

SCANNED



ORIGINAL

RESTRICTION, BOUNDARY, & VARIANCE AGREEMENT

THIS RESTRICTION AGREEMENT is made as of the 22ND day of MAY 2010 (this "Agreement") by and between GUENTHER OIL AND GAS, LTD., a Texas Limited Partnership ("GO&G") and SAN ANTONIO CHARTWELL HOME OWNERS ASSOCIATION, INC., A Texas Corporation ("Chartwell"), the condominium complex located next to and adjoining the land to the northwest.

WITNESSETH:

REFERENCE IS HEREBY MADE TO Lot II, Block 24, New City Block 13559, Colonies North Subdivision Market Place Unit 2, situated in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 9524, Page 108, of the Deed and Plat Records of Bexar County, Texas (the "Land"), and as depicted on Exhibit "A," which is attached hereto and incorporated herein for all purposes.

WHEREAS, GO&G is the owner of the Land;



WHEREAS, Chartwell is the homeowners association for the condominium complex ("Complex") located next to and abutting the Land to the northwest; and

WHEREAS, since Chartwell would be affected by any development of the Land, GO&G and Chartwell have entered into this Agreement whereby certain restrictions shall be placed on the Land for the benefit of Chartwell.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, GO&G and Chartwell do hereby agree as follows:

1. Restrictions.

- A. There shall be no vehicular access to the Land from Powhatan Drive.
- B. No bar, tavern, microbrewery or sexually-oriented business will be operated on the Land whatsoever. However, for a restaurant business whereby alcohol sales for on-premises consumption constitute no more than fifty percent (50%) of the gross sales of such business in connection with the sale of food products, such alcohol sales will be permitted therein.
- C. All exterior lighting must be arranged or shielded so that it does not constitute a legal nuisance to the Complex and so that it is in full compliance with all overlay district regulations promulgated by the City of San Antonio from time to time.
- D. No outdoor public speaker system will be operated on the Land that can be heard by the owners of the units located in the Complex next to the Land, except that special events may be conducted on the Land utilizing an outdoor public speaker system, provided that (i) no such usage shall constitute a legal nuisance, (ii) such usage shall be limited to the hours between 9:00

A.M. and 9:00 P.M. and (iii) no more than five (5) days of such events may be held in any calendar month.

E. Dumpsters may be located anywhere on the Land except in the area identified on Exhibit "A".

The restrictions to the Land (A through E) are collectively referred to herein as the "Restrictions".

2. **Boundary Improvements & Maintenance.** As additional consideration for Chartwell entering into this Agreement, GO&G will improve and maintain the common boundary between the Land and the Complex as follows:

A. Install and maintain a ± three foot (3') tall decorative metal fence on top of the low portion of the concrete block wall ("Wall") between the Land and the Complex, and install and maintain a ± six foot (6') decorative metal fence in the area between the end of the Wall and the IH-10 access road right-of-way where a chain link fence is now located. The design and color of the decorative metal fence shall be determined by GO&G.

B. Remove the dead ivy from the complex side of the portion of the Wall closest to Powhatan.

C. Paint both sides of the Wall (with paint designed to be used on masonry), in a color chosen by Chartwell & GO&G for the side facing their respective property.

3. **Variance Endorsement.** In consideration of the above Restrictions and Boundary Improvements & Maintenance by GO&G, Chartwell will endorse GO&G's application for a variance from the City of San Antonio that would remove its requirement to install and maintain a landscape buffer along their common property line.

4. **Rights of Successors.** The Restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the Land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

5. **Execution, Modification and Cancellation.** It is understood and agreed that until this Agreement is fully executed by both GO&G and Chartwell, there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified, amended or canceled only by the mutual agreement of GO&G, or its successors, and a majority of the then Owner(s) of the Land.

6. **Default of GO&G.** GO&G, or its successors, shall not be deemed to be in default of any provision of this Agreement unless so notified in writing by Chartwell.

7. **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

8. **Notices.** Any notice hereunder shall be in writing and shall be served by overnight delivery or certified mail, return receipt requested, postage prepaid, addressed to the respective addresses of the parties as follows:

If intended for GO&G:
Guenther Oil & Gas, Ltd.
153 Treeline Park, Suite 300
San Antonio, Texas 78209

If intended for Chartwell:
San Antonio Chartwell Home Owners Association
c/o Kyse & Associates Management Co., Inc.
11120 Wurzbach, Suite 205
San Antonio, Texas 78230

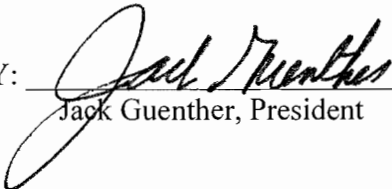
Each party to this Agreement may designate by notice in writing a new or other address to which such notice shall thereafter be so given or served.

9. **Termination.** This Agreement and the Restrictions created hereby shall terminate twenty (20) years after the date hereof and shall be of no further force or effect.

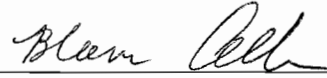
10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect by a writing executed and delivered in the same manner as required by this document.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

GUENTHER OIL AND GAS, LTD.
By Olmos Ventures, LLC, General Partner

BY:  _____
Jack Guenther, President

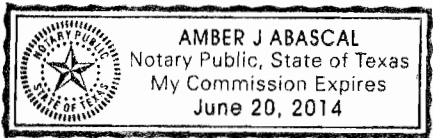
SAN ANTONIO CHARTWELL HOME OWNERS ASSOCIATION, INC.

BY:  _____
Blanca Albers, President

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 19th day of May 2010, by Jack Guenther, President of OLMOS VENTURES, LLC, acting in the capacity of General Partner of GUENTHER OIL AND GAS, LTD., on behalf of said partnership.

Abascal
Notary Public, State of Texas



THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 22 day of May 2010, by Blanca Albers, President of SAN ANTONIO CHARTWELL HOME OWNERS ASSOCIATION, INC.

[Signature]
Notary Public, State of Texas



Any provision herein which restricts the sale, or use of the described real property because of race is invalid and unenforceable under Federal law STATE OF TEXAS, COUNTY OF BEXAR
I hereby certify that this instrument was FILED in File Number Sequence on this date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Real Property of Bexar County, Texas on:

JUN 04 2010



Gerard Rickhoff
COUNTY CLERK BEXAR COUNTY, TEXAS

Doc# 20100098560 Fees: \$36.00
06/04/2010 1:56PM # Pages 6
Filed & Recorded in the Official Public
Records of BEXAR COUNTY
GERARD RICKHOFF COUNTY CLERK

RECORDED IN VOLUME 14507
PAGE 324

RECORDER'S MEMORANDUM
AT THE TIME OF RECORDATION, THIS
INSTRUMENT WAS FOUND TO BE INADEQUATE
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