

MODIFICATION AND AMENDMENT OF RESTRICTIONS

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THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF HARRIS §

WHEREAS, by instrument filed of record January 25, 1994, under Clerk's File No. P669426, Official Real Property Records of Harris County, Texas, by the owners of a tract of land of approximately 180.49563 acres in the William Settle Survey, Abstract 705, described in Exhibit A attached hereto and incorporated herein for all purposes (the "Property" or "Properties"), subjected the Property to certain restrictions and covenants as therein set out (hereinafter called the "Original Restrictions"); and

WHEREAS, the undersigned, the owners of at least sixty-six and two thirds percent (66 2/3%) of the total number of owners of separately owned parcels or tracts in the Property entitled to vote in accordance with the Original Restrictions, desire to modify and amend the Original Restrictions as hereinafter provided.

NOW, THEREFORE, in consideration of the premises and pursuant to the Original Restrictions, the undersigned, the owners of at least sixty-six and two thirds percent (66 2/3%) of the total owners of separately owned parcels or tracts in the Property entitled to vote, have and do hereby amend and modify the Original Restrictions so that the provisions set out shall be and read as follows, and

the provisions not set out shall remain in full force and effect,
to-wit:

RESTRICTIONS

1. **SINGLE-FAMILY RESIDENTIAL CONSTRUCTION**

All Building Sites shall be used only for single-family residential purposes, and other than those existing as of the date of the instrument, no building shall be erected, or permitted to remain on any Building Site other than single-family residential dwellings, private garages for not less than two (2) cars, and bona fide servants' quarters which structures shall not exceed the main dwelling in height. As used herein, the term "residential purposes" shall be construed to prohibit the use of said Building Sites for duplex houses, garage apartments or apartment houses; and no Building Site shall be used for business or professional purposes of any kind, nor for any commercial or manufacturing purposes. For all construction begun after the effective date of this Amendment to Restrictions, all primary residences shall be positioned so that the main front entrance faces the community roadway.

2. **ARCHITECTURAL CONTROL**

No buildings or improvements of any character, including but not limited to swimming pools, tennis courts, stock ponds, irrigation ponds or recreational ponds, shall be erected, constructed, placed or erection begun, or changes made in the design thereof after original construction, on any Building Site until the construction plans and specifications and a plot plan, showing the location of the structure of improvements, have been submitted to The Oaks of Cypress Community Association, Inc. and approved, as hereinafter provided, as to compliance with these restrictions, as to quality of material, harmony of external design with existing and proposed structures, and as to location with respect to the building setback lines. In the event the required documents and information are not approved or disapproved within fifteen (15) days after receipt thereof by The Oaks of Cypress Community Association, Inc., approval will not be required and the requirements for approval shall be deemed to have been fully satisfied. Further, the approval required

herein is conclusively presumed upon the substantial completion of the building and improvements. The Oaks of Cypress Community Association, Inc. shall act by and through the Board of Directors of the Association as established hereunder (the "Association"). The Board of the Association shall have the full and complete authority to approve or disapprove the construction of any improvements on any Building Site, and its judgment shall be final and conclusive. Members of the Board of the Association may be replaced or removed as provided by the By-Laws of the Association.

3. **MINIMUM SQUARE FOOTAGE WITHIN IMPROVEMENTS**

The living area exclusive of open porches and the garage shall not be less than three thousand (3000) square feet.

4. **UTILITY EASEMENTS**

The original Developer has reserved a utility easement five (5) feet wide adjoining and along the rear lot line of each lot not previously served by the service provider. No structure shall be erected upon any easement for installation and maintenance of utilities. Neither Developer, the Association, nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants to shrubbery, trees, flowers or improvements of the owner located on the land covered by said easement after easements. All overhead utilities are restricted to the rear of property line except for Tract 9F.

5. **ANNOYANCES OR NUISANCES**

No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done

thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of trash, garbage or household refuse shall be permitted within the Properties. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on any tract or parcel.

6. **TEMPORARY STRUCTURES AND SITE ALTERATION**

No structures of a temporary character, trailer (with or without wheels and whether or not attached to a foundation), mobile home (with or without wheels and whether or not attached to a foundation), modular or prefabricated home, tent, shack, barn or any temporary structure or building, shall be placed on any Building Site, either temporarily or permanently or used at any time as a residence or resident's house, garage, or structure appurtenant thereto, shall be moved upon any Building Site from another location.

7. **ROOFING MATERIAL**

The roofing material used in the construction of any improvements shall be wood shingle, composition roof with a minimum standard of 240 pounds shingle, metal, or any other comparable material which shall first be submitted and approved by the Architectural Control Committee.

8. **LOT AND ROADWAY RIGHT-OF-WAY MAINTENANCE**

All Building Sites shall be kept in a neat and orderly condition; grass and weeds shall be cut regularly and trash, junk and refuse shall not be kept or allowed on any Building Site nor shall unsightly articles, objects or things be placed thereon. Unimproved Building Sites, in addition to the above, must be mowed or cleared of weeds and grass a minimum of two (2) times each calendar year. Any violations can be noted by the Association to defaulting party. If default is not corrected within thirty (30) days of said notice, then legal action can be instituted to seek relief by a court of law.

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9. **SEPTIC TANKS**

No cesspools shall ever be dug, used, or maintained on any such Building Sites and all toilets shall be connected with a septic tank, constructed in accordance with sound engineering practices and in compliance with Harris County regulations. The drainage of septic tanks into roads, streets, adjacent Building Sites, or public ditches, either directly or indirectly, is strictly prohibited. All drain lines and septic field lines shall not be closer than twenty-five (25) feet to any property line.

10. **ANIMAL HUSBANDRY AND HOUSEHOLD PETS**

No pets shall be kept, bred or maintained for commercial purposes. Livestock may be kept or permitted on the Building Site, as pets for domestic or family use only and horses may be kept, bred, conditioned, trained, shown, and sold, so long as Restriction No. 5 is not violated. In this connection, it is further understood that all stables and outbuildings must be placed or so situated that no part of them are closer to the front of said Building Site than a line parallel to the front property line lying at the rear of the principal dwelling situated on said Building Site. Nothing herein contained shall ever be constructed so as to permit the keeping of animals and pets to become a nuisance or obnoxious to the owners or occupants of other Building Sites, or to become a hazard to the health, welfare and well-being of the community. All such structures and shelters for animals shall conform in architectural character to the structure of the main residential dwellings and shall not be maintained in any unsightly manner. It is further understood that no hogs, or swine, shall be kept on any part of a Building Site for any purpose, except F.F.A. and 4-H Club projects shall be permitted (including swine), so long as Restriction No. 5 is not violated.

11. **ENFORCEMENT**

Each Owner and occupant shall comply strictly with the covenants, conditions, and restrictions set forth in the Original Restrictions and this Amendment, each as may be amended from time to time, and with the rules and regulations adopted by the Board. Failure to comply with this Declaration or the rules and regulations shall be grounds for an action to

recover sums due for damages, injunctive relief, or any other remedy available at law or in equity, maintainable by the Board, on behalf of the Association, or by any Owner of a portion of the Properties. Failure of the Board or any other Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall also have the right to enforce, by any proceeding at law or in equity, any other restrictions, conditions, covenants and liens imposed upon any portion of the Properties which by the terms of the instrument creating same grant the Association the power to enforce same, and failure of the Association to enforce such provisions shall in no event be deemed a waiver of the right to do so thereafter.

12. **DURATION OF AND AMENDMENT TO THE ABOVE DEED RESTRICTIONS**

These Restrictions and Reservations shall run with and bind the land until January 1, 2015, and shall be automatically renewed for successive ten (10) year periods thereafter unless 66-2/3% of the owners of the tracts elect to eliminate them. This Declaration may be amended during its term by an instrument signed by 66-2/3% of the owners of the tracts. Any amendment must be recorded.

13. **VEHICLE STORAGE**

All travel trailers, recreational vehicles, boats and campers, miscellaneous trailer and equipment shall be kept or stored inside a garage or specifically constructed storage area, or stored behind the main residence, except for short term visitors with recreational vehicles. Tractor trailer rigs, construction equipment, or vehicles under repair will not be permitted.

14. **SETBACK REQUIREMENTS**

With the exception of Tract 6, no building or structure shall be located on any tract nearer than 100 feet to the nearest road easement line. No building or structure shall be located on any tract nearer than fifty (50) feet from the Owner's side property line; except for Tract 5, 8A, 9C and 9E for which this restriction does not apply. The fifty (50) foot restriction does not apply to any Owner's rear property line

which is determined from the view that the road is the front of each tract.

15. **EFFECT OF PARTIAL INVALIDITY**

In the event any one or more of these covenants, agreements, restrictions, or conditions shall become or be held invalid by reason of abandonment, waiver or judicial decision, the same shall in no wise affect the validity of the other covenants, agreements, conditions, or restrictions set out herein which shall remain in full force and effect.

16. **DURATION OF CONSTRUCTION**

All exterior improvements must be completed in a reasonable length of time. It is stipulated that a reasonable length of time for the completion of the exterior part of improvements, residence or other structure is twelve (12) months from the date the slab or foundation is poured or installed.

17. **ACREAGE REQUIREMENTS FOR BUILDING**

A Tract must contain at least five (5) acres before one (1) residence can be built upon it. Tracts 1, 2, 3, 4, 5, 6, 7, and 8 may be subdivided into two (2) tracts. Tract 9 may be divided into six (6) tracts. See Exhibit A attached.

18. **DRAINAGE**

Drainage structures used under private driveways shall have a net drainage opening area of sufficient size to permit the free flow of water without backwater, and shall be a minimum of 1-3/4 square feet (18 inch diameter pipe culvert) or of such larger size as may be required to insure proper drainage. Culverts must be used for driveways and for walks, and shall be installed in a manner that will not obstruct the flow of water in ditches and their inside bottom must be even with or below the level of the ditch.

19. **ANTENNAE**

It shall be permissible for not more than one (1) satellite dish antenna not more than 10 feet in diameter to be placed on a tract, provided, however, such dish antennae shall be placed

behind the residential dwelling or other building such that same is not visible from any portion of the road directly in front of the residential building upon which such residential building fronts.

20. **COMMON AREA MAINTENANCE**

As it becomes necessary to maintain and/or repair Common Areas within the property boundaries, the then current landowners will be called on to pay a pro-rata share of the total cost of expenses (the "Maintenance Assessments") based on each tract owner's voting rights. Notwithstanding this provision, Tracts 9E and 9F shall be considered as one tract and one share of the costs until one of the tracts is sold or conveyed to a third party, in which case they will be considered separate tracts with each carrying one share of such costs. The Board of Directors of the Association shall have full and complete authority in these matters.

21. **HOMEOWNER ASSOCIATION**

The now record owners have created a Homeowners Association and at anytime the then record owners of sixty-six and two-third percent (66-2/3) of the tracts shall have the authority by duly recorded written instrument to change the membership of the Association and authorize one or more committees to assume full authority hereunder and issue final approval and disapproval as required hereunder.

22. **VOTING RIGHTS**

Voting rights within the Deed Restrictions will be one vote per tract as follows:

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Tract	Current Owner	Approximate Acreage	Number of Votes
1A	McCurley	15.2730	1
1B	Brounkowski	15.2731	1
2A	Duffy	15.4456	1
2B	Alberts	15.4456	1
3	Lowe	15.2964	1
4	Busch	15.2966	1
5	Bond	14.2281	1
6	Fulton	14.2282	1
7	Bulgawicz	8.1244	1
8A	Gregson	7.0987	1
8B	Walton	7.0992	1
9A	Clark	5.00008	1
9B	McCorkle	5.00008	1
9C	Sembera	5.00545	1
9D	Huettel	5.00427	1
9E *	Morehead	5.00427	1
9F *	Morehead	5.00428	1

* Until the sale or conveyance of Tract 9E and 9F, Tracts 9E and 9F shall be considered one tract entitled to one vote and incurring one share of cost.

23. FENCING

No fencing other than brick, 3- or 4-rail board fence, wrought iron, split-rail fence, or pipe and cable fence, and for interior fencing only t-posts, slick or electrical wire, shall be permitted on any Building Site. Chain link, barbed wire, or wooden privacy fencing permitted as outer peripheral fencing around the entire 180 acre tract.

24. **BUILDING SITE**

Building Sites shall be defined as the Tracts described by field notes on Exhibit "B" attached to and made a part of these restrictions.

25. **SPECIAL PROJECTS**

Any project which has a capital cost of Ten Thousand Dollars (\$10,000.00) or more in its total cost shall be required to receive consent of sixty-six and two thirds percent (66 2/3%) of the then record owners, subject to these Restrictions before proceeding with the project.

26. **MAILBOXES**

Mailboxes shall be constructed with brick or stone matching the brick or stone of the primary residence, using a design similar to the mailboxes existing on Tracts 3 and 8B. A grace period of one (1) year from the effective date of this Amendment to Restrictions shall be given for the replacement of nonconforming mailboxes for existing primary residences.

27. **CREATION OF LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS**

All Assessments, together with interest commencing on the due date at a rate of interest to be set from time to time by the Board of Directors not in excess of the maximum lawful rate, costs (specifically including, but not limited to, any flat charges or percentage fees charged by any collection agencies used by the Association in collecting Assessments), and reasonable attorney's fees and court costs actually incurred, shall be a charge on the land and shall be secured by a continuing lien upon the land against which each Assessment is made. Each such Assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the person who was the Owner of such land at the time the Assessment fell due. Each such Owner shall be personally liable for his or her portion of each Assessment coming due while he or she is the Owner of the land, and each Assessment thereafter coming due unless and until such Owner notifies the Association of the sale or conveyance of the land against which the Assessment is made as hereinafter provided in this paragraph.

In order to extinguish any person's personal liability with regard to Assessments coming due following the sale or conveyance of the tract or parcel owned by such person, such person shall be obligated to notify the Association of such person's sale or conveyance of the tract or parcel against which Assessments may be levied. In that regard, each person who at any time owned any tract or parcel in the Properties against which Assessments coming due after the date upon which such person furnishes to the Association a copy of the executed instrument of conveyance by which fee title to the tract or parcel previously owned by such person was conveyed or transferred to any another person, and the mailing address of the person to whom such tract or parcel was conveyed or transferred. Upon receipt of such information, the Association shall cause the name and address of the new Owner to be substituted for that of the prior Owner on the records of the Association, and the prior Owner shall no longer be liable or responsible for Assessments subsequently coming due. Each person owning a tract or parcel against which Assessments may be made shall have the obligation to notify the Association of any change in its address, and notice of any such change shall become effective five (5) days after written notice thereof has been provided to the Association. With regard to mailing notices of Assessments payable by any person to the Association, the Association shall be deemed to have satisfied any obligation that it might have to provide written notices or bills if the same are mailed or delivered to the Owner at the address of such Owner as reflected on the records of the Association, and no such Owner or other person liable for the payment of any Assessment shall escape such liability or be entitled to any deferral or abatement of interest or any late charges or collection costs with regard to delinquent Assessments on the basis of such person's failure to receive notice thereof if the Association sent such notice by regular U.S. Mail to the most recent address of the person according to the records of the Association.

Assessments shall be payable annually on a date specified by the Board of Directors; provided, however, the Board may, at its option, require payment of such Assessments in monthly or quarterly installments. Special Assessments shall be paid in such manner and on such date or dates as may be fixed by the Board.

28. **COMPUTATION**

It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during each calendar year or such other fiscal year as the Board may adopt. Such budget may include a capital contribution or reserve in accordance with a capital budget separately prepared as provided for under these Restrictions. In the event that the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year. The Board shall in good faith attempt to cause the budget and the Assessments to be levied against each owner for the following year to be delivered to each Owner at least thirty (30) days prior to the end of the current year.

29. **LIEN FOR ASSESSMENTS**

All sums assessed against any property subject to the Restrictions, as may be amended, together with interest, collection and other costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on the property owned by each Owner in favor of the Association. All persons acquiring liens or encumbrances on any property subject to the Restrictions after this Restriction shall have been recorded in the real property records of Harris County, Texas shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for Assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

30. **SUBORDINATION OF THE LIEN TO MORTGAGES**

The lien securing the Assessments provided for herein shall be subordinate to (i) liens of ad valorem taxes and (ii) the lien of any Mortgage which has been recorded in the real property records of Harris County, Texas. Sale or transfer of any tract or parcel subject to these Restrictions shall not affect the lien hereby created. However, the sale or transfer of any tract or parcel pursuant to foreclosure of a Mortgage or any conveyance in lieu thereof, shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No such sale or transfer shall relieve such

tract or parcel from liability for any Assessments thereafter becoming due or from the lien thereof.

31. **EFFECT OF NONPAYMENT OF ASSESSMENTS, REMEDIES OF THE ASSOCIATION**

Any Assessments which are not paid in full by the date specified by the Board shall be delinquent. Any delinquent Assessment shall commence to bear interest on the due date of such interest rate as the Board may from time to time determine not in excess of the maximum lawful rate of interest. If the Assessment is not paid when due, the lien herein retained and created against the affected tract or parcel shall secure the Assessment due, interest thereon from the date due and payable, all costs of collection, court costs, reasonable attorney's fees actually incurred, and any other amount provided or permitted by law. In the event that the Assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit for collection against the Owner personally obligated to pay the Assessment or foreclose the lien created and reserved hereby against the tract or parcel of such Owner.

The Association's lien is created by recordation of this Amendment, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien shall be or is required. By acquiring a tract or parcel, an Owner grants to the Association a power of sale in connection with the Association's lien. By written resolution, the Board of Directors of the Association may appoint, from time to time, an officer, agent, trustee, or attorney of the Association to exercise the power of sale on behalf of the Association. The Association shall exercise its power of sale pursuant to the Texas Property Code, and any applicable provision(s), amendment(s), or recodifications thereof in effect at the time of the exercise of such power of sale. The Association has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created hereby. Costs of foreclosure may be added to the amount owed by the Owner to the Association. An Owner may not petition a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the Owner's debt. The Association may bid for and purchase the tract or parcel at the foreclosure sale utilizing funds of the Association. The Association may own,

lease, encumber, exchange, sell or convey a tract or parcel. The purchaser at any such foreclosure sale shall be entitled to sue for recovery of possession of the tract or parcel by an action of forcible detainer without the necessity of giving any notice to the former owner or owners of the tract or parcel sold at foreclosure. The Owner shall have no right of redemption after or resulting from a foreclosure sale of the Association's lien. Nothing herein shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien. At any time before a nonjudicial foreclosure sale, an Owner of a tract or parcel may avoid foreclosure by paying all amounts due the Association. Foreclosure of a tax lien attaching against a tract or parcel under Chapter 32, Tax Code, shall not discharge the Association's lien under this paragraph for amounts becoming due to the Association after the date of foreclosure of the tax lien.

No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, by non-use of Common Area or abandonment of the tract or parcel owned by such Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under these Restrictions or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to interest, and then to delinquent Assessments.