

**SECOND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS**

DAVIS MOUNTAINS PROPERTY OWNERS ASSOCIATION, INC.

STATE OF TEXAS }}

COUNTY OF JEFF DAVIS }}

WHEREAS, on August 17, 1972, Global Land Corporation, hereinafter called "GLC", filed of record at Volume 73, Page 13 of the Deed Records of Jeff Davis County, Texas, the "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS DAVIS MOUNTAINS PROPERTY OWNERS ASSOCIATION", hereinafter called "the Original Dedicatory Instrument", wherein it stated that the powers and duties of the Davis Mountains Property Owners Association, hereinafter called "the Association", a Texas non-profit corporation to be formed after the date thereof and provided a lien, hereinafter called "the Lien", against property which would become subject to the Original Dedicatory Instrument in the Davis Mountains Resort, hereinafter called "the Subdivision"; and

WHEREAS, thereafter, on March 27, 1974, GLC and Antonio A. Andretta, as the Chairman of the Land Owners Executive Committee and as the authorized representative of the other owners of record in the Subdivision, filed at Volume 77, Page 288 of the Deed Records of Jeff Davis County, Texas, the "REVISED DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS DAVIS MOUNTAINS PROPERTY OWNERS ASSOCIATION", hereinafter called the "Revised Dedicatory Instrument", however, the same was not adopted in accordance with the amendment procedures in the Original Dedicatory Instrument and are not effective against properties which were subject to the Original Dedicatory Instrument on that date, but are effective as against properties made subject to the Revised Dedicatory Instrument and the Original Dedicatory Instrument after that date, but only to the extent that the same are not in conflict with the Original Dedicatory Instrument; and

WHEREAS, on March 23, 1976, a predecessor of the Association was formed as the "Davis Mountains Resorts Property Association", hereinafter called "the Association's Predecessor", and its Articles of Association were filed of record at Volume 85, Page 237 of the Deed Records of Jeff Davis County, Texas; and

WHEREAS, on June, 30, 1979, the Association's Predecessor caused the Association to be incorporated using the name "Davis Mountains Property Owners Association, Inc.", hereinafter called "the Association", and held a meeting of the members for the purpose of voting to direct the officers and directors to convey to the Association all the properties owned by the Association's Predecessor and to incorporate the unincorporated entity into the Association; and

WHEREAS, the resolutions were passed and the Minutes of the meeting and a Deed from the Association's Predecessor to the Association were caused to be filed at Volume 99, Page 660 of the Deed Records Of Jeff Davis County, Texas, and the By-Laws of the Association, hereafter called "By-Laws", were caused to be filed at Volume 99, Page 695, of the Deed Records of Jeff Davis County, Texas, both on October 1, 1979; and

WHEREAS, the Original Dedicatory Instrument stated that it may be amended after August 17, 1992 by an instrument signed by not less than 75% of the lot owners in the Subdivision (other than the lots which fall into the definition of Common Areas), and the signature pages attached hereto contain the signatures of at least 75% of the lot owners in the Subdivision (other than lots owned by the Association as Common Areas); and

WHEREAS, the properties identified on the following plats filed of record in the Official Real Property Records of Jeff Davis County, Texas, have been made subject to the Original Dedicatory Instrument or the Revised Dedicatory Instrument, or both, and constitute the properties in the Subdivision:

The plat dated June 24, 1971, which was filed on June 25, 1971, in the Map Records of Jeff Davis County, Texas at Vol. 23, P. 57-66, later revised as P. 77-86;

The plat dated August 20, 1971, which was filed on September 13, 1971, in the Map Records of Jeff Davis County, Texas at Vol. 23, P. 67-76;

The revised plat dated November 6, 1971, which was filed on November 8, 1971, in the Map Records of Jeff Davis County, Texas at Vol. 23, P. 77-86;

The plat dated November 6, 1971, which was filed on November 8, 1971, in the Map Records of Jeff Davis County, Texas at Vol. 23, P. 87-96;

The second revision of a plat referred to above, dated November 6, 1971, which was filed on March 17, 1972, in the Map Records of Jeff Davis County, Texas at Vol. 24, P. 1-10;

The revision of a plat referred to above, dated March 9, 1972, which was filed on March 17, 1972, in the Map Records of Jeff Davis County, Texas at Vol. 24, P. 11-20 and renumbered as Vol. 24, P. 10A-18;

The plat dated April 8, 1972, which was filed on April 10, 1972, in the Map Records of Jeff Davis County, Texas at Vol. 24, P. 21-28 and renumbered as Vol. 24, P. 19-26;

The plat dated July 8, 1972, which was filed on July 10, 1972, in the Map Records of Jeff Davis County, Texas at Vol. 24, P. 29-34 and renumbered as Vol. 24, P. 27-28;

The replat dated July 8, 1972, which was filed on February 12, 1973, in the Map Records of Jeff Davis County, Texas at Vol. 24, P. 61-66 and renumbered as Vol. 24, P. 29-30;

The replat dated July 8, 1972, which was filed November 13, 1972, in the Map Records of Jeff Davis County, Texas at Vol. 24, P. 51-56 and renumbered as Vol. 24, P. 31-44;

The plat dated August 11, 1972, which was filed August 13, 1972, in the Map Records of Jeff Davis County, Texas at Vol. 24, P. 35-40 and renumbered as Vol. 24, P. 45-50;

The plat dated November 3, 1972, which was filed November 13, 1972, in the Map Records of Jeff Davis County, Texas at Vol. 24, P. 41-50 and renumbered as Vol. 24, P. 51-60;

The plat dated January 29, 1973, which was filed on February 12, 1973, in the Map Records of Jeff Davis County, Texas at Vol. 24, P. 57-60 and renumbered as Vol. 24, P. 61-64;

The replat of a plat referred to above, dated August 11, 1972, which was filed on February 12, 1973, in the Map Records of Jeff Davis County, Texas at Vol. 25, P. 1-6;

The replat of a plat referred to above dated March 9, 1972, which was filed on February 12, 1973, in the Map Records of Jeff Davis County, Texas at Vol. 25, P. 7-16;

The plat dated September 18, 1973, which was filed on November 12, 1973, in the Map Records of Jeff Davis County, Texas at Vol. 25, P. 17-24 and 29-30;

The replat of a plat referred to above, dated June 13, 1977, filed on February 13, 1978, in the Map Records of Jeff Davis County, Texas at Vol. 23, P. 162;

These being all of the properties subject to the Original Dedicatory Instrument only;

The replat of a plat referred to above, dated December, 1977, filed on June 12, 1978, in the Map Records of Jeff Davis County, Texas at Vol. 23, P. 165;

The plat filed on June 12, 1978, in the Map Records of Jeff Davis County, Texas at Vol. 25, P. 26 and renumbered as Vol. 25, P. 25-26;

The plat dated July 7, 1978, filed on July 10, 1978, in the Map Records of Jeff Davis County, Texas at Vol. 25, P. 28 and renumbered as Vol. 25, P. 27-28;

The plat dated July 7, 1978, filed on July 10, 1978, in the Map Records of Jeff Davis County, Texas at Vol. 25, P. 29 and renumbered as Vol. 25, P. 35-36;

The plat dated on or about July 7, 1978, filed on or about July 10, 1978, in the Map Records of Jeff Davis County, Texas at Vol. 25, P. 31 and renumbered as Vol. 25, P. 37-38;

The plat dated on or about July 7, 1978, filed on or about July 10, 1978, in the Map Records of Jeff Davis County, Texas at Vol. 25, P. 30 and renumbered as Vol. 25, P. 39-40;

The plat dated September 21, 1978, filed on November 13, 1978, in the Map Records of Jeff Davis County, Texas at Vol. 25, P. 32-33 and renumbered as Vol. 25, P. 31-32;

The plat dated October 30, 1978, filed on November 13, 1978, in the Map Records of Jeff Davis County, Texas at Vol. 25, P. 34-35 and renumbered as Vol. 25, P. 33-34;

The replat of Lots in Blocks 24, 29, 40, 36 and 10, dated May 3, 1986 and filed on July 14, 1986, in the Map Records of Jeff Davis County, Texas at Map File 2, Slot 5C;

Being the lots subject to the Original Dedicatory Instrument and the Revised Dedicatory Instrument, to the extent not in conflict with the Original Dedicatory Instrument, and to the extent that a document subjects the lot to the Revised Dedicatory Instrument;

NOW THEREFORE, the following Amended and Restated Declaration of Covenants, Conditions, and Restrictions, Davis Mountains Property Owners Association, Inc., hereinafter called "Restated Dedicatory Instrument," are hereby adopted, completely amending and restating the Original Dedicatory Instrument and all provisions of the Revised Dedicatory Instrument that are in conflict with the Original Dedicatory Instrument, without novating the Lien in the Original Dedicatory Instrument, but carrying forward, renewing and modifying the Lien, as stated herein:

ARTICLE I – DEFINITIONS

Section 1.1 (Association). Association shall mean and refer to the Davis Mountains Property Owners Association, Inc., a Texas non-profit corporation, its successors and assigns.

Section 1.2 (Commercial Tract). Commercial Tract shall mean and refer to a tract of land designated for the sole purpose of providing commercial services to the Davis Mountains Resort. Said tract is further described in Vol. 150, Page 330, of the Deed Records of Jeff Davis County, Texas, as 27.16 acres out of Block 13, Davis Mountains Resort, Jeff Davis County, Texas, being located at 205 & 207 Tomahawk Trail, Davis Mountains Resort and commonly known as the Country Store and RV Park. Other Commercial Tracts may be designated in the future in accordance with Article VI, herein.

Section 1.3 (Common Area). Common Area shall mean and refer to all real property and improvements thereon owned by the Association for the common use and enjoyment of the Owners.

Section 1.4 (Exempt Property). Exempt Property shall mean and refer to Block 2, Lot 10 and Block 33, Lot 8 of the Subdivision, which are dedicated to and operated as churches. Other Exempt Property may be added in accordance with Article V, herein.

Section 1.5 (Lot). Lot shall mean and refer to any numbered lot, plot or tract of land shown in the plats listed above describing the Subdivision and in any additions as may be brought within the jurisdiction of the Association, with the exception of the Common Area.

Section 1.6 (Owner). Owner shall mean and refer to one or more persons or entities with recorded title to any Lot, which is part of the Properties. An Owner selling on an executory contract may designate in writing to the Association that the contract buyer is to be treated as the Owner's representative for all purposes, including and limited to the exercise of any right or duty herein, until the Owner notifies the Association otherwise, however, the same shall not release the Owner from any liability or duty herein.

Section 1.7 (Properties). Properties shall mean and refer to all the properties described in the plats listed above describing the Subdivision and any additions as may be brought within the jurisdiction of the Association.

Section 1.8 (Utility System or Service). Utility System or Service shall mean and refer to all easements, pipes, pumps, wells, storage tanks, poles, lines and other facilities, whether similar or not, and whether now known or to be created, for the provision of any service to Lots in the Properties, employed by the Association or contractors approved by the Association, for water, sewer, telephone, gas, electric, data transmission, internet services or other utility services to residents of the Properties or for use in connection with the Common Areas whether regulated as a utility by the State or not, and under the direct supervision of the Association.

ARTICLE II – PURPOSES

The purpose of this Restated Dedicatory Instrument is to provide for the orderly management of the common interests of the residents and Owners of Properties in the Subdivision, including, but not limited to:

- (A) the collection of fees to fund the purposes of the Association, and the enforcement of the restrictions herein;
- (B) the preservation of the overall values of the Properties in the Subdivision and the peaceful use thereof by the residents, on the Lots, in the streets and on the Common Areas;
- (C) the provision of existing services and the extension of new services to the Properties, including the right to grant easements to private and public companies who provide the same, as the same are developed in the future, and the maintenance of current facilities and the development of new facilities for the benefit of the residents;

- (D) to create and carry out a uniform plan for the parceling and sale of property in the Subdivision as residential country homes, uniform use occupancy, and conveyance of the Properties and certain other uses ancillary thereto, whether stated in any deed , contract for deed , lease or other instrument or not, all of which are made subject hereto, as if all of the provisions herein were set out therein verbatim;
- (E) for providing for the general welfare of the Owners and residents of the Subdivision.

These purposes are permissive and not mandatory upon the Association.

ARTICLE III – PROPERTY RIGHTS

Section 3.1 (Owner’s Easement of Enjoyment). Every Owner shall have an easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.
- (b) The right of the Association to limit the number of guests an Owner can invite to use the Common Areas and to suspend the right to use of the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless done in compliance with the By-Laws in place at the time of the action.
- (d) The right of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property.
- (e) The right of the Association to grant similar rights to commercial lessees as provided in Article VI hereof.

Section 3.2 (Delegation of Use). Any Owner may delegate his right of enjoyment to the Common Area to the members of his family or his tenants who reside on the Property, subject to Article III, Section 3.1 herein.

ARTICLE IV – MEMBERSHIP AND VOTING RIGHTS

Section 4.1 (Members). Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.2 (Voting Rights). All Owners, whose assessment fees are current on all Lots owned, shall have the right of one (1) vote per Lot owned. This is to include single and joint ownership of Lots to mean one (1) vote for Owners in common.

Section 4.3 (Election of Directors and Other Matters). All Members, whose assessment fees are current on all Lots owned, shall have the right to elect the Directors of the Association and to vote on other matters in accordance with the By-Laws of the Association.

ARTICLE V – COVENANT FOR ASSESSMENTS

Section 5.1 (Annual Assessments, Special Assessments and Personal Obligation). As stated in the Original Dedicatory Instrument, each Owner of any Lot, by acceptance of a deed therefor, or upon execution of a contract for a deed, whether or not it shall be so expressed in such deed or contract, is deemed to covenant and agree to pay to the Association Annual Assessments and Special Assessments.

Annual Assessments shall mean and refer to charges which are payable monthly, semi-annually or annually.

Special Assessments shall mean and refer to charges which are payable, in one or more payments, in addition to Annual Assessments in accordance with the By-Laws in effect at the time of the action.

Each such Assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 5.2 (Lien Carried Forward, Renewed and Modified). As stated in the Original Dedicatory Instrument, the Annual Assessments and Special Assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing Lien upon the Lot against which such Assessment is made. The Lien herein is the same Lien set out in the Original Dedicatory Instrument, which is hereby carried forward, renewed and modified, without being novated.

Section 5.3 (Purpose of Assessments). The Assessments levied by the Association shall be used in accordance with Article III of the Articles of Incorporation of the Association and the purposes stated in Article II, hereof.

Section 5.4 (Maximum Annual Assessments). Through December 31, 2000, the Maximum Annual Assessment shall be ninety-six dollars (\$96.00) per Lot. The amount of the Maximum Annual Assessment may be changed by two-thirds (2/3) of the eligible votes cast on the matter at the Annual Meeting.

Section 5.5 (Uniform Rate of Assessment). Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots, except for Exempt Property and Common Areas.

Section 5.6 (Assessments – Due Dates). All Lots, other than Exempt Property or Common Areas, shall be subject to Annual Assessments and Special Assessments. The Board of Directors shall advise the Owners of the amount of any Assessment, as voted by the members in accordance with the By-Laws, at least thirty (30) days in advance of each Assessment period. Written notice of the Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

Section 5.7 (Effect of Non-payment of Assessments – Remedies of the Association). Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the Lien against the Lot, subject to the procedure as provided in Section 5.8. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid Lien by all methods available for the enforcement of such Lien, including judicial foreclosure by an action brought in the name of the Association or non-judicial foreclosure in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association and its agents a power of sale in the connection with said Lien. The Lien shall be in favor of the Association and shall be for the benefit of all other Lot owners. No Owner may waive or escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 5.8 (Procedure for Foreclosure of Lien). Foreclosure shall be initiated against a Lot only in accordance with this section. Prior to the initiation of foreclosure, the Treasurer shall certify to the Board of Directors that an Owner is more than two (2) years past due in payment of Assessments. A three-member resolution committee, hereinafter called the “Committee”, shall be appointed in accordance with the By-Laws and the issue referred to them. The Committee shall make reasonable efforts to contact the Owner and determine the reason for the delinquency. If the Committee determines that the Owner is willing to pay his past due Assessments but financially unable to do so, the Committee shall work with the Owner to develop a reasonable payment schedule. If,

however, the Committee, after having made reasonable effort, is unable to contact the Owner, or after having contacted the Owner, the Committee should determine that either the Owner is unwilling to pay past due Assessments or that the Owner is demonstrating a lack of effort at paying past due Assessments, the Committee shall recommend to the Board of Directors that judicial foreclosure proceedings or non-judicial foreclosure be initiated. Foreclosure procedures shall be initiated against a Lot only after unsuccessful efforts of the Committee and upon recommendation of the Committee. Once foreclosure procedures are initiated against a Lot, the Board shall have the right and obligation to pursue the action regardless of any subsequent partial payment of past due Assessments by the Owner.

The Association may foreclose its Lien by non-judicial foreclosure by appointing an agent, trustee or attorney to send the notices required by Tex. Prop. Code Ann. Sec. 51.002 and to conduct a sale as provided therein. The Association may bid at the sale and purchase the Lot, which it may hold, resell or lease. The former Owner and any occupant of the Lot after the foreclosure sale shall be tenants at sufferance and shall be subject to suit for eviction in the Justice of the Peace Court of Jeff Davis County, Texas, should they not surrender possession to the purchaser at the foreclosure sale, or his heirs or assigns. The Association's agent, trustee or attorney may prescribe additional terms upon which the sale will be conducted. The recitals in a deed or affidavit from the Association's agent, trustee or attorney shall be presumed to be conclusive of the facts stated therein. The Association shall indemnify and hold its agent, trustee or attorney harmless from any and all causes of action, damages or claims, including, but not limited to costs of investigation, litigation, settlement, expert witness fees and attorney's fees arising out of his duties herein, whether the claim is alleged to be caused, in whole or in part, by the negligence of said agent, trustee or attorney.

Section 5.9 (Subordination of the Lien to Mortgages). A bonafide first mortgage lien, to a person or entity not related to the Owner, for the purpose of purchasing or improving or refinancing the Lot is superior to any amount for Assessments or other amounts provided for herein due after the lien attaches, but not for those due before hand, and the foreclosure of the lenders lien or the taking of a deed in lieu of foreclosure by the lender, shall extinguish the Lien provided for herein, but not as to amounts or assessments becoming due after the foreclosure or after the date of the deed in lieu of foreclosure.

Section 5.10 (Exempt Property). Additional Exempt Property may be designated in the future, only if approved by two-thirds (2/3) of the eligible votes cast at an Annual Meeting or at a Special Meeting called for this purpose, in accordance with the By-Laws in effect at the time of the action. However, no land or improvements devoted to dwelling use shall be exempt from said Assessments.

Section 5.11 (Insurance).

- (a) The Board of Directors of the Association shall make every reasonable effort to obtain and continue in effect blanket property insurance to insure the buildings and structures in the Common Area and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, and said insurance may include coverage against vandalism.
- (b) The Board of Directors of the Association shall make every reasonable effort to obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees, and each Owner from and against liability in connection with the Common Area.
- (c) All costs, charges and premiums for all insurance that the Board of Directors may authorize as provided herein shall be a common expense of all Owners and be a part of the Annual Assessments.

ARTICLE VI – USE RESTRICTIONS

Section 6.1 (Residential Use). No Owner shall occupy or use his Lot or residence and such outbuildings as are customarily appurtenant to such residence, or permit the same or any part thereof to be occupied or used for any purpose other than as a private single family residence for the owner, his family, guests and tenants, except as provided in Article I, Section 1.4 and Sections 6.2, and 6.3, herein.

Section 6.2 (Home Occupations). Business activity may be conducted within a Lot or residence by its Owner or resident provided: such business activity is incidental to the residential purpose of the Lot or residence; no advertising of the address as a business location is displayed by signs or otherwise; the business activity is conducted in a manner that does not openly solicit business from passersby; clients or customers do not come to the Lot for the delivery of goods or services; and the conduct of the business does not create a nuisance or hazard or cause an increase in non-resident traffic. A yard sale, garage sale or estate sale conducted on no more than two consecutive weekends in a year or on no more two non-consecutive weekends in any twelve-month period, shall not be considered a violation of this provision.

Section 6.3 (Commercial Use). All commercial services, except as provided in Section 6.2, shall be located on a Commercial Tract. Additional Commercial Tracts may be designated in the future, only if approved by two-thirds (2/3) of the eligible votes cast at an Annual Meeting or at a Special Meeting called for this purpose, in accordance with the By-Laws in effect at the time of the action.

Section 6.4 (Re-division). No Lot shall be subdivided if any one or more of the resulting Lots becomes less than five (5) acres.

Section 6.5 (Density). Only one (1) permanent residence together with necessary outbuildings, such as garages, stables and pump houses, may be placed on any one Lot.

Section 6.6 (Water and Sewage). Each improvement placed on any Lot or tract and intended for residential purposes, whether it be temporary or permanent, must include an adequate water and sewage disposal system in accordance with state requirements.

Section 6.7 (Oil, Mining and Timber Cutting Operations). No cutting or selling of timber or the mining or selling of sand, gravel, rock or other minerals and no gas or oil drilling, gas or oil development operations or oil refining shall be permitted on or in any Lot for any commercial purpose, unless approved by two-thirds (2/3) of the eligible votes cast at an Annual Meeting or at a Special Meeting called for this purpose, in accordance with the By-Laws in effect at the time of the action.

Section 6.8 (Garbage and Refuse Disposal). No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers. All equipment used for the storage or disposal of such materials shall be kept in a clean and sanitary condition. A single location for all trash collection facilities shall be designated by the Board of Directors.

Section 6.9 (Domestic Animals). Commercial breeding or feeding of horses, cattle, sheep, goats or poultry is prohibited. This restriction shall not be construed to prohibit the keeping of a reasonable number of domestic animals for immediate family use and recreation, as defined and determined by the Board of Directors. Where such domestic animals are kept, the premises shall be maintained in a clean and sanitary condition and in a manner to avoid the breeding of flies and creation of noxious odors or any nuisance. No hogs or pigs shall be kept at any time and no domestic animals shall be allowed to wander.

Section 6.10 (Infringement). No act or omission shall impair the structural soundness or integrity of any residence, impair any easements or cause any condition that adversely affects other Lots, Owners, residents or the development as a whole.

Section 6.11 (Hunting and Nuisances). No hunting, target practice or other noxious or offensive activity shall be carried on upon any Lot or Common Area. Nor shall anything be done which may be or may become an endangerment, annoyance or nuisance to the other Owners.

ARTICLE VII – EASEMENTS

Section 7.1 (Utility, Emergency and Association). As stated in the Original Dedicatory Instrument there is an easement over a strip of land fifty (50) feet in width by rectangular measurement around the boundaries of each Lot and the Common Areas for ingress, egress, installation, replacing, repairing and maintaining all Utility System or Services as defined in Article I, Section 1.8 above. This easement shall in no way be construed as to affect the Owner's use, ownership or enjoyment of said strip of land. By virtue of this easement, it shall be expressly permissible for the company providing the Utility System or Service to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires or other media providing the Utility System or Service. An easement is further granted to all police, fire protection, ambulance, garbage and trash collector pickup vehicles and all similar persons to enter upon the Common Area in the performance of their duties. Notwithstanding anything to the contrary contained in this paragraph, no Utility System or Service may be installed or relocated on the Common Area except as approved by the Association's Board of Directors. Should a utility, furnishing a service covered by the general easement herein provided, request a specific easement by separate recordable instrument, the Board of Directors (for Common Area) or Owners (for Lots) shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this article shall in no way affect any other recorded easement on said premises.

ARTICLE VIII – GENERAL PROVISIONS

Section 8.1 (Enforcement). The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Restated Dedicatory Instrument. Failure of the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

In any proceeding to enforce the provisions of this Restated Dedicatory Instrument or of the By-Laws, the Association shall be entitled to recover its reasonable attorney's fees, expenses of investigation and litigation and costs should it prevail and the same shall be added to and become a part of the Assessments against the Lot and the personal obligation of the Owner, subject to the Lien and the remedies set out above.

Section 8.2 (Compliance with Local Regulations). Every Owner shall abide by all applicable State laws and County regulations including provisions restricting outdoor lighting.

Section 8.3 (Severability). Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 8.4 (Amendment). The covenants and restrictions of this Restated Dedicatory Instrument shall run with and bind the land. This Restated Dedicatory Instrument may be amended in the same manner as provided for amending the By-Laws in effect at the time of the action. Any amendment must be recorded in the Deed Records of Jeff Davis County, Texas.

Section 8.5 (Annexation). Additional residential property and Common Area may be annexed to the Properties with the consent of the membership in accordance with the By-Laws.

ATTESTATION

This Amendment to the Original Dedicatory Instrument, the Revised Dedicatory Instrument not in conflict with the Original Dedicatory Instrument and the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of the Davis Mountains Resort was duly made in accordance with the applicable amendment procedures and provisions of the dedicatory instruments and by-laws of the Davis Mountains Property Owners Association, Inc. on the 28th. day of June, 2003, to certify which witness our signatures and attestation.

Rachel Lawrence
Secretary of the Association

Jeff Fisher
President of the Association

ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF JEFF DAVIS §

Before me the undersigned notary public personally appeared Rachel Lawrence, as Secretary of the Association (title) and authorized representative of Davis Mountains Property Owners Association, Inc., a Texas Non-Profit Corporation, a person well-known to me and/or who was identified through a Texas Department of Public Safety Driver’s License or Texas Department of Public Safety Identification Card, who further acknowledged that he or she executed the same in this capacity and as the said corporation’s act and deed and for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2003.

Notary Public in and for the State of Texas
Printed Name: _____
My Commission Expires: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF JEFF DAVIS§

Before me the undersigned notary public personally appeared Jeff Fisher, as President of the Association (title) and authorized representative of Davis Mountains Property Owners Association, Inc., a Texas Non-Profit Corporation, a person well-known to me and/or who was identified through a Texas Department of Public Safety Driver’s License or Texas Department of Public Safety Identification Card, who further acknowledged that he or she executed the same in this capacity and as the said corporation’s act and deed and for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2003.

Notary Public in and for the State of Texas
Printed Name: _____
My Commission Expires: _____

Disclaimer: The preparer and scrivener of this instrument does not make any representation as to the validity of any restrictions, covenants, liens and the status of title to the property involved.

Notice to Clerk: Upon filing and recording, return this instrument to Davis Mountains Property Owners Association, Inc., HCR 74 Box 94-A, Fort Davis, Texas 79734.