

SECOND AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
WHITEWATER SPRINGS SUBDIVISION SECTION V

This SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WHITEWATER SPRINGS SUBDIVISION SECTION V (this "*Amendment*") is made by WHITE WATER SPRINGS, LLC ("*WWS*"), as Declarant, and the WHITEWATER SPRINGS PROPERTY OWNERS ASSOCIATION, INC. (the "*Association*"), to be effective as of the date set forth below.

RECITALS

A. Suntex Fuller Corporation ("*Suntex*"), as Declarant, previously executed that certain Declaration of Covenants, Conditions and Restrictions of Whitewater Springs Subdivision Section V dated December 7, 1999 and recorded under Volume 0892, Page 0117, Official Public Records of Burnet County, Texas (the "*Original Declaration*").

B. WWS acquired the Whitewater Springs Subdivision from Wollaston Properties, LLC ("*Wollaston*") (successor-in-interest to Suntex) and, in connection therewith, WWS became and currently is the successor-in-interest to Suntex's and Wollaston's rights as Declarant under the Declaration.

C. The Original Declaration has been amended by that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Whitewater Springs Subdivision Section V (the "*Amended and Restated Declaration*") dated effective April 1, 2002 and recorded under Volume 1093, Page 0003, Official Public Records of Burnet County, Texas, and has been further amended by that certain First Amendment to Declaration of Covenants, Conditions and Restrictions of Whitewater Springs Subdivision Section V (the "*First Amendment*") executed by WWS and the Association, dated effective December 11, 2003 and recorded under Volume 1286, Page 0471, Official Public Records of Burnet County, Texas. The Amended and Restated Declaration (as amended by the First Amendment) is referred to herein as the "*Declaration*." All terms not otherwise defined herein shall have the same meaning as in the Amended and Restated Declaration.

D. WWS, as Declarant, desires to further amend the terms of the Declaration in order to modify certain provisions contained therein and to correct certain errors and omissions, in accordance with the terms and provisions of this Amendment.

E. Pursuant to Article XI, Section 3 of the Declaration, the Declaration may be amended by a vote of the Owners owning 75% of the acreage within the Project.

F. Declarant and the Association confirm this Amendment to the Declaration has been approved by a vote of the Owners owning at least 75% of the acreage within the Project.

NOW THEREFORE, Declarant and the POA hereby amend the Declaration as follows:

1. **First Amendment.** To correct recording information regarding the Original Declaration contained in the First Amendment and to correct references to the Declaration in the

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First Amendment, paragraph A of the Recitals section of the First Amendment is hereby amended and restated as follows:

Suntex Fuller Corporation ("**Suntex**"), as Declarant, previously executed that certain Declaration of Covenants, Conditions and Restrictions of Whitewater Springs Subdivision Section V dated December 7, 1999 and recorded under Volume 0892, Page 0117, Official Public Records of Burnet County, Texas (the "**Original Declaration**") encumbering the Project. The Original Declaration has been amended by that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Whitewater Springs Subdivision Section V (the "**Declaration**") dated effective April 1, 2002 and recorded under Volume 1093, Page 0003, Official Public Records of Burnet County, Texas. All terms not otherwise defined herein shall have the same meaning as in the Declaration.

2. **Assessments.**

(a) The first grammatical sentence of Article VII, Section 1 of the Amended and Restated Declaration, as amended, is hereby amended and restated as follows:

Declarant hereby covenants for each tract within the Project, and each Owner of a tract is hereby deemed to covenant by acceptance of such Owner's contract or deed for such tract, whether or not it shall be so expressed in such Owner's contract or deed, to pay to the Association (1) annual assessments and (2) special assessments.

(b) The first grammatical sentence of Article VII, Section 2 of the Amended and Restated Declaration, as amended, is hereby amended and restated and a new second sentence is added as follows:

The annual assessments levied by the Board of the Association shall be used exclusively for the administration, management, maintenance and operation of the Subdivision, the construction, repair and maintenance of the commons, drainage and irrigation systems, community facilities, private roads, public roads and roadway easements or rights of way within the Project, and other improvements benefiting the residents of the Project and for other purposes that promote the health, safety, welfare and recreation of the residents of the Project (and may include contingency and reserve funds as the Board of Directors determines in its discretion). Such reserve and contingency funds may be allowed to accumulate and be carried forward to subsequent budget years at the discretion of the Association's Board of Directors.

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(c) Article VII, Section 3 of the Amended and Restated Declaration, as amended, is hereby amended and restated as follows:

Section 3: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year, if the annual assessment assessed for any period is insufficient to provide for the continued operation of the Subdivision or any other purposes contemplated by these restrictions (and may include contingency and reserve funds as the Board of Directors determines it its discretion). Such reserve and contingency funds may be allowed to accumulate and be carried forward to subsequent budget years at the discretion of the Association's Board of Directors. Except with respect to the Road Impact Assessment provided in Article VIII, any such assessment must be approved by a majority of votes cast by Owners, in a manner of voting as herein prescribed.

(d) Article VII, Section 4 of the Amended and Restated Declaration, as amended, is hereby amended and restated as follows:

Section 4: The Association's Board of Directors shall fix the amount of the annual assessment against each tract at least thirty (30) days in advance of the due date thereof and shall fix the dates such amounts become due. Except as provided below, Assessments shall be paid annually on or before the due date fixed by the Association's Board of Directors. Notwithstanding the above, any Owner that is assessed \$25,000.00 or more in any single assessment year may, at such Owner's option, pay such assessments monthly or quarterly. In the event any such Owner elects to pay its assessments hereunder on a monthly or quarterly basis, such Owner must pay to the Association a monthly installment of one-twelfth (1/12) of the total assessments or one-fourth (1/4) of the total assessments, as applicable, such payments to be allocated proportionately among the tracts owned by such Owner and such payments to begin on the due date set out by the Association's Board of Directors. Notice of annual assessments shall be sent to every Owner subject thereto. The Association shall, on demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessment against a specific tract has been paid, and shall annually cause to be recorded in the office of the County Clerk of the County, a list of delinquent assessments as of that date setting forth and establishing the amount of the lien therefor. Failure to record such list by such date shall not affect the validity of such lien. Said lien shall arise automatically and without any further action by the Association and shall become effective on the day after the due date for any assessment (or portion thereof) not paid by such due date.

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(e) The second grammatical sentence of Article VII, Section 5 of the Amended and Restated Declaration, as amended, is hereby amended and restated as follows:

Any assessments (or portion thereof) not paid within thirty (30) days after the due date shall bear interest from the due date at the highest legal rate per annum or such lower rate established by the Board in its discretion.

3. **Authority.**

(a) The first grammatical sentence of Article VIII, Section 5 of the Amended and Restated, as amended, is hereby amended and restated as follows:

It is specified herein that all assessments collected by the Authority will be kept in one or more accounts with federally insured financial institutions to be used only for the purposes as herein stated, and an accounting of receipts and disbursements will be mailed annually to all Owners in the Project.

(b) Article VIII, Section 6 of the Amended and Restated Declaration, as amended, is hereby amended and restated as follows:

Section 6: Establishment of Amount of Assessment – The Authority, in initially setting the annual levy or assessment for any purpose stated herein, will do so on an estimated basis determined by a study of the requirements of said purposes. Should said assessment prove to be more than needed for such purposes, then, the Authority may carry forward such excess to be used to decrease the amount of future assessments and/or retain such excess as a reserve or contingency fund for future expenditures relating to the Association and/or the Project.

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(c) Article VIII, Section 7 of the Amended and Restated Declaration, as amended, is hereby amended and restated as follows:

Section 7: Special Assessments – Upon the approval of a majority of votes cast by Owners, the Authority will have the right, privilege and powers to levy special assessments as may become necessary for purposes as required and authorized herein. Such special assessments would be made on the same pro-rata basis as hereinabove set forth and paid to Authority as prescribed by said Authority. Notwithstanding anything herein to the contrary, the Association's Board of Directors will have the right, privilege and power to levy a one time special assessment against any Owner seeking approval from the Architectural Control Committee on or after January 1, 2005 for construction of a new single family dwelling, which assessment will be used solely for the purpose of maintaining and repairing roads in the Project ("Road Impact

Assessment"). The initial Road Impact Assessment for calendar year 2005 will be \$1,500.00. From January 1, 2006 and on each January 1 of each succeeding year, the Association's Board may decrease or increase the Road Impact Assessment. In the event the Road Impact Assessment is increased, the amount of such increase will not exceed a 15% increase over the prior years Road Impact Assessment. The Road Impact Assessment will be due and payable prior to the commencement of any delivery of materials or construction in connection with such single family dwelling.

(d) Article VIII, Section 8 of the Amended and Restated Declaration, as amended, is hereby amended and restated as follows:

Section 8: Collection of Assessments – The Authority will have the sole responsibility and authority to collect all assessments. Such assessments will be levied on an annual basis and the Authority will have the power to allow Owners assessed \$25,000.00 or more in a single assessment year to pay such assessments monthly or quarterly as otherwise provided herein. The Authority will have the power to add to such assessments appropriate and reasonable penalties against said Owners for delinquency in payment of assessments, as well as the other remedies set forth herein. All agreements and transactions between the Association and any Owner, whether now existing or hereafter arising, whether contained herein or in any other instrument, and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity thereof, prepayment, demand for payment or otherwise, shall the amount contracted for, charged or received by the Association from any Owner for the use, forbearance, or detention of the principal indebtedness or interest thereof, which remains unpaid from time to time, exceed the maximum amount permissible under applicable law, it particularly being the intention of the Association and Owners to conform strictly to the law of the State of Texas and of the United States of America, whichever is applicable. Any interest payable hereunder or under any other instrument relating to the indebtedness evidenced hereby or created hereunder that is in excess of the legal maximum under applicable law, shall, in the event of acceleration of maturity, prepayment, demand for payment or otherwise, be automatically, as of the date of such acceleration, prepayment, demand or otherwise, applied to a reduction of the principal indebtedness thereof and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of such principal, such excess shall be refunded to the Owner making such payment. To the extent permitted by applicable law, determination of the legal maximum amount of interest shall at all times be made by amortizing, prorating, allocating and spreading in equal parts during the period commencing on the date the indebtedness arises through the date such

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Owner's interest in the subject tract is conveyed or any longer period allowed by applicable law, all interest at any time contracted for, charged or received from any Owner in connection with the indebtedness, so that the actual rate of interest on account of such indebtedness is uniform throughout such period.

4. **Entire Agreement.** Except as expressly modified by this Amendment, the terms, provisions, covenants, conditions and restrictions of the Declaration shall remain in full force and effect.

5. **Counterparts; Multiple Originals and Separate Signature Pages.** This Amendment and any and all future amendments may be executed simultaneously in two or more counterparts and/or with separate signature pages, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[Signatures on following page.]

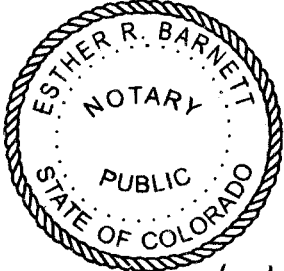
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EXECUTED this 19th day of January, 2006 to be effective as of December 9, 2004.

DECLARANT:

White Water Springs, LLC,
a Texas limited liability company

By: [Signature]
Gary D. Levine, Manager



My Commission Expires 10/25/09

ASSOCIATION:

Whitewater Springs Property Owners Association, Inc.
a Texas non-profit corporation

By: [Signature]
Gary D. Levine, President

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THE STATE OF COLORADO §
 §
COUNTY OF ARAPAHOE §

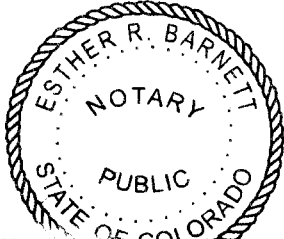
This instrument was acknowledged before me on the 19th day of January, 2006, by Gary D. Levine, Manager of White Water Springs, LLC, a Texas limited liability company, on behalf of said limited liability company.

Esther R. Barnett
Notary Public, State of Colorado

THE STATE OF COLORADO §
 §
COUNTY OF ARAPAHOE §

This instrument was acknowledged before me on the 19th day of January, 2006, by Gary D. Levine, President of Whitewater Springs Property Owners Association, Inc., a Texas non-profit corporation, on behalf of said corporation.

Esther R. Barnett
Notary Public, State of Colorado



AFTER RECORDING, RETURN TO:

Mr. Jerry Webberman
Jackson Walker L.L.P.
100 Congress Avenue, Suite 1100
Austin, Texas 78701

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FILED

2006 JAN 27 AM 9:16

JANET PARKER
COUNTY CLERK
BURNET COUNTY, TEXAS

SCANNED

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STATE OF TEXAS
COUNTY OF BURNET

I hereby certify that this instrument was FILED on this date
and at the time stamped hereon by me and was duly
RECORDED in the OFFICIAL PUBLIC RECORDS
OF BURNET COUNTY, TEXAS in the volume
and Page as shown.



Janet Parker
County Clerk
Burnet County, Texas
By *Janet Parker*
DEPUTY

Any provision herein which restricts the sale, rental or use
of the described real property because of color or race is
invalid and unenforceable under federal law.