

**DECLARATION OF RESTRICTIVE COVENANTS OF THE  
WINFREE OAKS SUBDIVISION SECTION 1**

**Basic Information**

**Date:** August 26, 2014

**Declarant:** DUTTON LAKE, LLC, a Texas Limited Liability Company

**Declarant's Address:**

DUTTON LAKE, LLC  
1915 Walnut Green Dr.  
Houston, TX 77062-2320

**Association:** Winfree Oaks Homeowner's Association, a Texas nonprofit association

**Association's Address:** 15201 E. Freeway, Suite 205, Channelview, Texas 77530

**Property:** A subdivision of a 41.376 acre tract divided into 27 lots and 1 Restricted Reserve "A", in the Benjamin Winfree Survey, Abstract No. 28, as conveyed to DUTTON LAKE, LLC by Cecil V. Winfrey, II, by deed dated August 19, 2013, and recorded in Volume 1438 at Page 88 of the official public records of Chambers County, Texas. The property is further described in the Plat filed for record on August 26, 2014 under Clerk's File number 96495 of the Plat Records of Chambers County, Texas.

**Definitions**

"ACC" means the Architectural Control Committee established in this Declaration.

"Assessment" means any amount due to the Association by an Owner or levied against an Owner by the Association under this Declaration.

"Association" means a non-profit association, unless incorporated by the Board, consisting of all Owners, which shall have the duty of maintaining, operating and managing the Common Area as defined in this Declaration and such other duties as set out in the By-Laws of the Association. Each Owner shall become a member of the Association contemporaneously with the acquisition of a Lot, without further documentation of any kind.

"Board" means the Board of Directors of the Association.

"Bylaws" means the Bylaws of the Association adopted by the Board.

"Common Area" means all property within the Subdivision not designated as a Lot on the plat and that has not been accepted for maintenance by the applicable governmental body. Declarant will convey the Common Area to the Association.

"Covenants" means the covenants, conditions, and restrictions contained in this Declaration.

"Declarant" means DUTTON LAKE, LLC, a Texas Limited Liability Company, and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

"Easements" means Easements within the Property for utilities, drainage, and other purposes as shown on the Plat or of record.

"Governing Documents" means this Declaration and the Bylaws, rules of the Association, and standards of the ACC, as amended.

"Lot" means each tract of land designated as a lot on the Plat, excluding lots that are part of the Common Area.

"Member" means Owner.

"Owner" means every record Owner of a fee interest in a Lot.

"Plat" means the Plat of the Property recorded on August 26, 2014 in Clerk's File Number 96495 of the real property records of Chambers County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

"Residence" means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

"Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

"Structure" means any improvement on a Lot (other than a Residence), including a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

"Subdivision" means the Property covered by the Plat and any additional property made subject to this Declaration.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

## Clauses and Covenants

### A. Imposition of Covenants

1. Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

3. Each Owner and occupant of a Lot agrees to comply with the Governing Documents and agrees that failure to comply may subject him to a fine, an action for amounts due to the Association, damages, or injunctive relief.

### B. Plat and Easements

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

### C. Use and Activities

1. *Permitted Use.* A Lot may be used only for an approved Residence and approved Structures for use by a Single Family.

2. *Prohibited Activities.* Prohibited activities are -

a. any activity that is otherwise prohibited by the Governing Documents;

b. any illegal activity;

- c. any nuisance or noxious or offensive activity;
- d. any dumping of rubbish or trash. All garbage and other waste shall be kept in sanitary containers away from public view and disposed of on a regular basis.
- e. any storage of -
  - i. building materials of any kind except during the construction or renovation of a Residence or a Structure. During construction or renovation, all building material shall be placed within the property lines of the Lot upon which the improvements are to be erected, and shall not be placed in the streets or between the curb and the property line;
  - ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; or
  - iii. unsightly objects unless completely shielded by a Structure;
- f. any exploration for or extraction of minerals;
- g. No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for any commercial purpose or for food. The only animals permitted on the Property are customary domesticated household pets, which may be kept for personal companionship subject to rules adopted by the board. The board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the rules fail to establish animal occupancy quotas, no more than 4 dogs and/or cats may be maintained on each lot. Pets must be kept in a manner that does not disturb the peaceful enjoyment of residents of other lots. Pets must be maintained inside the dwelling, and may be kept in a fenced yard only if they do not disturb residents of other lots. Resident is responsible for the removal of his pet's wastes from the Property. Unless the Rules provide otherwise, a resident must prevent his pet from relieving itself on the common area or the lot of another owner.;
- h. any commercial, professional or business activity to which the general public is invited; reasonable home office use is permitted provided the use does not interfere with the residential use and enjoyment of neighboring lots by other residents.;

- i. the renting of a portion of a Residence or Structure;
- j. the drying of clothes in a manner that is visible from any street;
- k. the display of any sign except -
  - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale; and
  - ii. political signage not prohibited by law or the Governing Documents;
- l. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- m. moving a previously constructed house or off-site constructed portions of a house onto a Lot;
- n. interfering with a drainage pattern without ACC approval;
- o. hunting of any type and the discharge of any firearm;
- p. occupying a Structure that does not comply with the construction standards of a Residence;
- q. the use or discharge of fireworks;
- r. possession of an aggressive breed of dog, including but not limited to "pit bull" dogs; and
- s. no individual sewage disposal system, commonly known as "septic systems" shall be permitted on any Lot unless the system is designed, located and constructed in accordance with the requirements, standards and regulations set forth by Chambers County, or other governing body.
- t. burning or incineration of trash, garbage, leaves, brush or other debris;
- u. installation of an individual water-supply system without written approval of the ACC.

D. Construction and Maintenance Standards

1. Lots

- a. *Consolidation of Lots.* An Owner of an adjoining Lot or Lots, with ACC approval, may consolidate those Lots into one site for the construction of a Residence. Additionally, Owners on either side of an unimproved Lot may subdivide the Lot between them such that three (3) Lots would be converted into two (2) building sites.
- b. *Subdivision Prohibited.* Other than as described in Section D.(1.) a. above, no Lot may be further subdivided.
- c. *Easements.* No easement in a Lot may be granted without ACC approval.
- d. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

2. Residences and Structures

- a. *Aesthetic Compatibility.* All Residences and Structures, including shops or accessory buildings, must be aesthetically compatible with the Subdivision, as determined by the ACC.
- b. *Maximum Height.* The maximum height of a Residence is two stories.
- c. *Required Area.* The total area of a Residence, exclusive of porches, garages, or carports, must be at least 2,200 square feet.
- d. *Location on Lot.* No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot line. All Structures must be located behind the front wall of the Residence. All outbuildings, except garages, must not be visible from any street.
- e. *Garages.* Each Residence must have at least a two-car garage accessed by a driveway. The garage may be a separate structure.
- f. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within 30 days (or within a period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the

extent that repairs are not practicable must be demolished and removed within 60 days and the Lot restored to a clean and attractive condition.

- g. *Fences, Walls, and Hedges.* No fence, wall, or hedge may be located forward of the front wall line of the Residence, except for trellises and decorative fences that are approved by the ACC. All wood fences must be installed so that the finish side of the fence faces outward from the Residence, so that the support structure side of the fence should face the Residence.
- h. *Antennae.* No antenna, satellite dish, or associated wires may be visible from the street or be located behind the back setback line of any Lot.
- i. *Flags and Flagpoles.* Each owner and resident of Winfree Oaks has a right to fly the flag on his lot. The United States flag ("Old Glory"), the Texas state flag ("Lone Star Flag") or a flag from a branch of the US military may be displayed in a respectful manner on each lot, subject to reasonable standards adopted by the Association for the height, size, illumination, location, and number of flagpoles. All flag displays must comply with public flag laws. No other types of flags, pennants, banners, kites, or similar types of displays are permitted on a lot if the display is visible from a street or common area.
- j. *Traffic Sight Lines.* No landscaping that obstructs traffic sight lines may be placed on any Lot.
- k. *Landscaping.* Landscaping must be installed within 30 days after occupancy. The minimum landscaping is specified in the standards of the ACC.

### 3. *Building Materials for Residences and Structures*

- a. *Roofs.* Only composition may be used on Residences and Structures, unless otherwise approved by the ACC. All roof stacks must be painted to match the roof color.
- b. *Air Conditioning.* Window- or wall-type air conditioners may not be used in a Residence. All air conditioning equipment must be located behind a fence, screening wall or landscaping.
- c. *Exterior Walls.* All Residences must have at least 60 percent of their exterior walls, including exposed foundation, of stone or brick, minus windows and doors, unless otherwise approved by the ACC.

- d. *Color Changes.* No change to the color of the exterior walls, trim, or roof of a Residence will be permitted, unless otherwise approved by the ACC.
- e. *Driveways and Sidewalks.* All driveways and sidewalks must be surfaced with concrete, unless otherwise approved by the ACC. Driveways and sidewalks may not be surfaced with dirt, gravel, shell, or crushed rock.
- f. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Subdivision.
- g. *Accessory Buildings.* Accessory structures, such as dog houses, gazebos, metal storage sheds, playhouses, and greenhouses, are permitted as long as they are typical for Winfree Oaks in terms of type, number, size, location, color, material, and height. Accessory structures may not be located in front yards or in unfenced portions of side yards facing streets. If an accessory structure that is visible from a street or another lot is installed on a lot without the prior written approval of the Architectural Reviewer, the Architectural Reviewer reserves the right to determine that the accessory structure is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the owner to screen it or to remove it.

#### E. Association

1. *Type.* The Association must be a nonprofit organization, and may be unincorporated or incorporated, as the Association decides from time to time. If the Association incorporates, the subsequent failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association.

2. *Applicability.* The Association is subject to the Texas Business Organizations Code ("TBOC"). Because provisions of this Declaration address issues covered by the TBOC, this Declaration is a "Governing Document" as defined by TBOC, and any such provision herein is a "Bylaw" as defined by TBOC. When incorporated, the Association is subject to TBOC Chapter 22 - the Nonprofit Corporation Law. When unincorporated, the Association is subject to TBOC Chapter 252 - the Uniform Unincorporated Nonprofit Association Act.

3. *Duration.* The Association comes into existence on the later to occur of the two following events: (1) the date on which this Declaration is recorded in the Real Property Records of Chambers County, Texas, or (2) the date on which a deed is recorded in the Real Property Records of Chambers County, Texas, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates). The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.



4. *Rules.* The Board may adopt rules that do not conflict with law or the other Governing Documents. On request, Owners will be provided a copy of any rules.

5. *Membership and Voting Rights.* Every Owner is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of a Lot. Members have one vote per Lot. When more than one person is an Owner, each is a Member, but only one vote may be cast for a Lot. Membership is appurtenant to and may not be separated from ownership of the lot. The board may require satisfactory evidence of transfer of ownership before a purported owner is entitled to vote at meetings of the Association.

#### F. ACC

1. *Purpose.* Because the lots are part of a single, unified community, this Declaration creates rights to regulate the design, use, and appearance of the lots and common areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which Prairie Chapel Estates is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements on a lot, including but not limited to dwellings, fences, landscaping, retaining walls, yard art, sidewalks and driveways, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

2. *ARCHITECTURAL CONTROL DURING THE DEVELOPMENT PERIOD.* During the Development Period, neither the Association, the board of directors, nor a committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new homes on vacant lots. During the Development Period, the Architectural Reviewer for new homes on vacant lots is the Declarant or its delegates.

- a. *Declarant's Rights Reserved.* Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within Winfree Oaks enhance Declarant's reputation as a community developer and do not impair Declarant's ability to sell homes in the Property. Accordingly, each owner agrees that - during the Development Period - no improvements will be started or progressed on owner's lot without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other

person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

- b. *Delegation by Declarant.* During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (1) a modifications or architectural committee appointed by Declarant or by the board, (2) a modifications or architectural committee elected by the owners, or (3) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

3. *ACC Control By Association*

- a. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ACC, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the ACC will assume jurisdiction over architectural control. The ACC will consist of at least 3 but not more than 7 persons appointed by the board, pursuant to the Bylaws. Members of the ACC serve at the pleasure of the board and may be removed and replaced at the board's discretion. At the board's option, the board may act as the ACC, in which case all references in the Governing Documents to the ACC are construed to mean the board. Members of the ACC need not be owners or residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the board.
- b. *Standards.* Subject to Board approval, the ACC may adopt standards that do not conflict with the other Governing Documents to carry out its purpose. On request, Owners will be provided a copy of any standards.

4. *Plan Review*

- a. *Required Review by ACC.* No Residence, Structure or fence may be erected on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require. The ACC is authorized to request the submission of samples of proposed construction material, floor plans, elevations and exterior finishes.
- b. *Procedures*
  - i. *Complete Submission.* Within 20 days after the submission of two (2) sets of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.
  - ii. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within 20 days after complete submission, the submitted plans and specifications are deemed approved.
- c. *Building Permit.* If the application is for work that requires a building permit from a governmental body, the Architectural Reviewer's approval is conditioned on the issuance of the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, governmental approval does not ensure Architectural Reviewer approval.
- d. *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of the appeal to the Board, and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within 7 days after the ACC's action. The Board shall determine the appeal within 10 days after timely notice of appeal is given. The determination by the Board is final.
- e. *Records.* The ACC will maintain written records of all requests submitted to it and of all actions taken. The Board will maintain written records of

all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.

- f. *No Liability.* The Association, the Board, the ACC, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.

### G. Assessments and Fees

1. *Authority.* The Association may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund operating expenses of the Association, and to improve and maintain the Common Areas.

2. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.

3. *Creation of Lien.* Assessments are secured by a continuing vendor's lien on each Lot, which lien is reserved by the Declarant and assigned to the Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Association to secure Assessments.

4. *Commencement.* A Lot becomes subject to Assessments on conveyance of the Lot by Declarant.

#### 5. *Regular Assessments*

a. *Rate.* Regular Assessments are levied by the Board, annually, to fund the anticipated operating and maintenance expenses of the Association. Until changed by the Board, the Regular Assessment is \$450.00.

b. *Changes to Regular Assessments.* Regular Assessments may be changed annually by the Board. Written notice of the Regular Assessment will be sent to every Owner at least thirty days before its effective date.

c. *Collections.* Regular Assessments will be collected yearly in advance, payable on the first day of the month in which the Owner joins and each succeeding June 1st of each year.

6. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area or for any other purpose benefiting the Subdivision but requiring funds exceeding those available from the Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every Owner.

7. *Approval of Special Assessments.* Any Special Assessment must be approved by a majority vote at a meeting of the Members in accordance with the Bylaws.

8. *Fines.* The Board may levy a fine against an Owner for a violation of the Governing Documents as permitted by law.

9. *Subordination of Lien to Mortgages.* The assessment lien on a lot is subordinate and inferior to (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before this Declaration, (3) a recorded deed of trust lien securing a loan for construction of the original dwelling, (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent assessment became due, (5) a home equity or reverse mortgage lien which is a renewal, extension, or refinancing of a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent assessment became due, (6) an FHA-insured or VA-guaranteed mortgage. Except for the foregoing, the assessment lien is superior to all other liens and encumbrances on a lot. The foreclosure of a superior lien extinguishes the Association's lien against the Lot as to Assessments due before the foreclosure, but does not extinguish the Association's claim against the former owner.

10. *Delinquent Assessments.* Any Assessment not paid within 15 days after it is due is delinquent.

11. *HOA Sale Fees.* This Section addresses the expenses, fees, charges, and contributions (hereafter, collectively, the "HOA Sale Fees") that are charged by the Association or its manager, and that arise at the time of a home's sale or purchase. As used in this Section, "HOA Sale Fees" does not include a buyer's prepaid and/or pro-rata assessments. HOA Sale Fees are not refundable by the Association or the Association's manager, and may not be regarded as a prepayment of or credit against assessments. HOA Sale Fees generally fall into two types of categories - budget enhancing fees, such as contributions to the reserve or operating funds of the Association, and administrative fees, such as fees for resale certificates, estoppel certificates, copies of governing documents, compliance inspections, ownership record changes, and priority processing.

HOA Sale Fees may be charged by the Association's manager, managing director, or managing agent (collectively, "manager"), pursuant to a contract between the Association and the manager, and provided there is no duplication of fees by type or amount with fees charged by the Association. This Article does not obligate the manager to levy HOA Sale Fees. The number, types, and amounts of HOA Sale Fees charged by a manager (1) must have the prior written approval of the board, (2) are not subject to the Association's assessment lien, (3) should

not exceed what is customary in amount, kind, and number for the local marketplace, and (4) are not payable by the Association unless the management contract so stipulates.

## H. Remedial Rights

1. *Late Charges and Interest.* A late charge of 10 percent of the delinquent amount is assessed for delinquent payments. Delinquent Assessments accrue interest at the rate of 15 percent per year. The Board may change the late charge and the interest rate.

2. *Costs, Attorney's Fees, and Expenses.* The Owner is liable to the Association for all costs and reasonable attorney's fees incurred by the Association in collecting delinquent Assessments, foreclosing the Association's lien, and enforcing the Governing Documents.

3. *Nonjudicial Foreclosure of Lien.* The Association may foreclose the Association's lien against a Lot by power of sale as permitted by law. The Association may designate a person to act as trustee or otherwise to exercise the power of sale on behalf of the Association.

4. *Judicial Enforcement.* The Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Association's lien, or enforce or enjoin a violation of the Governing Documents. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Governing Documents.

5. *Suspension of Voting.* An Owner delinquent in payment of any Assessment may not vote.

6. *Suspension of Other Rights.* If an Owner violates the Governing Documents, the Association may suspend the Owner's rights under the Governing Documents in accordance with law until the violation is cured.

7. *Damage to Property.* An Owner is liable to the Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

## I. Common Area

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Association to -

- a. suspend an Owner's rights under the Governing Documents;
- b. grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes; and

c. dedicate or convey any of the Common Area for public purposes, on approval by a vote of majority of the Members at a meeting in accordance with the Bylaws.

2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Governing Documents.

3. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

## J. Declarant Rights and Reservations

Introduction. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant-related provisions in this Article.

1. *General Reservation & Construction.* Notwithstanding other provisions of the Governing Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other owner, or the Association, prevent or interfere with the rights contained in this Article which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Article and any other Governing Document, this Article controls. This Article may not be amended without the prior written consent of Declarant. The terms and provisions of this Article must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.
2. *Purpose of Development and Declarant Control Periods.* This Article gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildout and sellout of Winfree Oaks, which is ultimately for the benefit and protection of owners and mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with 90 days' notice.
3. *Intent to Build.* Declarant, in its own name or through its affiliates, intends to construct dwellings on some of the lots in connection with the sale of the lots. However, Declarant may, without notice, sell some or all of the lots to one or more other builders to improve the lots with dwellings to be sold and occupied. In that event, Declarant may be expected to amend this Declaration to add provisions addressing the role of a builder in the Property.

4. *Definitions.* As used in this Article and elsewhere in the Governing Documents, the following words and phrases have the following specified meanings:

a. "Declarant Control Period" means that period of time during which Declarant controls the operation and management of the Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of (1) 7 years from date this Declaration is recorded, or (2) 60 days after title to 75 percent of the lots that may be created in Winfree Oaks have been conveyed to owners other than Declarant, affiliates of Declarant or other builders.

b. "Development Period" means the 10-year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to this Article, such as rights relating to development, construction, expansion, and marketing of Winfree Oaks. The Development Period is for a term of years and does not require that Declarant own land in Winfree Oaks. The Development Period is different from and longer than the Declarant Control Period. Declarant may terminate the Development Period at any time by recording a notice of termination.

c. "Unilaterally" means that the Declarant may take the authorized action without the consent, approval, vote, or joinder of any other person, such as owners, mortgagees, and the Association. Certain provisions in this Article and elsewhere in the Governing Documents authorize the Declarant to act unilaterally. Unilateral action by Declarant is favored for purposes of efficiency and to protect the interests of Declarant.

5. ***DECLARANT CONTROL PERIOD RESERVATIONS - GOVERNANCE.***

Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

a. *Officers & Directors.* During the Declarant Control Period, the Board may consist of 3 persons. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as a "Leader." Declarant's unilateral right to remove and replace officers and directors applies to officers and directors who were elected or designated by lot owners other than Declarant, as well as to Declarant's appointees.

b. *Association Meetings.* During the Declarant Control Period, meetings of the Association may be held at a location, date, and time that is convenient to Declarant, whether or not it is mutually convenient for the owners.

c. *Transition Meeting.* Within 60 days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call a transition meeting



of the members of the Association for the purpose of electing, by vote of the owners, directors to the board. Written notice of the transition meeting must be given to an owner of each lot at least 10 days before the meeting. For the transition meeting, owners of 10 percent of the lots constitute a quorum. The directors elected at the transition meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors, at which time the staggering of terms will begin.

6. ***DECLARANT CONTROL PERIOD RESERVATIONS - FINANCIAL.*** Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

a. *Association Budget.* During the Declarant Control Period, the Declarant-appointed board will establish a projected budget for Winfree Oaks as a fully developed, full constructed, and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the Property, using cost estimates that are current for the period in which the budget is prepared. The Association budget may not include enhancements voluntarily provided by Declarant to facilitate the marketing of new homes in the Property.

b. *Budget Funding.* During the Declarant Control Period only, Declarant is responsible for loaning to the Association the difference between the Association's actual operating expenses and the regular assessments received from owners other than Declarant, and will loan any additional funds necessary to pay actual cash outlays of the Association. On termination of the Declarant Control Period, Declarant will cease loaning funds for the difference between the Association's operating expenses and the assessments received from owners other than Declarant. Any funds advanced by Declarant under this provision shall be recoverable from the Association without interest.

c. *Declarant Assessments & Reserves.* During the Declarant Control Period, any real property owned by Declarant is not subject to assessment by the Association. During the Declarant Control Period, Declarant is not required to make contributions to the Association's reserve funds for the lots owned by Declarant. Declarant's obligation to fund the difference in the Association's operating expenses may not be construed to require Declarant to fund reserve accounts.

d. *Commencement of Assessments.* During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of regular assessments until a certain number of lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies regular assessments against the lots. Prior to the first levy, Declarant will be responsible for all operating expenses of the Association.

e. *Expenses of Declarant.* Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

f. *Budget Control.* During the Declarant Control Period, the right of owners to veto assessment increases or special assessments is not effective and may not be exercised.

7. **DEVELOPMENT PERIOD RESERVATIONS.** Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

a. *Withdrawal.* During the Development Period, Declarant may withdraw real property from the Property and the effect of this Declaration (1) if the owner of the withdrawn property consents to the withdrawal, and (2) if the withdrawal does not significantly and detrimentally change the appearance, character, operation, or use of the Property.

b. *Changes in Development Plan.* Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a governmental entity, if applicable, and (2) the owner of the land or lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of lots and streets; (b) change the minimum dwelling size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

c. *Architectural Control.* During the Development Period, Declarant has the absolute right to serve as the Architectural Reviewer pursuant to Section F 2. Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under Article 5 and this Article to (1) an architectural control committee appointed by the board, or (2) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Declarant also has the unilateral right to exercise architectural control over vacant lots in Winfree Oaks. Neither the Association, the board of directors, nor a committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new homes and related improvements on vacant lots.

d. *Amendment.* During the Development Period, Declarant may amend this Declaration and the other Governing Documents, without consent of other owners or any mortgagee, for any purpose.

e. *Completion.* During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in the common area and lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of Winfree Oaks, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

f. *Easement to Inspect & Right to Correct.* During the Development Period, Declarant reserves for itself the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located on a lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association.

g. *Promotion.* During the Development Period, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other owners and residents, for purposes of promoting, identifying, and marketing Winfree Oaks and/or Declarant's houses, lots, developments, or other products located outside the Property. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events - such as open houses, MLS tours, and brokers parties - at the Property to promote the sale of lots.

h. *Offices.* During the Development Period, Declarant reserves for itself the right to use dwellings owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to lots and dwellings used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

i. *Access.* During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing Winfree Oaks, and for discharging

Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the homebuying public through any existing or future gate that restricts vehicular access to the Property in connection with the active marketing of lots and homes by Declarant, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

j. *Utility Easements.* During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any lot, as shown on the plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, television, cable, internet service, and security. To exercise this right as to land that is not a common area of the Property or not owned by Declarant, Declarant must have the prior written consent of the land owner.

k. *Land Transfers.* During the Development Period, any transfer of an interest in the Property to or from Declarant is not subject to any transfer-related provision in the Governing Documents, including without limitation an obligation for transfer or resale certificate fees, and the transfer-related provisions of this Declaration.

8. *DIFFERENT STANDARDS.* Declarant has the right (1) to establish specifications for the construction of all initial improvements in Winfree Oaks, and (2) to grant variances or waivers from community-wide standards to certain neighborhoods of the Property.
9. *COMMON AREAS.* Any initial common area improvement will be installed, constructed, or authorized by Declarant, the cost of which is not a common expense of the Association. For every common area capable of being conveyed to the Association, Declarant will convey title to the common area to the Association by one or more deeds -with or without warranty. At the time of conveyance to the Association, the common areas will be free of encumbrance except for the property taxes accruing for the year of conveyance. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the owners. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of common areas requiring inspection, evaluation, acceptance, or approval of common area improvements by the owners.
10. *SUCCESSOR DECLARANT.* Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant,

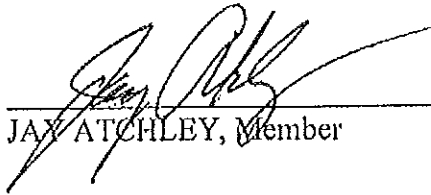
and recorded in the Real Property Records of Chambers County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

#### K. General Provisions

1. *Term.* This Declaration runs with the land and is binding in perpetuity.
2. *No Waiver.* Failure by the Association or an Owner to enforce the Governing Documents is not a waiver.
3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.
4. *Amendment.* This Declaration may be amended at any time by vote of 60 percent of the votes in the Association at a meeting in accordance with the Bylaws. An instrument containing the approved amendment will be signed by the Association and recorded.
5. *Conflict.* This Declaration controls over the other Governing Documents.
6. *Severability.* The provisions of this Declaration are severable. If any provision of this Declaration is invalidated or declared unenforceable, the other provisions remain valid and enforceable.
7. *Notices.* Any notice required or permitted by the Governing Documents must be in writing. To the extent required by law, notices regarding remedial rights must be given by certified mail, return receipt requested. All other notices may be given by regular mail. Notice is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to a Member, at the Member's last known address according to the Association's records, and the Association, the Board, the ACC, or a managing agent at the Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Governing Documents, actual notice, however delivered, is sufficient.
8. *Annexation of Additional Property.* On written approval of the Board and not less than 75 percent of the Members at a meeting in accordance with the Bylaws, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.

SIGNED this 21 day of August 2014.

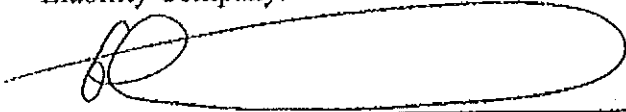
DUTTON LAKE, LLC, a Texas Limited Liability Company,

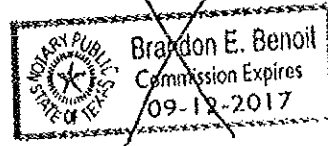
  
\_\_\_\_\_  
JAY ATCHLEY, Member

STATE OF TEXAS )

COUNTY OF HARRIS )

This instrument was acknowledged before me on the 21 day of August, 2014 by JAY ATCHLEY, in his capacity as Member of DUTTON LAKE, LLC, a Texas Limited Liability Company.

  
\_\_\_\_\_  
Notary Public, State of Texas


  
Notary Public  
State of Texas  
Brandon E. Benoit  
Commission Expires  
09-12-2017

  
Notary Public  
State of Texas  
Daniel D. Williams  
Commission Expires  
08-19-2017

After recording, please return to:

DUTTON LAKE, LLC  
1300 Rollingbrook Drive  
Suite 605  
Baytown, Texas 77521



Electronically Recorded Instrument Number  
Official Public Records 00096791  
 Book: OR Volume: 1516 Page: 292  
Heather H. Hawthorne, County Clerk 09/08/2014 08:48:00  
Chambers County, Texas Fee: 110.00 No. of Pages: 22  
Recorded by: MRHAME

**DECLARATION OF RESTRICTIVE COVENANTS OF THE  
WINFREE OAKS SUBDIVISION SECTION 1**

**Basic Information**

**Date:** August 26, 2014

**Declarant:** DUTTON LAKE, LLC, a Texas Limited Liability Company

**Declarant's Address:**

DUTTON LAKE, LLC  
1915 Walnut Green Dr.  
Houston, TX 77062-2320

**Association:** Winfree Oaks Homeowner's Association, a Texas nonprofit association

**Association's Address:** 15201 E. Freeway, Suite 205, Channelview, Texas 77530

**Property:** A subdivision of a 41.376 acre tract divided into 27 lots and 1 Restricted Reserve "A", in the Benjamin Winfree Survey, Abstract No. 28, as conveyed to DUTTON LAKE, LLC by Cecil V. Winfrey, II, by deed dated August 19, 2013, and recorded in Volume 1438 at Page 88 of the official public records of Chambers County, Texas. The property is further described in the Plat filed for record on August 26, 2014 under Clerk's File number 96495 of the Plat Records of Chambers County, Texas.

**Definitions**

"ACC" means the Architectural Control Committee established in this Declaration.

"Assessment" means any amount due to the Association by an Owner or levied against an Owner by the Association under this Declaration.

"Association" means a non-profit association, unless incorporated by the Board, consisting of all Owners, which shall have the duty of maintaining, operating and managing the Common Area as defined in this Declaration and such other duties as set out in the By-Laws of the Association. Each Owner shall become a member of the Association contemporaneously with the acquisition of a Lot, without further documentation of any kind.

"Board" means the Board of Directors of the Association.

"Bylaws" means the Bylaws of the Association adopted by the Board.

"Common Area" means all property within the Subdivision not designated as a Lot on the plat and that has not been accepted for maintenance by the applicable governmental body. Declarant will convey the Common Area to the Association.

"Covenants" means the covenants, conditions, and restrictions contained in this Declaration.

"Declarant" means DUTTON LAKE, LLC, a Texas Limited Liability Company, and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

"Easements" means Easements within the Property for utilities, drainage, and other purposes as shown on the Plat or of record.

"Governing Documents" means this Declaration and the Bylaws, rules of the Association, and standards of the ACC, as amended.

"Lot" means each tract of land designated as a lot on the Plat, excluding lots that are part of the Common Area.

"Member" means Owner.

"Owner" means every record Owner of a fee interest in a Lot.

"Plat" means the Plat of the Property recorded on August 26, 2014 in Clerk's File Number 96495 of the real property records of Chambers County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

"Residence" means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

"Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

"Structure" means any improvement on a Lot (other than a Residence), including a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

"Subdivision" means the Property covered by the Plat and any additional property made subject to this Declaration.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.



## Clauses and Covenants

### A. Imposition of Covenants

1. Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

3. Each Owner and occupant of a Lot agrees to comply with the Governing Documents and agrees that failure to comply may subject him to a fine, an action for amounts due to the Association, damages, or injunctive relief.

### B. Plat and Easements

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

### C. Use and Activities

1. *Permitted Use.* A Lot may be used only for an approved Residence and approved Structures for use by a Single Family.

2. *Prohibited Activities.* Prohibited activities are -

- a. any activity that is otherwise prohibited by the Governing Documents;
- b. any illegal activity;

- c. any nuisance or noxious or offensive activity;
- d. any dumping of rubbish or trash. All garbage and other waste shall be kept in sanitary containers away from public view and disposed of on a regular basis.
- e. any storage of -
  - i. building materials of any kind except during the construction or renovation of a Residence or a Structure. During construction or renovation, all building material shall be placed within the property lines of the Lot upon which the improvements are to be erected, and shall not be placed in the streets or between the curb and the property line;
  - ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; or
  - iii. unsightly objects unless completely shielded by a Structure;
- f. any exploration for or extraction of minerals;
- g. No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for any commercial purpose or for food. The only animals permitted on the Property are customary domesticated household pets, which may be kept for personal companionship subject to rules adopted by the board. The board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the rules fail to establish animal occupancy quotas, no more than 4 dogs and/or cats may be maintained on each lot. Pets must be kept in a manner that does not disturb the peaceful enjoyment of residents of other lots. Pets must be maintained inside the dwelling, and may be kept in a fenced yard only if they do not disturb residents of other lots. Resident is responsible for the removal of his pet's wastes from the Property. Unless the Rules provide otherwise, a resident must prevent his pet from relieving itself on the common area or the lot of another owner.;
- h. any commercial, professional or business activity to which the general public is invited; reasonable home office use is permitted provided the use does not interfere with the residential use and enjoyment of neighboring lots by other residents.;

- i. the renting of a portion of a Residence or Structure;
- j. the drying of clothes in a manner that is visible from any street;
- k. the display of any sign except -
  - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale; and
  - ii. political signage not prohibited by law or the Governing Documents;
- l. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- m. moving a previously constructed house or off-site constructed portions of a house onto a Lot;
- n. interfering with a drainage pattern without ACC approval;
- o. hunting of any type and the discharge of any firearm;
- p. occupying a Structure that does not comply with the construction standards of a Residence;
- q. the use or discharge of fireworks;
- r. possession of an aggressive breed of dog, including but not limited to "pit bull" dogs; and
- s. no individual sewage disposal system, commonly known as "septic systems" shall be permitted on any Lot unless the system is designed, located and constructed in accordance with the requirements, standards and regulations set forth by Chambers County, or other governing body.
- t. burning or incineration of trash, garbage, leaves, brush or other debris;
- u. installation of an individual water-supply system without written approval of the ACC.

## D. Construction and Maintenance Standards

### 1. Lots

- a. *Consolidation of Lots.* An Owner of an adjoining Lot or Lots, with ACC approval, may consolidate those Lots into one site for the construction of a Residence. Additionally, Owners on either side of an unimproved Lot may subdivide the Lot between them such that three (3) Lots would be converted into two (2) building sites.
- b. *Subdivision Prohibited.* Other than as described in Section D.(1.) a. above, no Lot may be further subdivided.
- c. *Easements.* No easement in a Lot may be granted without ACC approval.
- d. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

### 2. Residences and Structures

- a. *Aesthetic Compatibility.* All Residences and Structures, including shops or accessory buildings, must be aesthetically compatible with the Subdivision, as determined by the ACC.
- b. *Maximum Height.* The maximum height of a Residence is two stories.
- c. *Required Area.* The total area of a Residence, exclusive of porches, garages, or carports, must be at least 2,200 square feet.
- d. *Location on Lot.* No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot line. All Structures must be located behind the front wall of the Residence. All outbuildings, except garages, must not be visible from any street.
- e. *Garages.* Each Residence must have at least a two-car garage accessed by a driveway. The garage may be a separate structure.
- f. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within 30 days (or within a period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the

extent that repairs are not practicable must be demolished and removed within 60 days and the Lot restored to a clean and attractive condition.

- g. *Fences, Walls, and Hedges.* No fence, wall, or hedge may be located forward of the front wall line of the Residence, except for trellises and decorative fences that are approved by the ACC. All wood fences must be installed so that the finish side of the fence faces outward from the Residence, so that the support structure side of the fence should face the Residence.
- h. *Antennae.* No antenna, satellite dish, or associated wires may be visible from the street or be located behind the back setback line of any Lot.
- i. *Flags and Flagpoles.* Each owner and resident of Winfree Oaks has a right to fly the flag on his lot. The United States flag ("Old Glory"), the Texas state flag ("Lone Star Flag") or a flag from a branch of the US military may be displayed in a respectful manner on each lot, subject to reasonable standards adopted by the Association for the height, size, illumination, location, and number of flagpoles. All flag displays must comply with public flag laws. No other types of flags, pennants, banners, kites, or similar types of displays are permitted on a lot if the display is visible from a street or common area.
- j. *Traffic Sight Lines.* No landscaping that obstructs traffic sight lines may be placed on any Lot.
- k. *Landscaping.* Landscaping must be installed within 30 days after occupancy. The minimum landscaping is specified in the standards of the ACC.

### 3. *Building Materials for Residences and Structures*

- a. *Roofs.* Only composition may be used on Residences and Structures, unless otherwise approved by the ACC. All roof stacks must be painted to match the roof color.
- b. *Air Conditioning.* Window- or wall-type air conditioners may not be used in a Residence. All air conditioning equipment must be located behind a fence, screening wall or landscaping.
- c. *Exterior Walls.* All Residences must have at least 60 percent of their exterior walls, including exposed foundation, of stone or brick, minus windows and doors, unless otherwise approved by the ACC.

- d. *Color Changes.* No change to the color of the exterior walls, trim, or roof of a Residence will be permitted, unless otherwise approved by the ACC.
- e. *Driveways and Sidewalks.* All driveways and sidewalks must be surfaced with concrete, unless otherwise approved by the ACC. Driveways and sidewalks may not be surfaced with dirt, gravel, shell, or crushed rock.
- f. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Subdivision.
- g. *Accessory Buildings.* Accessory structures, such as dog houses, gazebos, metal storage sheds, playhouses, and greenhouses, are permitted as long as they are typical for Winfree Oaks in terms of type, number, size, location, color, material, and height. Accessory structures may not be located in front yards or in unfenced portions of side yards facing streets. If an accessory structure that is visible from a street or another lot is installed on a lot without the prior written approval of the Architectural Reviewer, the Architectural Reviewer reserves the right to determine that the accessory structure is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the owner to screen it or to remove it.

#### **E. Association**

1. *Type.* The Association must be a nonprofit organization, and may be unincorporated or incorporated, as the Association decides from time to time. If the Association incorporates, the subsequent failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association.

2. *Applicability.* The Association is subject to the Texas Business Organizations Code ("TBOC"). Because provisions of this Declaration address issues covered by the TBOC, this Declaration is a "Governing Document" as defined by TBOC, and any such provision herein is a "Bylaw" as defined by TBOC. When incorporated, the Association is subject to TBOC Chapter 22 -the Nonprofit Corporation Law. When unincorporated, the Association is subject to TBOC Chapter 252 - the Uniform Unincorporated Nonprofit Association Act.

3. *Duration.* The Association comes into existence on the later to occur of the two following events: (1) the date on which this Declaration is recorded in the Real Property Records of Chambers County, Texas, or (2) the date on which a deed is recorded in the Real Property Records of Chambers County, Texas, evidencing diversity of ownership in the Property (that the Property is not owned entirely by Declarant or its affiliates). The Association will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

4. *Rules.* The Board may adopt rules that do not conflict with law or the other Governing Documents. On request, Owners will be provided a copy of any rules.

5. *Membership and Voting Rights.* Every Owner is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of a Lot. Members have one vote per Lot. When more than one person is an Owner, each is a Member, but only one vote may be cast for a Lot. Membership is appurtenant to and may not be separated from ownership of the lot. The board may require satisfactory evidence of transfer of ownership before a purported owner is entitled to vote at meetings of the Association.

#### F. ACC

1. *Purpose.* Because the lots are part of a single, unified community, this Declaration creates rights to regulate the design, use, and appearance of the lots and common areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which Prairie Chapel Estates is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements on a lot, including but not limited to dwellings, fences, landscaping, retaining walls, yard art, sidewalks and driveways, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

2. *ARCHITECTURAL CONTROL DURING THE DEVELOPMENT PERIOD.* During the Development Period, neither the Association, the board of directors, nor a committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new homes on vacant lots. During the Development Period, the Architectural Reviewer for new homes on vacant lots is the Declarant or its delegates.

- a. Declarant's Rights Reserved. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within Winfree Oaks enhance Declarant's reputation as a community developer and do not impair Declarant's ability to sell homes in the Property. Accordingly, each owner agrees that - during the Development Period - no improvements will be started or progressed on owner's lot without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other

person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

- b. *Delegation by Declarant.* During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (1) a modifications or architectural committee appointed by Declarant or by the board, (2) a modifications or architectural committee elected by the owners, or (3) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

### 3. *ACC Control By Association*

- a. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ACC, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the ACC will assume jurisdiction over architectural control. The ACC will consist of at least 3 but not more than 7 persons appointed by the board, pursuant to the Bylaws. Members of the ACC serve at the pleasure of the board and may be removed and replaced at the board's discretion. At the board's option, the board may act as the ACC, in which case all references in the Governing Documents to the ACC are construed to mean the board. Members of the ACC need not be owners or residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the board.
- b. *Standards.* Subject to Board approval, the ACC may adopt standards that do not conflict with the other Governing Documents to carry out its purpose. On request, Owners will be provided a copy of any standards.

### 4. *Plan Review*



- a. *Required Review by ACC.* No Residence, Structure or fence may be erected on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require. The ACC is authorized to request the submission of samples of proposed construction material, floor plans, elevations and exterior finishes.
- b. *Procedures*
  - i. *Complete Submission.* Within 20 days after the submission of two (2) sets of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.
  - ii. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within 20 days after complete submission, the submitted plans and specifications are deemed approved.
- c. *Building Permit.* If the application is for work that requires a building permit from a governmental body, the Architectural Reviewer's approval is conditioned on the issuance of the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, governmental approval does not ensure Architectural Reviewer approval.
- d. *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of the appeal to the Board, and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within 7 days after the ACC's action. The Board shall determine the appeal within 10 days after timely notice of appeal is given. The determination by the Board is final.
- e. *Records.* The ACC will maintain written records of all requests submitted to it and of all actions taken. The Board will maintain written records of

all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.

- f. *No Liability.* The Association, the Board, the ACC, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.

## **G. Assessments and Fees**

1. *Authority.* The Association may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund operating expenses of the Association, and to improve and maintain the Common Areas.

2. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.

3. *Creation of Lien.* Assessments are secured by a continuing vendor's lien on each Lot, which lien is reserved by the Declarant and assigned to the Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Association to secure Assessments.

4. *Commencement.* A Lot becomes subject to Assessments on conveyance of the Lot by Declarant.

### **5. Regular Assessments**

- a. *Rate.* Regular Assessments are levied by the Board, annually, to fund the anticipated operating and maintenance expenses of the Association. Until changed by the Board, the Regular Assessment is \$450.00.
- b. *Changes to Regular Assessments.* Regular Assessments may be changed annually by the Board. Written notice of the Regular Assessment will be sent to every Owner at least thirty days before its effective date.
- c. *Collections.* Regular Assessments will be collected yearly in advance, payable on the first day of the month in which the Owner joins and each succeeding June 1st of each year.

6. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area or for any other purpose benefiting the Subdivision but requiring funds exceeding those available from the Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every Owner.

7. *Approval of Special Assessments.* Any Special Assessment must be approved by a majority vote at a meeting of the Members in accordance with the Bylaws.

8. *Fines.* The Board may levy a fine against an Owner for a violation of the Governing Documents as permitted by law.

9. *Subordination of Lien to Mortgages.* The assessment lien on a lot is subordinate and inferior to (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before this Declaration, (3) a recorded deed of trust lien securing a loan for construction of the original dwelling, (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent assessment became due, (5) a home equity or reverse mortgage lien which is a renewal, extension, or refinance of a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent assessment became due, (6) an FHA-insured or VA-guaranteed mortgage. Except for the foregoing, the assessment lien is superior to all other liens and encumbrances on a lot. The foreclosure of a superior lien extinguishes the Association's lien against the Lot as to Assessments due before the foreclosure, but does not extinguish the Association's claim against the former owner.

10. *Delinquent Assessments.* Any Assessment not paid within 15 days after it is due is delinquent.

11. *HOA Sale Fees.* This Section addresses the expenses, fees, charges, and contributions (hereafter, collectively, the "**HOA Sale Fees**") that are charged by the Association or its manager, and that arise at the time of a home's sale or purchase. As used in this Section, "HOA Sale Fees" does not include a buyer's prepaid and/or pro-rata assessments. HOA Sale Fees are not refundable by the Association or the Association's manager, and may not be regarded as a prepayment of or credit against assessments. HOA Sale Fees generally fall into two types of categories - budget enhancing fees, such as contributions to the reserve or operating funds of the Association, and administrative fees, such as fees for resale certificates, estoppel certificates, copies of governing documents, compliance inspections, ownership record changes, and priority processing.

HOA Sale Fees may be charged by the Association's manager, managing director, or managing agent (collectively, "manager"), pursuant to a contract between the Association and the manager, and provided there is no duplication of fees by type or amount with fees charged by the Association. This Article does not obligate the manager to levy HOA Sale Fees. The number, types, and amounts of HOA Sale Fees charged by a manager (1) must have the prior written approval of the board, (2) are not subject to the Association's assessment lien, (3) should

not exceed what is customary in amount, kind, and number for the local marketplace, and (4) are not payable by the Association unless the management contract so stipulates.

## H. Remedial Rights

1. *Late Charges and Interest.* A late charge of 10 percent of the delinquent amount is assessed for delinquent payments. Delinquent Assessments accrue interest at the rate of 15 percent per year. The Board may change the late charge and the interest rate.

2. *Costs, Attorney's Fees, and Expenses.* The Owner is liable to the Association for all costs and reasonable attorney's fees incurred by the Association in collecting delinquent Assessments, foreclosing the Association's lien, and enforcing the Governing Documents.

3. *Nonjudicial Foreclosure of Lien.* The Association may foreclose the Association's lien against a Lot by power of sale as permitted by law. The Association may designate a person to act as trustee or otherwise to exercise the power of sale on behalf of the Association.

4. *Judicial Enforcement.* The Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Association's lien, or enforce or enjoin a violation of the Governing Documents. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Governing Documents.

5. *Suspension of Voting.* An Owner delinquent in payment of any Assessment may not vote.

6. *Suspension of Other Rights.* If an Owner violates the Governing Documents, the Association may suspend the Owner's rights under the Governing Documents in accordance with law until the violation is cured.

7. *Damage to Property.* An Owner is liable to the Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

## I. Common Area

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Association to -

- a. suspend an Owner's rights under the Governing Documents;
- b. grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes; and

c. dedicate or convey any of the Common Area for public purposes, on approval by a vote of majority of the Members at a meeting in accordance with the Bylaws.

2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Governing Documents.

3. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

## **J. Declarant Rights and Reservations**

Introduction. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant-related provisions in this Article.

1. *General Reservation & Construction.* Notwithstanding other provisions of the Governing Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other owner, or the Association, prevent or interfere with the rights contained in this Article which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Article and any other Governing Document, this Article controls. This Article may not be amended without the prior written consent of Declarant. The terms and provisions of this Article must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.
2. *Purpose of Development and Declarant Control Periods.* This Article gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildout and sellout of Winfree Oaks, which is ultimately for the benefit and protection of owners and mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with 90 days' notice.
3. *Intent to Build.* Declarant, in its own name or through its affiliates, intends to construct dwellings on some of the lots in connection with the sale of the lots. However, Declarant may, without notice, sell some or all of the lots to one or more other builders to improve the lots with dwellings to be sold and occupied. In that event, Declarant may be expected to amend this Declaration to add provisions addressing the role of a builder in the Property.

4. *Definitions.* As used in this Article and elsewhere in the Governing Documents, the following words and phrases have the following specified meanings:

a. "**Declarant Control Period**" means that period of time during which Declarant controls the operation and management of the Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of (1) 7 years from date this Declaration is recorded, or (2) 60 days after title to 75 percent of the lots that may be created in Winfree Oaks have been conveyed to owners other than Declarant, affiliates of Declarant or other builders.

b. "**Development Period**" means the 10-year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to this Article, such as rights relating to development, construction, expansion, and marketing of Winfree Oaks. The Development Period is for a term of years and does not require that Declarant own land in Winfree Oaks. The Development Period is different from and longer than the Declarant Control Period. Declarant may terminate the Development Period at any time by recording a notice of termination.

c. "**Unilaterally**" means that the Declarant may take the authorized action without the consent, approval, vote, or joinder of any other person, such as owners, mortgagees, and the Association. Certain provisions in this Article and elsewhere in the Governing Documents authorize the Declarant to act unilaterally. Unilateral action by Declarant is favored for purposes of efficiency and to protect the interests of Declarant.

5. ***DECLARANT CONTROL PERIOD RESERVATIONS - GOVERNANCE.***

Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

a. *Officers & Directors.* During the Declarant Control Period, the Board may consist of 3 persons. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as a "Leader." Declarant's unilateral right to remove and replace officers and directors applies to officers and directors who were elected or designated by lot owners other than Declarant, as well as to Declarant's appointees.

b. *Association Meetings.* During the Declarant Control Period, meetings of the Association may be held at a location, date, and time that is convenient to Declarant, whether or not it is mutually convenient for the owners.

c. *Transition Meeting.* Within 60 days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call a transition meeting

of the members of the Association for the purpose of electing, by vote of the owners, directors to the board. Written notice of the transition meeting must be given to an owner of each lot at least 10 days before the meeting. For the transition meeting, owners of 10 percent of the lots constitute a quorum. The directors elected at the transition meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors, at which time the staggering of terms will begin.

6. ***DECLARANT CONTROL PERIOD RESERVATIONS - FINANCIAL.*** Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

a. *Association Budget.* During the Declarant Control Period, the Declarant-appointed board will establish a projected budget for Winfree Oaks as a fully developed, full constructed, and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the Property, using cost estimates that are current for the period in which the budget is prepared. The Association budget may not include enhancements voluntarily provided by Declarant to facilitate the marketing of new homes in the Property.

b. *Budget Funding.* During the Declarant Control Period only, Declarant is responsible for loaning to the Association the difference between the Association's actual operating expenses and the regular assessments received from owners other than Declarant, and will loan any additional funds necessary to pay actual cash outlays of the Association. On termination of the Declarant Control Period, Declarant will cease loaning funds for the difference between the Association's operating expenses and the assessments received from owners other than Declarant. Any funds advanced by Declarant under this provision shall be recoverable from the Association without interest.

c. *Declarant Assessments & Reserves.* During the Declarant Control Period, any real property owned by Declarant is not subject to assessment by the Association. During the Declarant Control Period, Declarant is not required to make contributions to the Association's reserve funds for the lots owned by Declarant. Declarant's obligation to fund the difference in the Association's operating expenses may not be construed to require Declarant to fund reserve accounts.

d. *Commencement of Assessments.* During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of regular assessments until a certain number of lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies regular assessments against the lots. Prior to the first levy, Declarant will be responsible for all operating expenses of the Association.

e. *Expenses of Declarant.* Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

f. Budget Control. During the Declarant Control Period, the right of owners to veto assessment increases or special assessments is not effective and may not be exercised.

7. DEVELOPMENT PERIOD RESERVATIONS. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

a. *Withdrawal*. During the Development Period, Declarant may withdraw real property from the Property and the effect of this Declaration (1) if the owner of the withdrawn property consents to the withdrawal, and (2) if the withdrawal does not significantly and detrimentally change the appearance, character, operation, or use of the Property.

b. *Changes in Development Plan*. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a governmental entity, if applicable, and (2) the owner of the land or lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of lots and streets; (b) change the minimum dwelling size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

c. *Architectural Control*. During the Development Period, Declarant has the absolute right to serve as the Architectural Reviewer pursuant to Section F 2. Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under Article 5 and this Article to (1) an architectural control committee appointed by the board, or (2) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Declarant also has the unilateral right to exercise architectural control over vacant lots in Winfree Oaks. Neither the Association, the board of directors, nor a committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new homes and related improvements on vacant lots.

d. *Amendment*. During the Development Period, Declarant may amend this Declaration and the other Governing Documents, without consent of other owners or any mortgagee, for any purpose.



e. *Completion.* During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in the common area and lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of Winfree Oaks, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

f. *Easement to Inspect & Right to Correct.* During the Development Period, Declarant reserves for itself the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located on a lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association.

g. *Promotion.* During the Development Period, Declarant reserves for itself an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other owners and residents, for purposes of promoting, identifying, and marketing Winfree Oaks and/or Declarant's houses, lots, developments, or other products located outside the Property. Declarant reserves an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events - such as open houses, MLS tours, and brokers parties - at the Property to promote the sale of lots.

h. *Offices.* During the Development Period, Declarant reserves for itself the right to use dwellings owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to lots and dwellings used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

i. *Access.* During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing Winfree Oaks, and for discharging

Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the homebuying public through any existing or future gate that restricts vehicular access to the Property in connection with the active marketing of lots and homes by Declarant, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

j. *Utility Easements.* During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any lot, as shown on the plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, television, cable, internet service, and security. To exercise this right as to land that is not a common area of the Property or not owned by Declarant, Declarant must have the prior written consent of the land owner.

k. *Land Transfers.* During the Development Period, any transfer of an interest in the Property to or from Declarant is not subject to any transfer-related provision in the Governing Documents, including without limitation an obligation for transfer or resale certificate fees, and the transfer-related provisions of this Declaration.

8. ***DIFFERENT STANDARDS.*** Declarant has the right (1) to establish specifications for the construction of all initial improvements in Winfree Oaks, and (2) to grant variances or waivers from community-wide standards to certain neighborhoods of the Property.
9. ***COMMON AREAS.*** Any initial common area improvement will be installed, constructed, or authorized by Declarant, the cost of which is not a common expense of the Association. For every common area capable of being conveyed to the Association, Declarant will convey title to the common area to the Association by one or more deeds -with or without warranty. At the time of conveyance to the Association, the common areas will be free of encumbrance except for the property taxes accruing for the year of conveyance. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the owners. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of common areas requiring inspection, evaluation, acceptance, or approval of common area improvements by the owners.
10. ***SUCCESSOR DECLARANT.*** Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant,

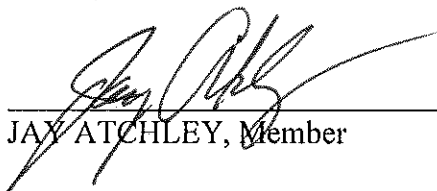
and recorded in the Real Property Records of Chambers County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

**K. General Provisions**

1. *Term.* This Declaration runs with the land and is binding in perpetuity.
2. *No Waiver.* Failure by the Association or an Owner to enforce the Governing Documents is not a waiver.
3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.
4. *Amendment.* This Declaration may be amended at any time by vote of 60 percent of the votes in the Association at a meeting in accordance with the Bylaws. An instrument containing the approved amendment will be signed by the Association and recorded.
5. *Conflict.* This Declaration controls over the other Governing Documents.
6. *Severability.* The provisions of this Declaration are severable. If any provision of this Declaration is invalidated or declared unenforceable, the other provisions remain valid and enforceable.
7. *Notices.* Any notice required or permitted by the Governing Documents must be in writing. To the extent required by law, notices regarding remedial rights must be given by certified mail, return receipt requested. All other notices may be given by regular mail. Notice is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed to a Member, at the Member's last known address according to the Association's records, and the Association, the Board, the ACC, or a managing agent at the Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Governing Documents, actual notice, however delivered, is sufficient.
8. *Annexation of Additional Property.* On written approval of the Board and not less than 75 percent of the Members at a meeting in accordance with the Bylaws, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.

SIGNED this 21 day of August 2014.

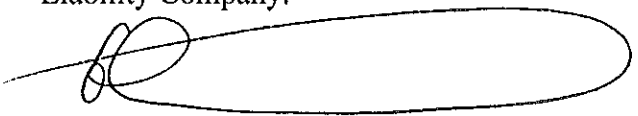
DUTTON LAKE, LLC, a Texas Limited Liability Company,

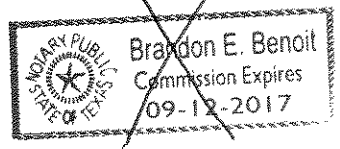
  
\_\_\_\_\_  
JAY ATCHLEY, Member

STATE OF TEXAS )

COUNTY OF HARRIS )

This instrument was acknowledged before me on the 21 day of August, 2014 by JAY ATCHLEY, in his capacity as Member of DUTTON LAKE, LLC, a Texas Limited Liability Company.

  
\_\_\_\_\_  
Notary Public, State of Texas



After recording, please return to:

DUTTON LAKE, LLC  
1300 Rollingbrook Drive  
Suite 605  
Baytown, Texas 77521