

**CHEROKEE COVE
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

STATE OF TEXAS }
COUNTY OF CHEROKEE }

WHEREAS, David R. Diduch and Kathryn C. Diduch, hereinafter called the Declarant, is the owner of all that certain real property located in Cherokee County, Texas, and being all of Tracts one (1) through twelve (12), of CHEROKEE COVE, a subdivision in Cherokee County, recorded in Cabinet , and Slide 309, through , in the records of Cherokee County.

WHEREAS, the Declarant will convey the above described property subject to certain protective covenants, conditions, and restrictions as hereinafter set forth;

NOW, THEREFORE, it is hereby declared that all of the property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding on all parties having any right, title, or interest in or to the above described property or any part thereof, and their heirs, successors, and assigns, and which covenants, conditions, and restrictions shall inure to the benefit of each owner thereof.

**ARTICLE ONE
DEFINITIONS**

- 1.01 "Owner" shall refer to the record owner, whether one or more persons or entities, of the fee simple title to any portion of the above described property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.02 "Declarant" shall refer to David R. Diduch and Kathryn C. Diduch, its successors and assigns.
- 1.03 "Tract" shall refer to any of the plots of land in Cherokee Cove, shown upon the plat and subdivision map recorded in Cabinet , and Slide , Official Public Records of Cherokee County, Texas.

**ARTICLE TWO
APPROVAL OF PLANS**

No building, fence, wall, culvert, driveway, enclosure or other structure shall be commenced, erected, materially altered, or maintained upon the Property, nor shall any exterior addition to, or change or alteration therein, be made, until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted to, and approved in writing by, the Declarant as to harmony of external design and location in relation to surrounding structures and topography and finish grade elevation, among other things. However, approval by the Declarant shall not be unreasonably withheld. At any time after sixty percent (60%) of property has sold Declarant may turn approval of plans over to property owners

Failure of Committee to Act

In the event that any plans and specifications are submitted to the Declarant as provided herein, and Declarant shall fail either to approve or reject such plans and specifications for a period of Thirty (30) days following such submissions, approval by the Declarant shall not be required, and full compliance with this Article shall be deemed to have been had.

**ARTICLE THREE
EXTERIOR MAINTENANCE**

In the event an Owner of any Tract shall fail to maintain the premises and the improvements situated thereon in a clean, sanitary, neat, and orderly manner, the Declarant shall have the right, through its agents and employees, to enter upon said Tract and to clean, repair, maintain, and restore the Tract and exterior of the buildings and any other improvements erected thereon, all at the expense of the Owner. However, prior to entering said Tract the Declarant shall provide thirty (30) days written notice of the needed repair or restoration. In the event that Declarant is required to pay for repair or restoration of Owner's tract, Owner shall reimburse Declarant within thirty (30) days written notice of the amount due and owing ("expense"). If the expense is not paid within (30) days after the date, the expense shall bear interest from the date of delinquency at the rate of fourteen percent (14%) per annum, and the Declarant may bring an action at law against the Owner personally obligated to pay the same, or for foreclosure of the lien against the Tract and interest of the responsible Owner, such action to also include costs and reasonable attorney's fees of any such action. No owner shall otherwise escape liability for the expenses provided for herein by non-use of the Property or abandonment of his Tract.

ARTICLE FOUR USE RESTRICTIONS

Type of Buildings Permitted Construction Completion

All Tracts shall be used for residential purposes only, and no building shall be erected, altered, placed or permitted to remain on any Tract other than one single family dwelling not to exceed two (2) stories in height plus any workshops, private garages, barns and other necessary outbuildings (all such outbuilding not to exceed thirty (30) feet in height), provided, however, that not more than one single family guest house may be erected on a tract in addition to the above. Guest house must be erected behind main house with same architectural design as main single family dwelling unless variation is granted by Declarant. The exterior walls of any residence situated on any tract shall consist of not less than sixty percent (60%) brick, stone, or other similar construction: provided, however, that all construction shall be of materials designed and manufactured for exterior use on site built residence structures of average or better quality. All non-masonry exterior construction (if any), on any residence or other building must be approved by the Declarant. No aluminum or vinyl siding is allowed on any exterior walls. All houses must have at least a eight (8) twelve (12) pitch roof or more.

Garages

Every dwelling on a Tract shall have either an attached or detached garage with the capacity to hold at least two (2) automobiles. Said garage shall not front or open onto a street.

Landscaping

Within 90 days of completion of the dwelling front and side yards must be in sod or covered in grass.

Minimum Floor Area and Exterior Walls

Any single story residence constructed on Tracts 1-6 must have a living area of at least two thousand (2,000) square feet, exclusive of open or screened porches, terraces, patios, driveways, carports and garages: any residence two (2) stories in height on Tracts 1- 6 must have a living area of at least twenty-two hundred (2,200) square feet, exclusive of open or screened porches, terraces, patios, driveways, carports, and garages.

Any single story residence constructed on Tracts 7-12 must have a living area of at least eighteen hundred (1,800) square feet, exclusive of open or screened porches, terraces, patios, driveways, carports and garages: any residence two (2) stories in height on Tracts 7-12 must have a living area of at least two thousand (2,000) square feet, exclusive of open or screened porches, terraces, patios, driveways, carports, and garages.

Noxious or Offensive Activities Prohibited

No illegal, noxious, or offensive activity shall be carried out upon the real property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Clearing and Burning

Clearing may be done by Owner, provided that no hardwood trees are removed without the Declarant's approval and when said clearing is not in violation of any local, State or Federal laws.

Brush and removed trees may be burned only if it is not in violation of any local, State, or Federal laws; the local fire department has no burning ban in effect at that time; it is done during damp weather with low winds, and there is a cleared area around the brush or trees to be burned. A bulldozer or local fire department surveillance is required at the burning sight.

Water Runoff

Nothing shall be erected, placed, maintained, done or permitted to remain on any Tract which interferes with surface runoff in such manner as to cause such water runoff to be diverted across any other Tract or which causes flooding or erosion to any other Tract or to any street or ditch.

Rubbish, Trash and garbage

The property shall not be used or maintained as a dumping ground for rubbish or trash, and no garbage or other waste shall be kept except in sanitary containers or composed or buried in a sanitary manner. No trash burning will be permitted on any tract of land.

Sewage disposal

No individual sewage disposal system shall be permitted on the property unless the system is designed, located, and constructed in accordance with the requirements, standards, and recommendations of any state, county, municipal, or other governmental subdivision or agency having lawful authority pertaining thereto.

Pollution

All springs, creeks, ponds, stock tanks, ditches, and gullies, and any water on the property shall be kept free of trash, rubbish, garbage, waste, effluent from sewage disposal systems or other waste disposal systems, and all other forms of pollution.

Construction Completion

Exterior and interior construction of all structures must be completed within twelve (12) months from the date of written approval of plans by the Declarant.

Fencing

No barbed wire, hog wire, chain link, chicken wire, goat wire, or similar type fence shall be erected on Tract. All fencing shall be of a decorative nature, such as wood, polymer, masonry or decorative iron and approved in writing by Declarant.

Clothes Drying Facilities

Outside clothes lines or other facilities for drying clothes or airing clothes shall not be erected, placed or maintained on any Tract unless they are concealed in such a manner so as not to be visible from streets or from access roads.

Manufacturing and Commercial Activity

No manufacturing or commercial enterprise or enterprises of any kind for profit shall be maintained on or in front of any Tract nor shall such property in any way be used for other than strictly residential purposes. This restriction shall not be construed as preventing the practice, by a person actually residing on a Tract, of architecture, accountancy, engineering, computer programming, counseling, individualized teaching or tutoring, general or specialized consulting, or of similar or analogous professions or skills; provided, however, that no sales of goods of any kind shall be permitted to be made on any Tract except sales which are only occasional and which are merely incidental to the residential or other permitted use of the Property (a non-commercial garage sale, for example) and, further provided, that not more than one non-resident employee may be employed on any Tract at any one time; and, further provided, that nothing herein shall prohibit an artist or craftsman actually residing on a Tract from producing art or craft objects which are removed from the Property before the sale.

Animals

No livestock, livestock feed lot, hog or pig farm, slaughter or packing house, poultry house, or dog kennel shall be erected, operated, or maintained on the property for any purpose. Nothing herein shall prevent the raising of household pets for personal use.

- A. No more than three (3) dogs may be raised, bred, kept or maintained on any Tract.
- B. No more than three (3) cats may be raised, bred, kept or maintained on any Tract.
- C. No lions, tigers, panthers, bears, or similar animals may be raised, bred, kept or maintained on any Tract.
- D. No animals of any kind shall be raised, bred, kept, or maintained on any Tract in such manner as to cause a safety or health risk or hazard to humans or other animals, livestock, or poultry or in such a manner as to cause a noise, odor or other nuisance.

Prohibited Use and Items

Without the prior express written consent of Seller, its successors or assigns, no rock, gravel, or other mining, quarrying or sale of sand or other material shall be conducted on any tracts except for the purpose of supplying or removing rock, gravel, or other material related to construction on the tract.

No structure of a temporary character, trailer, motor home, "single-wide" mobile home, basement, tent, shack, or other outbuilding shall be used on the property as a residence, except a guest house or garage with a separate living area may be used as a temporary residence while new home construction is underway. For purposes of this provision, temporary residence shall mean a period of residence not longer than eighteen (18) months. After new home construction is completed the separate living area in such cottage or garage will be considered a guest house only. For purposes of this provision, temporary occupancy shall mean a period of occupancy not longer than thirty (30) days including any periods of vacancy which commence after the start of the period of occupancy and which are shorter than ten (10) days in length.

No house trailers, modular homes, mobile homes, doublewide homes, or similar manufactured residence structure, shall be erected, parked, or otherwise situated on any land tract for any reason.

No used structure shall be moved on any Tract without the express written consent of the Declarant.

No wrecked, junked, broken down, or inoperative automobile, truck, bus, motorcycle, or other motor vehicle, boat, or trailer, or any part thereof, shall be placed or be permitted to remain on or in front of any Tract so as to be visible from any street or highway or from any adjacent Tract or the lake.

Resubdivision

No tract may be subdivided without the express written consent of the Declarant.

Setbacks

No building shall be located on any of the Tracts nearer to the front lot line than forty-five (45) feet. However, minor variations of the minimum set-back line shall be permitted to allow for preservation and utilization of existing trees or views. No building shall be located nearer than twenty (20) feet to an interior Tract line. No dwelling shall be located on any of the interior Tracts nearer than fifteen (15) feet to the rear Tract line. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Tract to encroach upon any other Tract, provided, however that this provision shall not apply to interior Tract boundary lines between contiguous Tracts having a common owner.

Easements

Each Owner covenants to provide and hereby grants easements and rights-of way for existing utility lines and roadways, whether of record or not; easements and rights-of-ways shown on the plat of Cherokee Cove subdivision, Cherokee County; other easements and rights-of ways, if any, shown in the records of the County Clerk of Cherokee County, Texas; and easements for installation and maintenance of utilities and drainage facilities.

Propane Tanks

An Owner may place one propane tank on each Tract, but the propane tank must not exceed a maximum of 500 gallons and the propane tank must be underground, not to interfere with surface use.

ARTICLE FIVE GENERAL PROVISIONS

The Declarant, any Owner, any association of Owners, and any person owning all or any part of all that certain real property described herein shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

The covenants, conditions, and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by the Declarant, Declarant's successors in title to any property which is contiguous to the property above described, any Owner, or any association of Owners, and their respective legal representatives, heirs, successors, and assigns, and unless amended as provided herein, shall be effective for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years. The covenants, conditions, and restrictions of this Declaration may be amended at any time by an instrument signed by the Owner or Owners of not less than eighty percent (80%) of the total owners comprising the property. During any succeeding ten (10) year period, the covenants, conditions, and restrictions of this

declaration may be amended during the last year of any such ten (10) year period by an instrument signed by the Owner or Owners of not less than sixty-six and two third percent (66 2/3%) of the total Owners comprising the property. No amendment shall be effective until recorded in the Real Property Records of Cherokee County, Texas, nor until the approval of any governmental entity or regulatory body which is required by law shall have been obtained.

Effective as of the date Declarant conveys all of its rights, title and interest in and to the property and no longer holds any interest in and to the property or any property thereafter added, Declarant shall be deemed to have assigned all its rights, benefits and obligations as Declarant hereunder to the property owners. Declarant shall then be relieved of the performance of any further duty or obligation hereunder, and the property owners shall then be obligated to perform all such duties and obligations of the Declarant with the necessity of any further writing of assignment of such rights and obligations by the Declarant, during the term of the Declaration and thereafter. Neither Declarant nor the Partners, Officers, Directors, Members, Employees Real Estate Brokers and Agents of it shall be liable for damages or otherwise to any owner of any property relying on these restrictions for reason of their unenforceability thereof, in addition, during the term of the declaration and thereafter, each owner agrees that he will not bring any action or suit against Declarant or the Partners, Officers, Directors, Members, Employees Real Estate Brokers and Agents of it, to recover any such damages, and hereby releases all claims, demands and causes of action against Declarant arising out of or in connection with any decision, action, judgment, negligence, enforcement action or any other act or omission by Declarant in connection with the enforcement (or lack thereof) of this declaration.

Executed by said Declarant, this 24 day of APRIL, 2007.

David R. Diduch and Kathryn C. Diduch

By: [Signature]
DAVID R. DIDUCH

By: [Signature]
KATHRYN C. DIDUCH

STATE OF TEXAS }
COUNTY OF }

This instrument was acknowledged before me on the 24th day of April, 2006, by DAVID R. DIDUCH AND KATHRYN C. DIDUCH, Owners of CHEROKEE COVE, a subdivision in Cherokee County, Texas.

[Signature]
Notary Public
State of Texas

Jay Abercrombie
Notary Printed Name

5-17-10
Date Commission Expires

