

15/ITC/ 1333787A -COM/CCT

DECLARATION OF RESTRICTIVE COVENANT

This DECLARATION OF RESTRICTIVE COVENANT (this "Declaration") is made and entered into as of the 19th day of December, 2014, by Falconhead West, L.P., a Texas limited partnership ("Declarant"), having an address of 1101 Arrow Point Drive #101, Cedar Park, Texas 78613, Attn: Dominic Longi.

RECITALS

A. WHEREAS, Declarant is the owner of that certain approximately 5.22 acre parcel of land situated in Travis County, Texas, and known as Lot 1, Block A, Falconhead West, Phase 1, Section 2 & Phase 2 Final Plat, a subdivision in Travis County, Texas according to the map or plat thereof recorded as Document Number 200800106 in the Official Public Records of Travis County, Texas (the "Land"); and

B. WHEREAS, Declarant wishes to place a restriction on the Land, under certain circumstances only as expressly set out in this Declaration, with respect to the ability of future owners of the Land to grant access over and across the Land to that certain approximately twenty-three (23) acre tract of land which is located directly to the east of the Land and is more particularly described in Exhibit "A" attached to that certain deed recorded at Document No. 2007196134, Official Public Records of Travis County, Texas (the "Commercial Tract") from Vail Divide which is located directly to the west of the Land, and from Vail Divide to the Commercial Tract; and

C. WHEREAS, the restriction placed upon the Land by this Declaration is for the benefit of the owners of residential lots in the Falconhead West subdivision and of the Falconhead West Homeowners Association, Inc. a Texas non-profit corporation.

ARTICLE 1GENERAL PROVISIONS

1.1 Declaration. Declarant, as the owner of the Land, hereby declares that the Land shall be held, sold, transferred, conveyed and occupied subject to the restriction set out herein, which shall be binding upon all parties having or acquiring any right, title and interest in the Land.

1.2 Purpose. The purpose of this Declaration is to create a restriction upon the Land for the benefit of the owners of residential lots in the Falconhead West subdivision and of the Falconhead West Homeowners Association, Inc. a Texas non-profit corporation (collectively "Beneficiary"), subject to the terms, provisions, and conditions hereof. Beneficiary is hereby deemed to be a third-party beneficiary with respect to the terms and provisions of this Declaration.

ARTICLE 2

RESTRICTIVE COVENANT

2.1 **Certain Access Prohibited.** No portion of the Land shall be used for vehicular or pedestrian (i) ingress to the Commercial Tract from Vail Divide, or (ii) egress from the Commercial Tract to Vail Divide, provided however that such vehicular and pedestrian ingress and egress is prohibited only during any period of time during which any portion of the Commercial Tract is used as an automobile (including, without limitations, cars, trucks and SUVs) showroom or dealership, whether new, used or otherwise, and not during any other period of time. Nothing herein shall prohibit vehicular and pedestrian (a) ingress to the Land from Vail Divide, or (b) egress from the Land to Vail Divide.

ARTICLE 3

DEFAULTS AND REMEDIES

3.1 **Remedies.** In the event of any violation or threatened violation by any person or entity of the restriction contained in this Declaration, Declarant or Beneficiary shall have the right to enjoin such violation or threatened violation or to obtain a decree to compel performance of such restriction in a court of competent jurisdiction, it being agreed that the remedy at law for a breach of such restriction is not adequate. The right of injunction and specific performance shall be in addition to all other remedies available at law or in equity.

3.2 **Non-Waiver.** No delay or omission in the exercise of any right created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of a breach hereunder. A waiver by a party or beneficiary hereto of a breach of any of the terms of this Declaration by another party or a beneficiary shall not be construed to be a waiver of any subsequent breach thereof or of any other provision of this Declaration.

ARTICLE 4

MISCELLANEOUS PROVISIONS

4.1 **Applicable Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Texas.

4.2 **Negation of Partnership.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among Declarant and Beneficiary and neither Declarant nor Beneficiary shall have the right to act as an agent for the other unless expressly authorized to do so by separate written instrument signed by the party to be charged.

4.3 **Time.** Time is of the essence of this Declaration.

4.4 **Binding Effect.** The provisions of this Declaration shall be binding upon Declarant and its successors and assigns and shall inure to Beneficiary and Beneficiary's respective successors and assigns.

4.5 **Severability.** In case any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provision hereof, and this Declaration shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

4.6 **Amendment and Termination.** Declarant, its successors and assigns may not amend, modify, or terminate this Declaration without the prior written consent of Beneficiary or Beneficiary's respective successors and assigns.

4.7 **Limitation of Purpose.** The terms of this Declaration are to be read as narrowly as possible so as to permit the development of the Land to the fullest extent allowable under applicable law.

4.8 **Duration.** Unless modified, amended, or terminated in accordance with Section 4.6, this Declaration shall remain in effect in perpetuity.

4.9 **Existing Encumbrances.** The restriction created by this Declaration is subject to any and all matters of record affecting the Land.

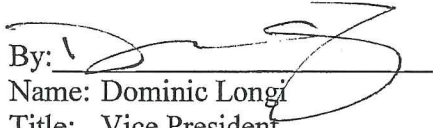
4.10 **Entire Agreement.** This Declaration contains the entire agreement between the parties to and beneficiaries of this Declaration with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration. The provisions of this Declaration will be construed as a whole according to their common meaning and not strictly for or against Beneficiary or any future owner of any portion of the Land.

IN WITNESS WHEREOF, this Declaration is executed as of the date first written above.

DECLARANT:

FALCONHEAD WEST, L.P.,
a Texas limited partnership

By: Ryland Homes of Texas, Inc.,
a Texas corporation,
its managing general partner

By: 
Name: Dominic Longi
Title: Vice President


ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF TRAVIS

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This instrument was acknowledged before me on the 19 day of December 2014, by Dominic Longi, Vice President for Ryland Homes of Texas, Inc., a Texas corporation, Managing General Partner of Falconhead West, L.P., a Texas limited partnership, on behalf of said corporation and limited partnership.





Notary Public,
The State of Texas



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS



DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

December 19 2014 02:57 PM

FEE: \$ 38.00 2014189208

15/ITC/ 1333787 A -COM/CCT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

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COUNTY OF TRAVIS

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THAT, FALCONHEAD WEST, L.P., a Texas limited partnership (hereinafter referred to together as "Grantor"), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to the undersigned in hand paid by **BIODEC, LLC**, a California limited liability company (hereinafter referred to as "Grantee"), whose address is 901 S. MOPAC, Plaza I, Sk 160, AUSTIN, TEXAS 78746, the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD and CONVEYED and by these presents does GRANT, SELL and CONVEY to Grantee that certain real property (the "Real Property") situated in Travis County, Texas, described as Lot 1, Block A, FALCONHEAD WEST, PHASE 1, SECTION 2 & PHASE 2, according to the map or plat thereof recorded in Document No. 200800106, Official Public Records, Travis County, Texas, together with (i) all of Grantor's rights in and to any land situated in any adjacent strips, street, road, highway or other right-of-way, public or private, open or proposed, including rights of ingress and egress; (ii) all licenses, permits or similar documents relating to the Real Property; (iii) all buildings, together with all other structures and permanent improvements situated on the Real Property and all fixtures and other property affixed thereto (the Real Property and all of the foregoing set forth in the above subclauses (i)-(iii) are hereinafter collectively referred to as the "Property").

This conveyance is made and accepted subject only to those certain title exceptions more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes.

TO HAVE AND TO HOLD, the Property unto Grantee and Grantee's heirs, executors, administrators, legal representatives, successors and assigns forever, and Grantor does hereby bind Grantor and Grantor's heirs, executors, administrators, legal representatives, successors and assigns to WARRANT AND FOREVER DEFEND, all and singular, the Property unto Grantee and Grantee's heirs, executors, administrators, legal representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the Property or any part thereof, by, through or under Grantor, but not otherwise.

THIS CONVEYANCE IS MADE ON AN "AS IS," "WHERE IS" AND, "WITH ALL FAULTS" BASIS. GRANTOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY,

SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OF THE PROPERTY, ANY IMPROVEMENTS, ANY PERSONALTY, OR SOIL, WATER, AIR OR OTHER ENVIRONMENTAL CONDITIONS. GRANTOR SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT. GRANTEE, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, ACKNOWLEDGES THAT GRANTEE IS PURCHASING THE PROPERTY BASED SOLELY UPON GRANTEE'S OWN INDEPENDENT INVESTIGATIONS AND FINDINGS AND NOT IN RELIANCE UPON ANY INFORMATION PROVIDED BY GRANTOR OR GRANTOR'S AGENTS, BROKERS OR CONTRACTORS. WITHOUT LIMITING THE FOREGOING, GRANTEE ACKNOWLEDGES THAT GRANTOR HAS MADE NO AGREEMENT TO ALTER, REPAIR OR IMPROVE ANY OF THE PROPERTY.

EXCEPT FOR THE WARRANTIES AND REPRESENTATIONS MADE BY GRANTOR TO GRANTEE IN THE AGREEMENT OF SALE AND PURCHASE WITH RESPECT TO THE PROPERTY, BY ITS ACCEPTANCE OF THIS CONVEYANCE, GRANTEE RELEASES GRANTOR AND ITS RESPECTIVE EMPLOYEES, AGENTS, BROKERS AND CONTRACTORS FROM ANY AND ALL CLAIMS (WHETHER KNOWN OR UNKNOWN, AND WHETHER CONTINGENT OR LIQUIDATED) ARISING FROM OR RELATED TO (A) ANY DEFECTS, ERRORS OR OMISSIONS IN THE DESIGN OR CONSTRUCTION OF ANY IMPROVEMENTS UPON THE PROPERTY, WHETHER THE SAME ARE A RESULT OF NEGLIGENCE OR OTHERWISE; OR (B) OTHER CONDITIONS (INCLUDING ENVIRONMENTAL CONDITIONS) AFFECTING THE PROPERTY, WHETHER THE SAME ARE A RESULT OF NEGLIGENCE OR OTHERWISE. THIS RELEASE SPECIFICALLY INCLUDES WITHOUT LIMITATION ANY CLAIMS UNDER ANY ENVIRONMENTAL LAWS (AS DEFINED BELOW), UNDER THE AMERICANS WITH DISABILITIES ACT OF 1990, 42 U.S.C. §§ 12101 ET SEQ., OR WITH RESPECT TO ANY ENVIRONMENTAL RISK (AS DEFINED BELOW). "Environmental Laws" means all laws (federal, state, local or foreign) relating to pollution or the environment or relating to public health, welfare, or safety, including without limitation, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), the Emergency Planning and Community Right to Know Act (42 U.S.C. §§ 11001 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Clean Water Act (33 U.S.C. §§ 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), as any of the same may be amended from time to time, any state or local law dealing with environmental matters, any common law, and any regulations, orders, rules, procedures, guidelines and the like promulgated in connection therewith, regardless of whether the same are in existence on the date of this Agreement. An "Environmental Risk" means any risk of liability under Environmental Laws, including without limitation, (a) the presence, release, or discharge of asbestos; (b) the presence,

release, or discharge of any "hazardous substance," "hazardous waste," "hazardous materials," "pollutants," or "contaminants" (as defined by any Environmental Laws); and (c) the presence, release, or discharge of any petroleum substance or petroleum product. IT IS SPECIFICALLY INTENDED BY GRANTOR AND GRANTEE THAT THE RELEASE CONTAINED HEREIN BE WITHOUT LIMIT, IRRESPECTIVE OF THE CAUSE OR CAUSES OF ANY SUCH CLAIMS (INCLUDING, WITHOUT LIMITATION, PRE-EXISTING CONDITIONS, STRICT LIABILITY OR THE NEGLIGENCE OF ANY PARTY OR PARTIES, INCLUDING GRANTOR, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE).

BY ITS ACCEPTANCE HEREOF, GRANTEE HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD GRANTOR AND GRANTOR'S GENERAL PARTNERS HARMLESS FROM ANY AND ALL CLAIMS WITH RESPECT TO OR ARISING OUT OF THE ENTRANCE SIGN AND FEATURE LOCATED ON THE SOUTHWEST CORNER OF THE REAL PROPERTY AS SHOWN ON THE SURVEY OF SAME DATED 2-28-2014, UPDATED 5-15-2014, PREPARED BY JOHN E. BRAUTIGAM, R.P.L.S. NO. 5057,

Ad valorem taxes relating to the Property have been prorated between Grantor and Grantee as of the date hereof. When the context requires, singular nouns and pronouns include the plural.

[Signature Pages to follow]

EXECUTED AND DELIVERED on this the 19th day of December, 2014.

GRANTOR:

FALCONHEAD WEST, L.P.,
a Texas limited partnership

By: Ryland Homes of Texas, Inc.,
a Texas corporation,
its managing general partner


By: 
Name: Dominic Longi
Title: Vice President

ACKNOWLEDGMENT

STATE OF TEXAS §
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COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 19 day of December, 2014, by Dominic Longi, Vice President for Ryland Homes of Texas, Inc., a Texas corporation, Managing General Partner of Falconhead West, L.P., a Texas limited partnership, on behalf of said corporation and limited partnership.




Notary Public,
The State of Texas

AGREED TO AND ACCEPTED BY:

BIODEC, LLC,
a California limited liability company

By: Biodec Manager, LP,
a California limited partnership,
its managing member

By: The Kelly Capital Group, Inc.,
a California corporation,
its general partner

By: 
Kenneth R. Satterlee, its President

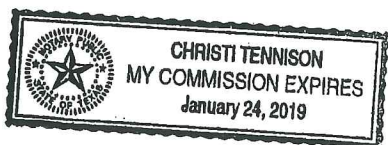
ACKNOWLEDGMENT


STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on the 19 day of December, 2014, by Kenneth R. Satterlee, President of The Kelly Capital Group, Inc., a California corporation, general partner of Biodec Manager, LP, a California limited partnership, managing member of Biodec, LLC, a California limited liability company, on behalf of said entities.




Notary Public,
The State of Texas

AFTER RECORDING, RETURN TO:

Independence Title Company
5900 Shepherd Mountain Cove, Bldg. 2, Ste. 200
Austin, TX 78730

EXHIBIT "A"

Permitted Exceptions

1. Document No(s). 200800106 (Plat), 2013091774, Official Public Records, Travis County, Texas.
2. Easement as shown on the plat recorded under Document No. 200800106, Official Public Records, Travis County, Texas:
Purpose: Landscape
Location: Seventy (70) feet along the property line adjacent to Vail Divide
3. Easement as shown on the plat recorded under Document No. 200800106, Official Public Records, Travis County, Texas:
Purpose: Landscape
Location: Variable width along the northwesterly property line
4. Easement as shown on the plat recorded under Document No. 200800106, Official Public Records, Travis County, Texas:
Purpose: Landscape
Location: Located in the southeasterly corner of subject property
5. Easement as shown on the plat recorded under Document No. 200800106, Official Public Records, Travis County, Texas:
Purpose: Sanitary sewer
Location: Located in the northeasterly corner of subject property
6. Building setback lines as shown on the plat recorded under Document No. 200800106, Official Public Records, Travis County, Texas.
7. Easement: (blanket)
Recorded: Volume 1147, Page 167, Deed Records, Travis County, Texas
To: Pedernales Electric Cooperative, Inc.
Purpose: Electric
8. Easement:
Recorded: Document No. 2007099161, Official Public Records, Travis County, Texas, as shown on the plat recorded under Document No. 200800106.
To: Travis County WCID No. 17
Purpose: Water distribution line/facilities
9. Easement:
Recorded: Document No. 2009117371, Official Public Records, Travis County, Texas
To: The City of Austin

Purpose: Electric/telecommunications

10. Notice Regarding: Propane Gas Distribution
Recorded: Document No. 2013222032, Official Public Records, Travis County, Texas
11. Mineral and/or royalty interest:
Recorded: Volume 911, Page 552, Deed Records, Travis County, Texas
12. Inclusion within the Travis County Water Control & Improvement District No. 17.
13. Any agreements, leases, or easement rights associated with the entrance sign and feature on the lot as shown on the survey dated 2-28-2014, updated 5-15-2014, prepared by John E. Brautigam, R.P.L.S. No. 5057.
14. Declaration of Restrictive Covenant recorded at Document No. 2014189208, Official Public Records, Travis County, Texas.

Exhibit "A" – Page 2



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dana Debeauvoir
DANA DEBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

December 19 2014 04:38 PM

FEE: \$ 54.00 2014189375