

## DECLARATION OF RESTRICTIVE COVENANTS

This DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made and entered into as of the \_\_\_\_ day of August 2020 (the "Effective Date"), by WEST HOUSTON TREES, LTD., a Texas limited partnership (the "Declarant").

### WITNESSETH:

#### RECITALS

A. Declarant is the owner of a tract of land in Fort Bend County, Texas, consisting of approximately 5.85 acres of land, as more particularly described on Exhibit A attached hereto ("Property"). Declarant also owns two (2) tracts of land adjacent to the Property, consisting of approximately 171.314 acres of land, as more particularly described on Exhibit B attached hereto (the "Benefitted Property").

B. On or about the Effective Date, Declarant will convey the Property to Charles and Melinda Rimer, LLC, a Texas limited liability company ("Purchaser").

C. In order to establish a general plan for the improvement and development of the Property and to protect the Benefitted Property, Declarant and Purchaser desire to subject the Property to certain covenants, conditions and restrictions as set out herein.

#### AGREEMENTS

NOW, THEREFORE, Declarant hereby declares and establishes the restrictions provided for below subject to and on the following terms and conditions:

1. Certain Definitions. The following terms when used herein shall have the following meanings:

"Ground Lease" means a written agreement creating a leasehold estate in the entirety or any portion of the Property (without regard to whether such lease also covers any improvements located on portion).

"Ground Lessee" means the lessee under a Ground Lease.

"Owner" means the owner of the fee simple title to the Property or any part thereof or, if applicable, a Ground Lessee under a Ground Lease applicable to the Property or any part thereof if the Ground Lease entitles the Ground Lessee thereunder to exercise the rights of the Owner hereunder.

"Permittees" shall mean those entities and individuals who, from time to time, have a right to the use and occupancy of any portion of the Property under an ownership right or any lease, sublease, license, concession or similar agreement, and their officers, agents, contractors, invitees, licensees, subtenants and concessionaires.

2. Establishment of Restrictions. Declarant hereby declares the Property shall be held, sold and transferred, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth, all of which shall be binding on all parties having or acquiring any right, title and interest therein for the benefit of the Benefitted Property.

3. Restrictions; Architectural Control.

A. Use Restrictions. In no event shall the Property or any portion thereof be used or operated for the following purposes (collectively, the "Use Restrictions"):

1. Any use which is illegal or constitutes a public or private nuisance or is offensive by reason of odor, fumes, dust, smoke, noise, or pollution in excess of what is typical for a retail center and/or office property in a metropolitan area (provided, however, periodic emergency vehicle traffic, with sirens, shall not be deemed to be a violation of these restrictions);

2. Any firing, explosion or other damaging or dangerous hazards, including, without limitation, any use that is hazardous by reason of excessive danger of fire or explosion (provided, however, the retail sale of gasoline and related products shall be expressly permitted);

3. Any facility for the sale of paraphernalia designed or intended for use with illicit drugs or any so called "smoke shops";

4. Any establishment that offers or sells a product or service that is intended to provide sexual gratification to its users (including, but not limited to, the dissemination or exhibition of obscene materials; any establishment featuring topless, bottomless, or totally nude performances or personnel; or any establishment that regularly shows X-rated or pornographic movies, or sells or rents pornographic material or movies);

5. Any massage parlor, modeling studio, or establishment where men and/or women are engaged in salacious activities, provided that a first-class massage business using licensed masseuses not engaging in salacious activities shall not be prohibited;

6. Any carnival or fair;

7. A flea market;

8. A mortuary, crematorium or funeral home, but not including a sales office of any of the foregoing;

9. A mobile home or trailer court, labor camp, junkyard or stockyard; provided, however, this provision shall not be applicable to provisional use of construction trailers during legitimate and continuous periods of construction, reconstruction or maintenance;

10. A land fill, garbage dump or other such facility for the dumping, disposing, incineration or reduction of garbage;

11. A gambling establishment or betting parlor (including any so-called Internet café that offers gambling to the public, off track betting facility, casino or gaming facility), but lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business;

12. Any livestock or poultry raising or keeping facilities or any outdoor animal raising or keeping facilities; provided, however, veterinarian clinics, animal hospitals, and/or indoor pet boarding facilities with outdoor runs or pet training or play areas are expressly permitted to the extent permitted by applicable laws;

13. A refining or smelting facility;

14. An industrial facility; or

15. Any outdoor shooting range or outdoor shooting gallery.

B. Architectural Controls. The following architectural controls (collectively, the "Architectural Controls") are hereby imposed on the Property:

1. By no later than completion of construction of the first improvement on any portion of the Property, a landscape corridor of at least six feet (6') in width shall be installed along the entire length of the frontage of the Property with FM 359 and shall contain a suitable mix of ground cover, shrubs and trees. The landscape corridor shall be professionally designed and maintained at all times in a good, clean and attractive condition.

2. Unless Declarant's prior written consent is obtained: the front elevations of all buildings shall be solely of masonry comprised of brick, stucco or stone, or a combination thereof, except for windows and doors.

3. Roofs of all buildings shall be full metal or a metal shed roof that covers at least thirty percent (30%) of the portion of the roof that faces FM 359.

4. By no later than completion of construction of the first improvement on the Property, a privacy fence shall be installed along the entire length of the Property with FM 359, except for any portion that is a building or a driveway.

C. Term of Restrictions. The Architectural Controls shall have a term of five (5) years from the date of this Declaration and the Use Restrictions shall have a term of ten (10) years from the date of this Declaration.

4. Parking. The Property will comply with applicable governmental parking ratio requirements.

5. Maintenance. The Owner of the Property shall have the duty of and responsibility for keeping the land and all landscaping and improvements, including, without limitation, outbuildings/accessory buildings and appurtenances, in a well-maintained, clean and attractive condition at all times. If any such Owner is failing in this duty and responsibility, then the

Declarant or a Qualified Association, may give notice of such fact to such Owner and, within ten (10) days following receipt of such notice, the failing Owner must undertake the care and maintenance required to restore the Property to a safe, clean and attractive condition.

6. Leases. Any agreement for the leasing or rental of a portion of the Property or all or any portion of any of the improvements located on a portion of the Property (a "Lease") shall be subject to the provisions of this Declaration. Each Owner who enters into a Lease shall take reasonable steps to ensure that its tenant complies with this Declaration.

7. Entire Agreement; Modification. This Declaration contains the entire agreement of the Declarant with respect to the rights and obligations contained herein. This Declaration may be changed, canceled, modified or amended in whole or in part by written and recorded instruments executed by both Declarant (or an applicable Qualified Association or any assignee to Declarant's rights pursuant to Section 13 below) and Purchaser (or any assignee of Purchaser), recorded in the real property records of Fort Bend County, Texas. No consent to or joinder in the modification, amendment, change or cancellation hereof shall ever be required of any Permittee (other than an Owner).

8. Default; Remedies. Declarant (or an applicable Qualified Association or any assignee to Declarant's rights pursuant to Section 13 below) shall have the right but not the obligation to enforce the provisions of this Declaration. For purposes hereof, an Owner shall be deemed to be in default hereunder if such Owner (the "Defaulting Owner") fails to perform its obligations hereunder or fails to observe the covenants binding upon it hereunder, in either event, for a period of thirty (30) days following written notice to such Defaulting Owner from Declarant or any other Owner (or if such failure cannot be reasonably cured within such thirty (30) day period, such longer period of time as may be reasonably necessary to cure such failure provided such Defaulting Owner commences such cure within such thirty (30) day period and thereafter pursues the curing thereof with reasonable diligence). A breach of any of the provisions of this Declaration shall give to the party entitled to enforce such provision the right to bring a proceeding at law or in equity against the party or parties breaching or attempting to breach this Declaration and to enjoin such party or parties from so doing or to recover actual third-party out of pocket damages resulting from such breach; provided, however in no event shall any party be entitled to punitive, consequential, or speculative damages hereunder. A breach of this Declaration by an Owner relating to the use or maintenance of any portion of the Property is hereby declared to be and constitutes a nuisance and every public or private remedy allowed by law or equity for the abatement of a public or private nuisance shall be available to remedy such breach. In any legal or equitable proceedings for the enforcement of this Declaration or to restrain a breach thereof, the party or parties against whom judgment is entered shall pay the reasonable attorney's fees and costs of the party or parties for whom judgment is entered in such amount as may be fixed by the court in such proceedings. All remedies provided under this Declaration, including those at law or in equity, shall be cumulative and not exclusive. No party having the right to enforce this Declaration shall be liable for failure to enforce this Declaration.

In no event shall the Benefitted Property be burdened by or subjected to this Declaration.

9. Successors and Assigns. Subject to the provisions contained herein, the covenants and restrictions of this Declaration shall run with the title to the Property for the term hereof and may

be enforced by the single owner of at least fifty percent (50%) of the Benefitted Property (or an applicable property association to which the rights of Declarant have been assigned and referred to herein as a "Qualified Association"), their respective heirs, successors and assigns, for so long as this Declaration remains in effect. This Declaration shall be binding upon and benefit Declarant and its respective successors and assigns.

10. Governing Law. This Declaration shall be subject to the laws of the State of Texas.

11. Notice. Any notice required or desired to be given under this Declaration shall be in writing and shall be deemed to have been properly served when (i) delivered in person, (ii) sent three (3) days after deposit in the United States Mail, certified, return receipt requested, postage pre-paid, addressed, or (iii) delivered via a reputable overnight delivery service such as FedEx (a) if to an Owner, to the address of such Owner, to its last known address as shown on the deed conveying the Property or portion thereof to such Owner or such later address as the Owner desiring to give notice has been notified in writing, (b) if:

To Declarant: West Houston Trees, Ltd.  
Attn: Jack Castle  
2536 Amherst Street, Suite A  
Houston, Texas 77005

With copy to: Winstead PC  
Attention: Barry E. Puttermann  
600 Travis, Suite 5200  
Houston, Texas 77002

Purchaser: Charles and Melinda Rimer, LLC  
5314 Waterbeck St.  
Fulshear, Texas 77441

Declarant and any Purchaser may change their address for purposes of notice hereunder, by giving notice to the other in accordance with the foregoing terms of this paragraph.

12. Severability. If any provision of this Declaration shall be found void or unenforceable for whatever reason by any competent court of law or of equity, then every other provision shall remain valid and binding to the fullest extent possible to carry out the general intention of this Declaration and to impart validity to such provision.

13. Assignment of Declarant Rights. The Declarant named herein or any successor holding Declarant's rights hereunder pursuant to an instrument filed in accordance with this Section 13, may designate in an instrument executed by the transferring Declarant to the transferee Declarant and filed of record in the Real Property Records of the Office of the County Clerk of Fort Bend County, Texas, a person or entity to hold the rights of "Declarant" hereunder. Upon such designation of a successor Declarant, all rights of the former Declarant hereunder shall cease.

Executed as of the day and year first above written.