

**DEED RESTRICTIONS
EMERALD POINTE SUBDIVISION
SECTION ONE**

THE STATE OF TEXAS)
)
)
County of San Jacinto)

KNOW ALL MEN BY THESE PRESENTS:

THE POINTE OWNERS’ ASSOCIATION (“The Association”) desires to have a document detailing a plan for protecting, maintaining and improving the value of all lots (the “Lots”) as shown on that certain plat (the “Plat”) of 21.582 acres (the “Subdivision”) recorded in Vol. 92, Page 719 of the Map Records of San Jacinto County, Texas, for the benefit of the present and future owners of said Lots. To this purpose, the Association hereby adopts and imposes the following declarations, reservations, protective covenants, limitations, and conditions (the “Restrictions”) to apply uniformly to the use, improvement, occupancy and conveyance of all Lots in the Subdivision, and each contract or deed which may be hereafter executed with regard to any of the Lots in the Subdivision shall conclusively be held to have been executed, delivered and accepted subject to the following (regardless of whether or not the same are set out in full or by references in said contract or deed):

1. Use. Except that a driveway may be constructed and maintained on Lot 35, none of the Lots or the improvements thereon shall be used for anything other than single-family, private residential purposes, and all Lots in the Subdivision shall be known as residential lots. No commercial activity shall be permitted on any Lot, nor shall any commercial activity be engaged in from any such Lot.

2. No Subdividing. The Lots shall not be subdivided into smaller parcels than as set forth on the Plat of the Subdivision. It shall not be permissible to sell a portion of any Lot. Nothing herein contained shall prohibit the construction of a single residence on two (2) or more Lots, in which case such Lots shall be considered as one lot for building purposes. Irrespective of the foregoing provisions of this Paragraph 2, the maintenance fund assessment hereinafter set forth shall be and remain applicable to all Lots as shown on the Plat.

3. Architectural Control Committee. An Architectural Control Committee (“Committee”) composed of three members shall be elected by the members of the Association for a term of one year, whose purpose it shall be to review plans, to insure for all owners (i) compliance with these Restrictions; (ii) harmony of external design of such building or improvement with existing and proposed buildings and improvements; (iii) quality of building materials; (iv) location of such building or improvement within the Lot or Lots on which it will be constructed; and (v) the number of square feet to be contained in such building or improvement.

4. Structures.

- A. No residence shall be constructed or permitted to remain on any Lot in the Subdivision unless such residence shall have a minimum of eighteen hundred (1,800) square feet of living area exclusive of porches, breezeways, patios and garage as per amendment filed on February 2, 2005, recorded as No. 4080 in Vol. 95, Page 726 of Deed Records of San Jacinto County, Texas (Attached Exhibit A.)
- B. No improvements shall be placed on any Lot until the building plans, specifications and plot plans showing the location of such improvements on the Lot have been approved in writing by the Committee. Likewise, the alteration of any existing improvements thereon may not be made until the plans for such alterations have been approved in writing by the Committee. In the event the Committee disapproves of any such plans, specifications and/or plot plans, notice of such disapproval shall be delivered in person or by registered or certified letter addressed to the party submitting the same at an address which must be supplied with the submission. In passing upon all such plans, specifications and/or plot plans, the Committee may take into consideration, among other things, the suitability of any such proposed building or structure or the alteration thereof and the materials of which it is to be constructed to the Lot upon which it is to be constructed, and the affect thereof upon adjacent neighboring or other Lots. Any such notice shall set forth the elements disapproved and the reason or reasons therefore, but need not contain suggestions as to methods of curing any matters or things disapproved. the judgment of the Committee in this respect in the exercise of its sole and absolute discretion shall be final and conclusive and there shall be no review or any such action by the Committee; provided, however, any party seeking approval from the Committee may sue the Committee for injunctive relief if the Committee's disapproval is patently arbitrary and capricious. Such party's right to sue for injunctive relief shall be the sole and exclusive remedy of such party against the Committee. In no event shall the Committee be liable to such party or any other party for damages. If said committee fails to approve or disapprove said plans, specifications and/or plot plans within thirty (30) days after the same have been received by the Committee, it will be presumed that the same have been approved. These requirements for approval by the Committee as herein set out cover not only the residences to be constructed in the subdivision, but all piers and other structures built in the water as well as on the land, and also apply to any retaining walls and any significant moving of soil in or out of the water.
- C. All structures which extend into the water (*excluding bulkheads*) shall

meet the following requirements.

1. Such structures (*such as boat docks and fishing piers*) shall not extend into the water more than seventy-five (75) feet.
2. No part of such structure shall be closer to any projected side property Lot line than ten (10) feet.
3. No such structures shall exceed fifty (50) feet in width.

D. No part of any building shall be located on any Lot nearer than twenty (20) feet to any street. No part of any building shall be located nearer than five (5) feet to any interior lot line, except that in the event of common ownership of more than one (1) Lot and the construction of one (1) building on more than one (1) Lot, the combined area owned shall be considered as one (1) lot for this purpose. The building set-back lines may be relaxed by decision of the Committee, if the above described distances are not feasible, considering the terrain and/or dimensions of the Lot as determined by the Committee in its sole discretion.

E. No structure shall be occupied or used for residential or storage purposes until the exterior thereof shall have been fully completed in accordance with the approved plans and specifications.

F. Each residence, once commenced, must be “dried in” within six (6) months from the date of commencement thereof. As used herein the term “dried in” means that the exterior must have the appearance of being a complete house, including all necessary windows, doors, roof, paint and trim. If any such residence is not “dried in” within six (6) months after the date on which such residence is commenced, the owner of same hereby gives the Committee or its representative or agent the right and authority to enter upon the property upon which such structure is situated, and to disassemble such structure and store the building materials on the premises or elsewhere at the discretion of the Committee. The owner or occupant of any such Lot agrees, by the purchase or occupancy thereof, that the Committee shall not be liable in trespass or otherwise in entering upon said Lot and disassembling any such structure.

G. Except that a travel trailer may be parked beside the garage on Lot 5 (1000 Emerald Way), which grant shall not include transferability of the privilege of parking a travel trailer beside the garage on said lot to any subsequent owner of said lot, no trailer, mobile home, tent, shack, camper, recreational vehicle, garage, barn or other outbuilding or structure of a temporary character shall, at any time, ever be used as a residence, temporary or permanent. No structure of a temporary character shall ever be used in any way or moved onto or permitted to remain on any Lot.

H. The location, height, type and design of any fence or wall erected on any Lot in the Subdivision shall be approved in writing by the Committee prior to construction.

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5. Consent of Committee. No sign, advertisement, billboard or advertising structure of any kind may be erected or maintained on any Lot without the written consent of the Committee. The Committee shall have the right to remove any such non-conforming sign, advertisement or billboard or advertising structure which is placed on any Lot without such consent, and in so doing, the Committee shall not be liable and is hereby expressly relieved from any liability for trespass or otherwise in connection with, or arising from such removal. This shall not prohibit a "For Sale" sign on said property if not larger than four (4) foot square.

6. Nuisances. No noxious or offensive activity shall be carried on or maintained on any Lot in the Subdivision, nor shall anything be done or permitted to be done thereon which may be or become a nuisance in the Subdivision.

7. Firearms and Fireworks. The use or discharge of firearms in the Subdivision is expressly prohibited.

8. Garbage and Trash Disposal. No lot shall be used or maintained as a dumping ground for garbage. Trash, garbage or other rubbish shall be kept only in sightly, sanitary containers. Each Lot owner shall be responsible for disposing of all of his trash, garbage and rubbish.

9. Unightly Storage. If open carports are used, no unsightly storage and/or unsightly vehicles shall be permitted therein.

10. Camping. No camping shall be permitted in the Subdivision at any time.

11. Animals. No horses, cows, poultry or livestock of any kind (other than house pets) may be kept on any Lot in the Subdivision.

12. Off-street Parking. Both prior to and after the occupancy of a dwelling on any Lot, the owner shall provide appropriate space for off-street parking for his vehicle and/or boat. No repair work, dismantling or assembling of motor vehicles, boats or any other machinery or equipment shall be done in any street, or front or side yard on any Lot.

13. Weeds and Debris. The owner of each Lot shall (a) keep the same clean and free of weeds and unsightly debris such as will be in keeping with the other property and the community at any particular time, and (b) remove any dead trees, standing or fallen, within 60 days following receipt of notification by the Board or Committee of the Association. Upon failure to do this, the Association may have the Lot cleaned and the cost or expense thereof shall be payable to the Association by the Lot owner. Upon

presentation of a written receipt by the Board or Committee for such cost or expense the property owner shall have thirty (30) days to remit payment. Failure on the Association's

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part to provide notice or clear and clean any debris or dead trees will not preclude or constitute a waiver by the Association of any legal rights available to the Association, at law or in equity.

14. Cesspool. No cesspool will be dug or permitted on any Lot.

15. Septic Tanks. Septic tanks will be permitted on the Lots, but their construction and location shall comply with all existing state, county or other laws relating thereto. There shall be no outside toilet built or used on any Lot, except for port-o-can type facilities during construction.

16. Water Service. Each Lot owner shall, at his expense, connect his residence to the water line serving his Lot. A monthly charge may be made for water service. Nothing herein contained to the contrary shall prevent the installation and operation of water and sanitary sewer facilities by a water district or other governmental authority in said Subdivision.

17. Utility Easements. An easement is expressly reserved in, on, over, under and through those portions of the Lots as shown on the Plat for the purpose of installing, repairing and maintaining electric power, water, sewage, gas, telephone and similar utility facilities and services. There is also reserved and dedicated hereby for the use of any public or private utility company an unobstructed aerial easement five (5) feet wide from a plane twenty (20) feet above the ground upward, located adjacent to and above all dedicated utility easements as shown on the Plat of the Subdivision. The easements reserved and dedicated under the terms and provisions hereof and under the terms and provisions of the Plat shall be for the general benefit of the Subdivision as herein defined, and shall also inure to the benefit and may be used by any public or private utility company entering into and upon said property for the purposes aforesaid, without the necessity of any further grant of such easement rights to such utility companies. Fences, walls and shrubbery hedges shall be permitted on any such easements except those easements being used for underground electric and/or telephone systems, provided: (i) that such fences, walls and hedges do not interfere in any way with the use of such easements by any public or private utilities then utilizing or thereafter designed to utilize the same, (ii) that the right of the owners of such fences, walls and hedges shall at all times be and remain subordinate and inferior in every way to the right of public and private utilities; and (iii) that such public or private utilities at any time may, without liability of any kind to the owner or owners thereof, remove any such fence, wall or hedge where the removal of the same is incidental to or necessary for the performance of public or private utility operations. No building or structures of any character may be erected or allowed to remain on any utility easement.

18. Association Membership. All owners of a Lot or Lots in the Subdivision must be members of the Association as may be particularly set forth in the Articles and Bylaws of the Association.

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19. Private Boat Ramp. All Lot owners, members of their families and their guests, shall have the right of ingress and egress to the lake through the private boat ramp as shown on the Plat. When seventy-five (75) % of the Lots in Emerald Pointe Subdivision have been sold, the Developer will transfer title of all park (private boat ramp) and other community areas to the Association after which the operation, maintenance and payment of taxes on such park and other community areas shall be the responsibility of the Association.

20. Easements in favor of the Trinity River Authority of Texas. The property included in the Subdivision is subject to certain easements in favor of The Trinity River Authority of Texas, and the use of the land area contained in said easements is further subject to the approval by The Trinity River Authority of Texas as set out in that certain conveyance from Gibbs Brothers & Company to The Trinity River Authority of Texas dated February 2, 1968, recorded in Volume 108, Page 195, of the Deed Records of San Jacinto County, Texas, to which instrument and the record thereof reference is hereby made for all purposes. All references to the improvements to be located within such easement areas as contained in these restrictions are hereby expressly made subject to the approval of The Trinity River Authority of Texas.

21. Oil, Gas and Mineral Development. No oil or gas drilling, oil or gas development operations, oil or gas refining or treatment, quarrying or mining operations of any kind shall be permitted upon any Lot in the Subdivision, nor shall oil or gas wells, or tunnels, mineral excavations or shafts be permitted on any Lot at any time while these restrictions remain in full force and effect. No derricks or other structure designed for use in boring or drilling for oil or gas shall be erected, maintained or permitted on any residential Lot in the Subdivision at any time while these restrictions remain in force and effect.

22. Drainage Structures. Drainage structures under private driveways shall always have a net drainage opening area of sufficient size to permit the free flow of water without backwater.

23. Cutting of Trees. No growing trees six (6) inches or more in diameter measured at a point twelve (12) inches from the ground may be cut from any Lot without the prior written approval of the Committee, except only for such trees as may be removed where necessary to the construction of improvements on the Lot.

24. Maintenance Fund. Each Lot shall be subject to an annual maintenance charge of \$140 (one hundred and forty dollars) per Lot per year for the purpose of maintaining a fund to be known as the "Emerald Pointe Maintenance Fund" to be paid by the then owner of such Lot in conjunction with like charges to be paid by other Lot owners. This maintenance charge shall be secured by a vendor's lien upon said Lot

which lien may be foreclosed either through appropriate judicial proceedings by the Association or by public sale without judicial proceedings in the manner prescribed by

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law in the State of Texas. A power of sale is hereby granted to the Association to conduct such public sale without judicial proceedings. The maintenance charge is to be paid to the Association annually on the first day of January of each year in advance, with any delinquent payment to be increased by a charge of 10% per annum. Such annual charge may be adjusted by the Association from year to year as the needs of the Subdivision may, in the judgment of the Association, require. Said lien shall be junior, subordinate and inferior to any lien (and renewals and extension thereof) granted by the owner of said Lot to secure the repayment of sums advanced to cover the purchase price for the Lot or the cost of any permanent improvement to be placed thereon.

The Association will render an annual accounting of the fund to the owners of the Lots, showing the receipts and expenditures. It shall apply the total of the funds so collected so far as they may be sufficient toward doing things necessary and desirable in the opinion of the Association which will benefit the owners or occupants of Lots within the Subdivision. The Association shall also have the right to use said maintenance fund to enforce these restrictions.

25. Covenants Running with the Land. All of the restrictions, covenants and conditions herein provided for an adopted shall apply to each and every Lot in the Subdivision, and shall be covenants running with the land. The Association shall have the right to enforce observance and performance of the restrictions and covenants contained and provided for herein, and in order to prevent a breach or to enforce the observance or performance of same, shall have the right, in addition to all legal remedies or remedies elsewhere provided herein, to an injunction either prohibitive or mandatory. The owner of any Lot or Lots in the Subdivision affected shall likewise have the right either to prevent a breach of any such restrictions or covenants or to enforce the performance thereof.

26. Partial Invalidity. Invalidation of any of these covenants, restrictions or conditions by court judgment or otherwise, shall not effect, in any way, the validity of any of the other covenants, restrictions or conditions, all of which shall remain in full force and effect. Acquiescence in any violation shall not be deemed a waiver of the right to enforce against the violator or others the conditions so violated or any other conditions and the Association shall have the right to enter the property of the violator and correct the violation, recover attorneys' fees and other costs and expenses in enforcing these covenants and Restrictions.

27. Duration. These covenants and restrictions shall run with the land and shall be binding upon the owners of property in the Subdivision, their successors, heirs and assigns, and all persons or parties claiming under them, for a period of twenty (20) years from the date hereof, at which time they shall be automatically extended for

successive periods of ten (10) years each, unless amended or terminated in whole or in part as hereinafter provided.

28. Amendments. The foregoing covenants and restrictions may be terminated or amended by the execution and recordation of a written instrument executed by the owners of a majority of the Lots within said Subdivision, such owners being allowed one vote for each Lot owned.

29. Headings. All sections and paragraph headings used herein are for convenience only and shall have no efficacy in construing any of the restrictions, covenants or conditions herein contained.