

**AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIVE COVENANTS OF
HOLLY OAKS LANDING,
a subdivision in Bell County, Texas**

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

FIRST OMEGA PARTNERS, LTD., a Texas limited partnership ("Declarant"), is the developer of that certain 18.0 acre tract of land out of the David Compton Survey, Abstract No. 210, in Bell County, Texas, that has been platted as a subdivision known as **HOLLY OAKS LANDING, a subdivision in Bell County, Texas**, as shown on the plat recorded in Cabinet C, Slide 234-B, Plat Records of Bell County, Texas (the "Subdivision").

As a part of that process, Declarant created certain covenants, conditions and restrictive covenants that would affect the lots and the land that comprise the Subdivision, and executed and filed the "Declaration of Covenants, Conditions and Restrictive Covenants of Holly Oaks Landing, a subdivision in Bell County, Texas" (the "Declaration") in Volume 4338, Page 181, of the Official Public Records of Real Property of Bell County, Texas. In addition, Declarant formed a property owners' association known as **MPRC HOLLY OAKS HOMEOWNERS' ASSOCIATION, INC.** (the "Association") to enforce the covenants, conditions and restrictive covenants of the Declaration. The Association has the power to administer and enforce the covenants, conditions and restrictive covenants as described in the Declaration.

Pursuant to Article XV, Amendment and Annexation of the Declaration, Declarant has the right to file an amendment to the Declaration. In addition, pursuant to Article XI, paragraph 1., Annual Assessments, the Members of the Association (the "Membership"), by a majority vote of two-thirds (2/3) of the votes of the Lot Owners who are voting in person or by proxy at a meeting called for a vote on such proposed increase, has, the right to adjust the amount of the Annual Assessment by an amount greater than the formula specified in said Article XI, paragraph 1., Annual Assessments. In addition, pursuant to Article XI, paragraph 2., Special Assessments, the Membership, by a majority vote of two-thirds (2/3) of the votes of the Lot Owners who are voting in person or by proxy at a meeting called for a vote on such purpose, has, the right to levy a special assessment. The Membership met in a called meeting on February 24, 2004, and approved an increase in the Annual Assessments and formalized a special assessment, called the "Membership Assessment", and approved an increase in the Membership Assessment. This Amendment to the Declaration of Covenants, Conditions and Restrictive Covenants of Holly Oaks Landing, a subdivision in Bell County, Texas" (the "Amendment") combines the actions of both Declarant and the Membership, and amends the Declaration as follows, to-wit:

(1) **ARTICLE XI, COVENANTS FOR MAINTENANCE ASSESSMENTS** of the Declaration is replaced, in its entirety, by the following in order to clarify the language and content of Article XI.

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIVE COVENANTS OF HOLLY OAKS LANDING, a subdivision in Bell County, Texas

"ARTICLE XI
COVENANTS FOR MAINTENANCE ASSESSMENTS

"Declarant, for each Lot owned by it within the Properties, covenants, and each Builder Member and every Owner, by acceptance of a deed, whether or not it is so expressed in the deed or other conveyance, will be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments, to be fixed, established, and collected from time to time as provided below; and (3) Member Charges levied against individual Owners to reimburse the Association for extra or unusual costs incurred by the Association for curing the Owner's violation of a restrictive covenant contained in this Declaration. The annual assessments, special assessments, and member charges are collectively called the "Charge" or "Charges". The Charges, together with interest, reasonable attorney's fees, and costs of collection, as provided in this Declaration, will be a charge on the land and will be a continuing lien upon the Lot against which the Charges are made. Each Charge, together with interest, reasonable attorney's fees and cost of collection as provided in this Declaration, will also be the personal obligation of the Owner of the Lot at the time the obligation accrued.

"The Charges levied by the Association will be used for the purpose of promoting the recreation, health, safety, and welfare of the Members, and in particular, for the improvement, maintenance, and operation of the Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas by the Members.

- "1. Annual Assessments. The annual assessments ("Annual Assessments") for both Class A and Class B membership will be determined by the Board of Directors in the manner provided below after determination of current maintenance costs and anticipated needs of the Association during the year for which the assessment is being made. The maximum Annual Assessment may be adjusted by a majority vote of the Board of Directors, without membership vote, but will not increase to more than the greater of: (i) 110% above the prior year's Annual Assessment, or (ii) the result of multiplying the prior year's Annual Assessment by a fraction, the numerator of which is the latest Consumer Price Index published on or before the 60th day prior to the date the Board sets the new maximum Annual Assessment rate and the denominator of which is the Consumer Price Index published on the year prior to the one used in the numerator. Consumer Price Index is the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers. In the event the compilation or publication of the Consumer Price Index is substantially revised, transferred to any other governmental department or bureau or agency or is discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices most nearly the same as the Consumer Price Index) will be used to make the calculations. The Association may increase the maximum Annual Assessment rate by more than the amount specified in the preceding sentence only upon receipt of 2/3's of the vote the Owners present in person or represented by proxy at a meeting called for vote on the proposed increase.

"The Annual Assessment will be an amount equal to the total amount of the annual budget multiplied by a fraction, the numerator of which is the number of Lots

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIVE COVENANTS OF HOLLY OAKS LANDING, a subdivision in Bell County, Texas

attributable to that Owner and the denominator of which is the total number of Lots in the Subdivision.

"Commencing upon the execution of the Declaration and continuing through December 31, 2003, the Annual Assessment on Lots 1 through 26, inclusive, of the Subdivision will be \$150.00. Effective January 1, 2004, the Annual Assessment on Lots 1 through 26, inclusive, of the Subdivision will be \$200.00.

"Commencing upon the execution of the Declaration and continuing through December 31, 2003, the Annual Assessment on Lots 27 through 29, inclusive, of the Subdivision will be \$100.00. Effective January 1, 2004, the Annual Assessment on Lots 27 through 29, inclusive, of the Subdivision will be \$150.00.

"The Annual Assessment is due and payable in accordance with the terms of the Declaration.

"Regardless of any language to the contrary, the Charges will not apply to Declarant, as owner of or holder of title of any Lot, unless Declarant occupies a Living Unit or uses the Living Unit for its own personal use as rental property. Annual Assessments and Special Assessments (defined below) will not apply to Builder Members in the business of purchasing Lots for construction of improvements and subsequent resale to a third party unless the Builder Member occupies the Living Unit or uses the Living Unit for its own personal use as rental property. Membership Assessments (defined below) will not apply to Builder Members for Lots purchased for resale to a third party but will apply to any subsequent sale and purchase of the Lot to a third party.

- "2. Membership Assessments. In addition to the Annual Assessments provided for above, the Association may levy a membership assessment ("Membership Assessment") on Class A membership at any time a Lot is sold by the Owner, including Declarant, to a third party. The Membership Assessment will be established by Declarant so long as the Declarant is the owner of a Lot and thereafter determined and established by the Board. The Membership Assessment will be due and payable at the sale and closing of the Lot, and will be collected from the purchaser of the Lot at the closing.

- "a. The Initial Membership Assessment to be collected at the sale of a Lot to a third party by the Declarant or Builder Member will be as follows:

"(1) Commencing upon the execution of the Declaration and continuing through March 14, 2004, the Initial Membership Assessment on Lots 1 through 26, inclusive, of the Subdivision will be \$150.00. Effective March 15, 2004, the Initial Membership Assessment on Lots 1 through 26, inclusive, of the Subdivision will be \$200.00.

"(2) Commencing upon the execution of the Declaration and continuing through March 14, 2004, the Initial Membership Assessment on Lots 27

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIVE COVENANTS OF HOLLY OAKS LANDING, a subdivision in Bell County, Texas

through 29, inclusive, of the Subdivision will be \$100.00. Effective March 15, 2004, the Initial Membership Assessment on Lots 27 through 29, inclusive, of the Subdivision will be \$150.00.

"b. The Third Party Sale Membership Assessment to be collected at the sale of a Lot to a third party by a subsequent Owner will be as follows:

"(1) Commencing upon the execution of the Declaration and continuing through March 14, 2004, the Third Party Sale Membership Assessment on Lots 1 through 26, inclusive, of the Subdivision will be \$150.00. Effective March 15, 2004, the Third Party Sale Membership Assessment on Lots 1 through 26, inclusive, of the Subdivision will be \$200.00.

"(2) Commencing upon the execution of the Declaration and continuing through March 14, 2004, the Third Party Sale Membership Assessment on Lots 27 through 29, inclusive, of the Subdivision will be \$100.00. Effective March 15, 2004, the Third Party Sale Membership Assessment on Lots 27 through 29, inclusive, of the Subdivision will be \$150.00.

"A table is attached to this Declaration setting forth both the initial and revised Annual Assessments and Membership Assessments.

"3. Special Assessments. In addition to the Annual Assessment and Membership Assessment provided for above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") on Class A membership and Class B membership as follows:

"a. For the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement on or which is a part of the Common Area, or of the easements that the Association is responsible for in an amount determined by the Board;

"b. Respond to the unusual emergency needs of the Association as may be expected to appear from time to time, in an amount determined by the Board; or

"c. For such other lawful purpose related to the use of the Properties as the Board or the Owners may determine;

"provided that any Special Assessment will have the approval of 2/3's of the vote of the Owners who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of the date, time and purpose of the meeting will be sent to all Owners.

"4. Member Charge. In addition to the Annual Assessment, Membership Assessment, and Special Assessment described above, the Association, by vote of the Board, may impose a charge ("Member Charge") upon any Owner for the purposes of reimbursing the Association for all direct and indirect costs incurred by the Association with regard to the maintenance, repair, or replacement of improvements on any particular Lot when the Board has determined the maintenance, repair, or replacement of improvements

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIVE COVENANTS OF HOLLY OAKS LANDING, a subdivision in Bell County, Texas

associated with the Lot has been neglected to the point where conditions existing on the Lot are not in conformance with the maintenance obligations set forth in this Declaration, or an Owner places anything in the Common Area. The Owner of the Lot will be notified in writing of the Board's determination and the specific deficiencies found to exist. The Owner will be afforded a reasonable period of time to respond to the Board's notice and to correct the deficiencies. The Owner will be assessed the cost necessary to reimburse the Association for any and all costs to secure compliance, including attorney's fees.

- "5. Due Dates, Budget, and Late Charges. The Annual Assessments will be due and payable and collected as the Board of Directors of the Association determines. The amount of the Annual Assessment will be an amount which bears the same relationship to the Annual Assessment provided for above as the remaining number of months in that calendar year bear to twelve. The Board will use reasonable efforts to provide each Owner with an invoice statement as of the appropriate amount due, but any failure to provide a notice will not relieve any Owner of the obligation.

"The Membership Assessment is due and payable at the closing of a sale of any Lot to a third party.

"The due date of any Special Assessment will be as set out above or as fixed in the resolution authorizing such assessment.

"The Member Charge is due and payable within 30 days after the Owner was served with notice by the Association of the amount of the Member Charge.

"Each year, the Board of Directors of the Association will adopt an annual budget and set the amount of the Annual Assessment, taking into consideration the Association's operating cost for the then current year, expected increases or decreases in the costs over the next year, and future needs of the Association. The annual budget will be adopted by the Board at least 30 days prior to the commencement of each calendar year.

"Any assessment or Member Charge not paid within 30 days after the due date will bear interest from the due date at a rate to be determined, from time to time, by the Board, not to exceed the maximum permitted by law. If the Board refuses or fails to determine a rate of interest, the rate of interest will be the lesser of (i) 18% per annum, or (ii) the maximum rate allowed by law.

- "6. Remedies and Lien for Annual Assessment, Membership Assessment, Special Assessment, and Member Charge. Each Owner, by his acceptance of a deed to a Lot, expressly vests in the Association, or its agents, the right and power to bring all actions against the delinquent Owner personally for the collection of the Charge as a debt and to enforce the lien by all methods available for the enforcement of liens, including non-judicial or judicial foreclosure by an action brought in the name of the Association, and grants to the Association the power of sale in connection with the lien. The President of the Board of Directors will have the right to appoint an agent and trustee, to mail and file the notices required by Texas Property Code § 51.002, and if applicable, by Texas

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIVE COVENANTS OF HOLLY OAKS LANDING, a subdivision in Bell County, Texas

Property Code § 209, to conduct the sale, and to otherwise comply with the statutes. The lien provided for in this Section will be in favor of the Association and will be for the benefit of all other Owners. No Owner may waive or otherwise escape liability for the Charges for nonuse of the Common Area or abandonment of his Lot.

"In addition to the foregoing charges for delinquent accounts, each Owner will be obligated to pay to the Association all actual costs of collection incurred by the Association, including attorney's fees, as and when allowed by law, and such reasonable late charges and collection charges as the Board of Directors may establish, all of which will also be subject to the liens of the Association.

"In the event of a delinquent account, the Association will provide all notices to the delinquent Owner as required by Texas Property Code § 209. A summary of the relevant parts of Texas Property Code § 209 will be maintained by the Association for review by each and every Owner upon request.

"All payments will be applied first to costs and attorney's fees, then to interest, then to delinquent Charges, then to any unpaid Charges that are not the subject matter of suit in the order of their coming due, and then to any unpaid Charges that are the subject matter of suit in the order of their coming due.

"Notice of the lien may be given, but is not required, by the recordation in the Real Property Records of Bell County, Texas an Affidavit of Delinquent And Notice Of Assessment Lien, duly executed by an officer, managing agent, attorney, or officer of the Association, setting forth the amount owed, the name of the last known Lot Owner or Owners of record, and the legal description of the Lot.

"At any foreclosure, judicial or non-judicial, the Association will be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any foreclosure, the occupants of the Lot will be required to pay a reasonable rent for the use of such Living Unit or Commercial Unit. Their occupancy of the Lot will constitute a tenancy-at-sufferance, and the purchaser at the foreclosure sale will be entitled to appoint a receiver to collect rents and, further, will be entitled to sue for recovery of possession of such Lot by forcible detainer or by Writ of Possession.

"The lien of the Charges will be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lots subject to the Charges, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such Lot pursuant to a decree of foreclosure, non-judicial foreclosure, or conveyance in lieu of foreclosure or in satisfaction of mortgage debt. The sale or transfer will not relieve the Lot from liability for any Charges thereafter becoming due nor from the lien of any subsequent Charge."

This Amendment is executed and accepted by Declarant pursuant to the right and authority granted and bestowed Declarant in ARTICLE XV, AMENDMENT AND ANNEXATION of the Declaration:

1. to AMEND the Declaration in accordance with the actions, approvals and consents of the Membership pursuant to the terms of the Declaration;
2. to AMEND the above enumerated provisions and terms of the Declaration;
3. to CONFIRM that this Amendment does not affect any of the remaining covenants, conditions and restrictive covenants set forth in the Declaration and that such remaining covenants, conditions and restrictive covenants will remain and continue in full force and effect; and
4. to CONFIRM that this Amendment will be EFFECTIVE as of FEBRUARY 14, 2001.

However, in the event of any conflict in the terms and provisions of the Declaration and of this Amendment, the terms and provisions as revised by this Amendment will control."

FIRST OMEGA PARTNERS, LTD.,
a Texas limited partnership

By: OMEGA ENTERPRISES, INC.,
a Texas corporation, general partner

By: [Signature]
Printed name: James I. Howe
Title: Vice President

(ACKNOWLEDGMENT)

STATE OF TEXAS §
COUNTY OF BELL §

This instrument was acknowledged before me on May 25, 2004
by James I. Howe, in his capacity as
Vice President (title) of OMEGA ENTERPRISES, INC.,
a Texas corporation, in its capacity as general partner of FIRST OMEGA PARTNERS, LTD., a
Texas limited partnership, on behalf of said corporation and said limited partnership.



KIM GODIN
Notary Public - State of Texas
Commission Expires: 09-05-04

[Signature]
NOTARY PUBLIC

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIVE COVENANTS OF HOLLY OAKS LANDING, a subdivision in Bell County, Texas

PREPARED IN THE LAW OFFICE OF:

crm

BAIRD, CREWS, SCHILLER & WHITAKER, P.C.

Attn: THOMAS C. BAIRD

15 North Main Street

Temple, Texas 76501

AFTER RECORDING, RETURN TO:

BAIRD, CREWS, SCHILLER & WHITAKER, P.C.

Attn: THOMAS C. BAIRD

15 North Main Street

Temple, Texas 76501

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIVE COVENANTS OF HOLLY OAKS LANDING, a subdivision in Bell County, Texas

014844/27346