

## FIRST AMENDMENT TO SHARED ACCESS AGREEMENT

This Agreement is by and between Coppertree Condominium Owners' Association, Inc. (hereinafter called "Coppertree"), a Texas non-profit corporation, and S A Heritage Condominiums at Coppertree, Inc. (hereinafter called "Heritage"), a Texas non-profit corporation. This Agreement is effective as of the last date of the signatures below.

WHEREAS, Coppertree entered into a "Shared Access Agreement" with Schinker Companies-Builders, Inc. (hereinafter called "Schinker") effective the 22nd day of June, 1999, and which has been recorded among the Bexar County Real Property Records at Volume 8043, Pages 01267 through 01274 (which document is hereinafter referred to as the "Shared Access Agreement", and a copy of which is attached hereto as Exhibit "A"); and,

WHEREAS, said Shared Access Agreement pertains in part to certain real property more fully described in Exhibit "A" to the Shared Access Agreement, which was deeded by Schinker to Heritage, subsequent to the effective date of the Shared Access Agreement (which property shall hereinafter be referred to as the "Heritage Properties"), thus making Heritage Schinker's successor or assignee under the Shared Access Agreement; and,

WHEREAS, Coppertree on the one hand, and Heritage on the other, have determined that it would be to their mutual benefit to add provisions to the Shared Access Agreement concerning the location, maintenance and use of water meters, lines and equipment on both the property described in the Shared Access Agreement as the "Coppertree Properties" and on the "Heritage Properties", for their mutual benefit;

NOW, THEREFORE, Coppertree and Heritage do, by their signatures below, acting by and through their duly authorized representatives, agree and bind themselves, their agents, assigns and successors, to the following additional contractual terms, as set forth below:

### A. PURPOSE AND INTENT

1. There currently exists upon the Coppertree Properties municipal potable water meters, lines and equipment in connection with the supply and use of municipal potable water by Coppertree.
2. There also exists on Coppertree Properties a potable water line which runs to the property line or boundary between the Coppertree Properties and the Heritage Properties.
3. Heritage desires to install a submeter for its own municipal potable water supply, attaching the necessary plumbing meter and equipment to the existing line on the Coppertree Properties described in Paragraph 2 above.
4. There currently exists an irrigation water meter on the Heritage Properties.

5. Coppertree desires to have access to and use of irrigation water by connecting a submeter and lines to the irrigation water meter on the Heritage Properties.
6. Heritage desires to install a irrigation water line from the meter referenced in Paragraph 4 above to the property line or boundary between the Coppertree Properties and the Heritage Properties, to provide Coppertree with the ability and means to obtain irrigation water supply.
7. It is the intent of the parties that each party shall be solely and individually responsible for maintenance of the water lines and equipment located on the property owned by that party (including, without limitation, backflow prevention devices and cutoff valves), without regard to whether the equipment and lines in question provide service to the party owning the real property or not, so long as same are for the benefit of either Coppertree or Heritage.
8. The parties further intend that Heritage shall be responsible for all of the initial installation costs of the meters, equipment and lines necessary to put into place the necessary lines and equipment to provide municipal potable water supply to the property owned by Heritage, and the equipment and lines necessary to deliver the irrigation water supply to the property line, as described in Paragraph 6 above.
9. The parties additionally intend that Coppertree shall be responsible for all the initial installation costs of the submeter line and equipment located on Coppertree Properties which will be necessary to use the irrigation water line to be delivered to the property line by Heritage.
10. The parties further desire to extend the period of the irrevocability of the Shared Access Agreement to allow Heritage more time to commence and complete construction, as set forth below.

#### **B. REVOCABLE GRANT OF EASEMENT**

11. For and in consideration of the granting of the reciprocal easements granted herein, the receipt and sufficiency of which is hereby acknowledged, Coppertree grants to Heritage, and Heritage grants to Coppertree, a non-exclusive right to locate, install, maintain and use on each other's property (as described in the Shared Access Agreement), meters, equipment and/or lines necessary and/or convenient for Heritage to receive potable water and for Coppertree to receive irrigation water.
12. This easement granted by each party is revocable by either Coppertree or Heritage, ~~for any reason or no reason,~~ upon the giving to the other party of at least thirty days written notice of intent to terminate the easement, if the other party fails to (1) pay any amount owed hereunder when due, (2) maintain in proper condition the equipment for this easement. In the event that either which that party is responsible, or (3) take prompt corrective action to prevent any wasting of

water. In a party gives notice to terminate this easement, both parties~~the party~~ receiving notice shall remove from the other party's property all meters, equipment and lines providing service to that party, but located on the other party's property. No party may otherwise revoke only a portion of this easement, it being understood that revocation may only be mutual, agreed and effect the interest of both parties hereto at once.

13. The interest conveyed herein touches and concerns the land, and is intended to run with the land.
14. This is an easement appurtenant, and shall pass with the ownership of the land subject to same.
15. In order to facilitate the use and enjoyment of the rights granted herein each party shall be permitted to enter onto the land of the other at such times and under such circumstances as may be necessary to survey, install or maintain equipment, or do any other act necessary or useful to the rights conveyed herein. In so entering the land of another party hereto no person acting at the request of a party to this agreement shall be guilty of trespass.
16. In exercising the rights granted herein each party shall, to the extent possible, avoid disturbing and/or damaging the currently condition of the property of the other party. To the extent that any disturbance or damage is done in exercising the rights granted herein, the party causing such disturbance and/or damage shall immediately take any and all repair efforts and/or restoration activities at their expense as may be required to return the property of the other party to its state prior to such disturbance and/or damage, to the extent possible.

#### C. INITIAL INSTALLATION AND DEADLINE COSTS

17. Heritage shall be responsible for the initial cost of locating, installing and/or the initial startup cost for the municipal potable and irrigation water service, meters, equipment and lines. The municipal potable water supply submeter shall be installed by Heritage on or before April 15, 2002, or the day before construction commences on the Heritage Properties, whichever is earlier. If the submeter is not installed and maintained in operation after the deadline herein provided then Coppertree shall be entitled to shut off the flow of potable water to the Heritage Properties until the submeter is installed and made operational, and Heritage shall not be relieved or excused from any obligation owed under this First Amendment or the Shared Access Agreement.
18. Heritage shall be responsible for procuring and paying for any and all permits and/or approvals which may be required to install, operate, maintain and/or use the municipal potable and irrigation water service.

#### **D. PAYMENTS FOR MAINTENANCE AND USE**

19. Each party hereto shall be responsible for maintaining the meters, equipment and/or lines on the property of that party, without regard to for which other party's benefit such meters, equipment and/or lines may be present. In other words, Coppertree shall maintain all meters, equipment and lines for water service on Coppertree property, both those that benefit Coppertree and those that benefit Heritage. Conversely, Heritage shall be responsible for maintaining all meters, equipment and lines on Heritage's property, whether same be for the benefit of Heritage or Coppertree.
20. Coppertree shall be responsible for paying for the water used by Coppertree, and shall not be responsible for Heritage's water. Similarly, Heritage shall be responsible for paying for the water used by Heritage, and shall not be responsible for paying Coppertree's water usage. Heritage shall reimburse Coppertree, and Coppertree shall reimburse Heritage, based on submeter readings of the number of gallons of water used by the reimbursing party, multiplied by the then prevailing applicable rate per thousand gallons of water usage as charged by San Antonio Water Systems (SAWS).

#### **E. EXTENSION OF SHARED ACCESS AGREEMENT**

21. The period of irrevocability of the Shared Access Agreement and the deadlines referenced in Parts II.2., IV.5., VII.1. and VII.2. of the Shared Access Agreement, is extended to thirty months following April 15, 2002.

#### **F. TERMINATION**

22. The failure of either party to perform its obligations hereunder shall constitute a default, and unless otherwise provided herein or excused in writing by the non-breaching party, shall cause a termination of the agreements contained herein and give rise to a claim for breach of contract.

#### **G. ATTORNEYS FEES**

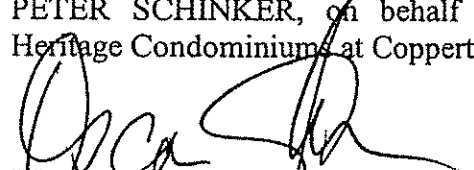
23. Heritage agrees to pay Coppertree's legal fees incurred in connection with the preparation of this Amendment, totaling \$1,000.00.
24. Any party that does not prevail in legal action brought in connection with this agreement is responsible to the other party for attorney's fees and cost of litigation incurred in such a dispute.
25. This agreement is made and is performable in Bexar County, Texas.

#### **H. GENERAL PROVISIONS**

26. Each person signing this agreement represents that he or she has the authority to do so from the entity on whose behalf signature is made.
27. This is the entire agreement between the parties concerning the subject matter of this agreement, save and except for the Shared Access Agreement referenced above.
28. No promises or representations have been made or relied on except those stated herein.
29. If any part of this agreement is ever held illegal, invalid or unenforceable, such part shall be severed from the remainder, and the remainder shall be enforced.
30. Each party hereto has been advised by their own legal counsel concerning this agreement, and no party relies on the other or counsel for the other to advise them.
31. This agreement may only be amended or modified in one or more writings signed by authorized representatives of all parties hereto.
32. This agreement shall be binding on the parties hereto and their heirs, devisees, representatives, successors and assigns.

THUS AGREED this 7<sup>th</sup> day of May, 2002.

  
 \_\_\_\_\_  
 PETER SCHINKER, on behalf of S A  
 Heritage Condominiums at Coppertree, Inc.

  
 \_\_\_\_\_  
 OSCAR GORDON, Managing Agent and  
 duly authorized Representative of  
 Coppertree Condominiums Owners'  
 Association, Inc.

#### ACKNOWLEDGMENT

THE STATE OF TEXAS    §  
                                   §  
 COUNTY OF BEXAR       §

Before me the undersigned authority, on this day personally appeared PETER SCHINKER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 7<sup>th</sup> day of May, 2002.



Lisetta A Ennis  
Notary Public, State of Texas

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF BEXAR   §

Before me the undersigned authority, on this day personally appeared OSCAR GORDON, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 7<sup>th</sup> day of May, 2002.



Lisetta A Ennis  
Notary Public, State of Texas

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