be used for single family, residential purposes only, and no part thereof shall be used for or converted to business or commercial purposes.
- (a) The term "residential purposes" shall exclude, without limitation, duplex houses, apartment houses, boarding houses, hospitals, nursing or retirement homes, hotels, tourist courts or cottages, halfway houses or transient accommodations, or commercial and professional uses of any kind.
- (b) All Lots shall be used for permanent residences in the Subdivision.
- (c) Any business or commercial activity on any Lot, which disturbs the residential character and tranquility of the Subdivision, shall be prohibited.
- (2) All Lots shall be used for single family residence purposes only, and only one (1) private residence home of new construction, designated and constructed for use by a single family, shall be built on each Lot, with such servants quarters, garages and other structures as may be suitable and proper for occupancy of said residents as a single family dwelling.
- (3) Subdivision of Lots Prohibited: No Lot shall be subdivided, nor shall any dwelling be placed on any Lot having an area of frontage less than the smallest Lot on the block, unless a variance is granted by the Association.
- (4) Garages: Garages shall be for a minimum of two (2) cars. In the event the garage is detached from the residence, it may be of frame construction, but at all times must be painted or stained with at least two (2) coats.

- (5) Outbuildings: All outbuildings shall be located to the rear of the residence. No shed, shack, tent, trailer home, or mobile home may be used as a primary residence or rented out for residential purposes either temporarily or permanently.
- (6) Building Set Back Lines: No new construction of any primary residential building shall be located nearer to the front line or nearer to the side street line than the building setback lines shown on the recorded plat. In no event shall any primary residential building be located nearer than sixty (60) feet from roadways as dedicated, unless a variance is granted by the Association, and in no event shall any primary residential building be located nearer than five (5) feet to any interior Lot line. All primary residential buildings and outbuildings constructed prior to the filing of this petition are hereby "grandfathered" and therefore, not subject to or required to comply with this restrictions.
- (7) Minimum Square Footage: No primary residential structure shall be placed on any Lot unless its living area has a minimum of sixteen hundred (1600) square feet of floor space, exclusive of open porches and garages.
- (8) Exterior and Roof Specifications: All new construction of primary residential structures shall have a minimum of fifty-one percent (51%) brick or stone on the exterior wall area, and the remainder of a material other than brick or stone shall be painted or stained with at least two (2) coats. Roofs on all structures shall be in accordance with fire code specifications.
- (9) Approval for New Construction and Additions: All new construction in the Subdivision, whether for primary residences, garages, secondary buildings or outbuildings, or additions to any structure on the Lot, shall be approved by the Board of Directors of the Association before ground is broken or any construction is commenced, to determine architectural suitability with existing structures in the Subdivision and conformity with Deed restriction requirements. In the event the Board fails to respond, approve, or disapprove the plans within (30) days after the requested plans and other documents have been submitted to it, such approval will not be required and this provision as to approval will be deemed to have been satisfied; however, the Board's response may state that the Board requires one (1) additional thirty (30) day period to review said application before the plans are approved, disapproved, or deemed approved. All necessary construction permits must be obtained from the appropriate county or city officials prior to commencing construction. All new construction must be completed in six (6) months, unless an extension of time is approved by the Board of Directors of the Association.

- (10) Sewage Disposal: Prior to occupancy of the residence, the property Owner shall install a septic tank for sewage disposal that is Montgomery County approved. Drainage of septic systems or sewage into ditches, alleys, ravines, or upon the open ground shall be strictly prohibited. All drainage must be regularly and properly disposed of on the property. No cesspool shall be dug, used or maintained on any Lot. Outside toilets and outhouses are strictly prohibited.
- (11) Culverts and Driveways: The Owner or purchaser of a parcel of land in the Subdivision shall, upon constructing any new residence on the Lot, or any person making use of a tract of land, shall place a culvert of a size as specified by Montgomery County and a minimum of sixteen (16) feet in length to permit the free flow of water at a point between the roadway and the property and shall fill the drive entrance with sufficient dirt over and around the culvert for proper drainage. All driveways shall be of concrete slab or black asphalt from street to garage.
- 11.1 Utility Easements: Five (5) feet shall be reserved on each side of roadways for underground utility easements. Said easement grants to Grantee the right to use and to keep all of said easement free of any and all obstructions except property line fences and mail boxes, and (2) the rights of ingress and egress to and from said right-of-way for the purpose of constructing, operating, inspecting, repairing, maintaining, replacing and removing said wire or equipment; and Grantor, his successors, assigns, agents or licensees, shall not have the right to cause or permit any obstructions, except property line fences and mail boxes, to be placed, constructed, or to grow (other than grass) within said easement area without the express written consent of the holder of said easement.
- (12) Prohibited Structures: No Mobile Homes, Trailer Homes, Manufactured Homes, or any other similar structures shall be placed on any tract of land in the subdivision.

ARTICLE III
MAINTENANCE AND USE COVENANTS AND RESTRICTIONS

- (1) Maintenance of Property: No activity that might reasonably be considered to reduce the marketability of any Lot or the desirability of the Subdivision as a residential neighborhood shall be carried on upon any Lot or any Common Area. All Lots and all structures on the Lots shall be maintained in conformity with the general plan and scheme of residential development and in order to preserve property values in the Subdivision. Building exteriors shall be kept in good condition. Buildings with frame construction shall be kept painted or stained and in good condition. Rotted wood or siding shall be replaced.

- (2) Soil and Timber Removal: Owners shall not excavate, remove, or sell the soil, and shall not cut, remove, or sell timber, except as necessary for the construction of residential and associated improvements upon the property, and except as may be necessary for the reasonable use, upkeep, and maintenance of the property. Said permitted removal must be carried out in such a way as does not in any manner decrease the value of the property in the Subdivision.
- (3) Lot and Yard Maintenance: All developed or improved Lots shall be kept cut, weeded and maintained by the Owner or occupant. If the Lot is not maintained properly, the Association may provide written notice to the Owner of the need for maintenance within a reasonable specified time. If the Owner does not comply within the time given in the notice, the Association may, without being liable for trespass, hire a third party to do the maintenance work and charge the Owner for all costs incurred. Lawn maintenance charges shall be a continuing lien upon the Lot against which the charge is assessed, and such charge shall be the personal obligation of the person who was the Owner of the Lot at the time the charge was assessed.
- (4) Nuisances and Prohibited Activities: No noxious, offensive, or dangerous activity shall be carried on upon any Lot, nor shall any loud disruptive noises be carried on in the Subdivision or upon any Lot.
- (a) Prohibited activity shall be defined as any activity that can be seen, heard, or smelled by persons outside the Lot or structure. Examples of prohibited activity include, but are not limited to: noise; a motor vehicle with more than one single rear axle parked on a Lot or road or permanently kept on the property; any motor vehicle not properly licensed by the State of Texas or having expired tags, within view of the road; any motor vehicle with a flat tire or tires, or any inoperable vehicle on the property within view of the road; junk or wreckage yards, or autos, trucks or other vehicles used for parts; motorcycles without proper mufflers; loud music systems; pets allowed to run loose; speeding and wreckless driving; vandalism of public or private property.
- (b) The use and/or discharge of firearms or pneumatically discharged weapons such as air rifles are strictly prohibited on all Lots in the Subdivision. No hunting shall be permitted in the Subdivision.
- (c) No Lot or tract shall be occupied or used for any vicious or immoral purposes, nor in violation of the laws of the local, State, or Federal Governments.
- (5) Trash Dumping and Storage of Waste: All Lots must be maintained in a sanitary manner, at all times. No Lot, whether vacant or occupied, any Common Area, or any other area of the Subdivision, shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste. Trash and other waste must be kept in covered sanitary containers, and must be disposed of on a regular basis, at least once per week. No waste, garbage or trash shall be buried or burned in the Subdivision. No leaves, brush, timber, debris, or trash of any nature shall be placed, disposed of, or burned within the road right-of-way or on any unattended or vacant Lot.

- (6) Wrecking Yards Prohibited: Wrecking yards are strictly prohibited, and shall not be located on any Lot or area in the Subdivision, whether or not enclosed behind a fence.
- (7) Animals and Pets: Dogs, cats, and other household pets may be kept on residential Lots, provided, however, that they are not kept, bred, or maintained for commercial purposes. Local animal control regulations shall be complied with. No livestock or poultry of any kind shall be raised, bred, or kept on any Lot.
- (8) Signs on Residential Lots: No commercial signs, billboards, posters, or other advertisements may be posted on any residential Lot except reasonable "For Sale" or "For Rent" signs pertaining to the sale or rental of the tract or tracts and improvements thereon. Other signs of a temporary nature such as political signs or garage sale signs shall be promptly removed at the conclusion of the event and in no event shall be left in place for a continuous period exceeding two weeks.

ARTICLE IV MISCELLANEOUS

- (1) Creation of the Lien and Personal Obligation of Dues, Annual Dues, Assessments, Special Assessments for Capital Improvements or Charges ("Obligation"): Each Lot in the Subdivision shall be subject to Obligations. Each Owner of a Lot or Lots within Kipling Oaks Subdivision by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay such Obligation. The Obligation is payable to the Association and such Obligation shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or charge is made. If such Obligation becomes delinquent and collection is made necessary by an attorney, then court costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such Obligation is made. Each such Obligation, together with interest, court costs, and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who or which was the Owner at the time the Obligation fell due. The personal burden for the Obligation shall not pass to successors in title unless expressly assumed by such successors.
- (2) Subordination of Lien to Mortgages: The assessment lien shall be subordinate to the lien of any first mortgage, but superior to all other liens. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

- (3) Annual Assessments: Each property owner is hereby subject to annual maintenance dues for the purpose of creating a maintenance fund. The Owner of developed or undeveloped Lot(s) shall pay the maintenance dues to the Association in advance annual installments, on January 1st of each twelve-month period. The rate at which each property owner will be assessed shall be determined annually, and may be adjusted from year to year by the Association as the needs of the properties may, in the judgment of the Association, require, provided that such assessment shall be uniform as between each property owner whereas, the total amount paid for charges, dues and assessments by each property owner will be the same regardless of the number of Lots owned by the property owner. (Note: As of the 1999 Annual Business Meeting of the Kipling Oaks Homeowners Association at the Decker Prairie Community Center, the current, approved, rate is at \$75.00 per year per property owner.)
- (4) Purpose of Maintenance Dues: Maintenance dues levied by the Association shall be used for the purpose of promoting the property values, health, safety and welfare of the property in the Subdivision and the Owners thereof. Such uses and benefits may include, by way of clarification but not limited to, any and all of the following: costs of enforcement of these covenants, conditions and restrictions; business costs incurred by the Association; maintenance of any Common Area; negotiation of professional police and security service; street lighting; street cleaning and repair; mosquito control; special garbage or heavy trash pickup, legal expenses, insurance and other purposes as the Association may deem to be in the Subdivision's best interest.
- (5) Special Assessments for Capital Improvements: In addition to the annual assessment authorized above, the Board may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of (1) any purchase, construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or (2) any other expenditure authorized by Article IV, Section 4, provided that any such assessment shall have the approval of the Owners of seventy-five percent (75%) of the Lots in the Subdivision. Voting may be by proxy or in person at a meeting duly called for such purpose.
- (6) Duration and Amendment Process: The covenants, restrictions and conditions herein shall be binding upon all Owners and Lots, and all persons claiming thereunder for a period of twenty (20) years from the date this instrument is recorded, after which period such covenants, restrictions and conditions shall be automatically extended for successive periods of ten (10) years. Notwithstanding the preceding sentence, the covenants, restrictions and conditions herein may be revoked or amended at any time in whole or in part by an instrument signed and acknowledged by the Owners of a majority of the Lots in the Subdivision, such revocation or amendment to become effective when such instrument has been recorded in the Real Property Records of Montgomery County, Texas.

- (7) Notification of Violations: The Board of Directors of the Association shall have the right to notify Owners in writing of any violation of these Deed Restrictions. Said notification shall give the Owner thirty (30) days to correct the problem before further action is taken.
- (8) Enforcement: The Association, acting through its Board of Directors, shall have the right, but not the duty, to enforce, by any proceedings at law or in equity, all conditions, covenants, easements, reservations and restrictions now or hereafter imposed by the provisions of these Deed Restrictions.
- (a) The authority of the Association to enforce this Declaration shall not affect the right of any Owner to commence and maintain actions and suits to restrain and enjoin any violation or threatened violation of the provisions of these Deed Restrictions by another Owner, except the provisions for dues and special assessments.
- (b) Enforcement may be by proceedings at law and/or in equity against any person or persons violating or attempting to violate any restriction, covenant and condition herein contained, whether such enforcement is to restrain violation or to recover damages, or both. Failure of the Association or any Owner to enforce any provision of this Declaration does not constitute a waiver of the right to do so hereafter. The persons violating this Declaration shall be responsible for paying any and all court costs, attorney's fees, and other costs that are incurred by either the Association or any Owner in enforcing the provisions of these Deed Restrictions.
- (9) Notice: Any legal notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent by certified mail, postpaid, to the last known address of the person who appears as Owner in the records of the Association at the time of such mailing. It shall be the Owner's obligation to inform the Association of any change in his/her mailing address.
- (10) Severability: Except as provided in Article IV, Paragraph 11, invalidation of any provision or provisions of any one or more of these Deed Restrictions by legislation, judgment or court order shall not affect the validity or enforceability of any of the other provisions.
- (11) Except as otherwise provided herein, these Deed Restrictions replace in their entirety all previously recorded deed restrictions for the Kipling Oaks Subdivision. If these Deed Restrictions are made invalid or unenforceable in their entirety by any legislation, judgment or court order, any previously recorded restrictions will be deemed reinstated and still in effect in accordance with the provisions thereof.
- (12) The headings in these Deed Restrictions are for convenience in reference only and do not limit or otherwise affect the meaning of any provision hereof.

NOTICE TO OWNERS

723-00-0129

An owner who does not sign this petition must file suit under Section 201.010 of the Texas Property Code before the 181st day after the date on which the certificate called for by Section 201.008(e) of the Texas Property Code is filed in order to challenge the procedures followed in creating these covenants, conditions, and restrictions.

An owner who does not sign this petition may delete their property from operation of these covenants, conditions, and restrictions by filing, before one year after the date on which the owner receives actual notice of the filing of the petition, an acknowledged statement describing the owner's property by reference to the recorded map or plat of the subdivision and stating that the owner elects to have the property deleted and excluded from the operation of the covenants, conditions, and restrictions.

I/we wish to _____ INCLUDE my property in being burdened by these covenants, conditions, and restrictions.

I/we wish to _____ EXCLUDE my property from being burdened by these covenants, conditions, and restrictions.

My name(s) is/are _____ I/we own record title to property within the Kipling Oaks Subdivision. The legal description and street address of my property is as follows:

Section, Block and Lot Number(s):
Please indicate all lots owned by you.

Section # _____ Block # _____ Tract or Lot Number(s) _____ Address _____

Full Name and Address:

Printed Name: _____

Number/Street _____

City/State/Zip _____

Signature: _____

Date signed: _____

Full Name and Address:

Printed Name: _____

Number/Street _____

City/State/Zip _____

Signature: _____

Date signed: _____

If there is more than one record owner of a tract or lot, each record owner must sign this Notice to include or exclude property with the petition.

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the _____ day of _____, 2000, by _____, known to me to be the person whose name is subscribed above.

Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the _____ day of _____, 2000, by _____, known to me to be the person whose name is subscribed above.

Notary Public in and for the State of Texas

UP FOR RECORD

00 JUN 13 PM 2:37

MARK TURNBULL, CO. CLERK
MONTGOMERY COUNTY, TEXAS

DEPUTY

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify that 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 of
Montgomery County, Texas.

JUN 13 2000



Mark Turnbull
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS