

AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
EMERALD RIDGE ESTATES SUBDIVISION
PHASE I

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AMENDED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
EMERALD RIDGE ESTATES SUBDIVISION

This AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS of Emerald Ridge Estates Subdivision, Phase One, is made and effective as of September 22, 2021, by Emerald Ridge Estates, Ltd., (sometimes referred to herein as the "Declarant"):

PREAMBLE

Declarant is the owner and developer of certain residential Lots within an approximately 23.256 acre tract of land now commonly known and described as the Emerald Ridge Estates Subdivision, more particularly described within Exhibit "A" attached hereto, (the "Property"). The Property includes Lots One A (1A) through Twenty A (20A), Block One (1), Emerald Ridge Estates, Phase I, an addition to the City of College Station, Brazos County, Texas, as set forth in Amending Plat recorded in Volume 10555, Page 116, Official Records, Brazos County, Texas (the "Plat"). Declarant proposes to establish and implement plans for residential living, recreation, aesthetic and quality-of-life considerations. The purposes of this Declaration is to protect the Declarant and the Owners against inappropriate development and use of Lots within the Subdivision; provide for the use, maintenance and repair of private streets; assure compatibility of design of improvements within the Subdivision; secure and preserve sufficient setbacks and space between buildings so as to create an aesthetically pleasing environment; provide for landscaping of common areas and the maintenance thereof; and in general to encourage construction of attractive, quality, permanent improvements that will promote the general welfare of the Declarant and the Owners. Declarant desires to impose these restrictions on the Property now and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to guide, control and maintain the quality and distinction of the Emerald Ridge Estates Subdivision project. The restrictive covenants will also comply with the requirements of the City of College Station, Texas and those of the utility companies providing service to Emerald Ridge Estates Subdivision to better ensure the care of maintenance of the common areas and amenities within Emerald Ridge Estates Subdivision and to preserve the best interests of the Declarant and the Owners and Residents of Emerald Ridge Estates Subdivision after completion of all development and construction therein.

The Emerald Ridge Estates Owners Association, Inc. (the "Association") has been chartered as a non-profit Texas corporation to assist in the ownership, management, use and care of the various common areas within Emerald Ridge Estates Subdivision and to assist in the administration and enforcement of the covenants, conditions, restrictions, easements, charges and liens set forth with this Declaration.

This original Declaration was recorded in Volume 10544, Page 44, Document #01112848, Official Records of Brazos County, Texas. In Section 13.04(a), Declarant reserved the right to amend the Declaration during the Development Period, as defined in Section 1.16. Declarant, in conformity with its rights set forth in Sections 2.01 & 2.02 and

Sections 13.04, 13.26 & 13.32 of the Declaration, Declarant hereby amends said Declaration and restates it in whole.

DECLARATION

The Declarant hereby declares that the Emerald Ridge Estates Subdivision residential lots located on the Property and described within the Plat, and such phases or additions hereto as may hereafter be made pursuant to Article 2 hereof, are and shall be owned, held, mortgaged, transferred, sold, conveyed and occupied subject to this Declaration and the covenants, conditions, restrictions, easements, charges and lien (sometimes collectively referred to hereinafter as "the Covenants") set forth in this Declaration.

ARTICLE 1 CONCEPTS AND DEFINITIONS

The following words, when used in this Declaration or in any amended or supplementary declarations (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

1.01 "Amended Declaration" shall mean and refer to each and every instrument recorded in the Official Records of Brazos County, Texas which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of this Declaration.

1.02 "Annual Assessment" shall have the meaning specified in Article 5 below.

1.03 "Architectural Control Committee" (sometimes referred to herein as the "ACC") shall mean and refer to the committee which is described in Article 8 of this Declaration.

1.04 "Articles" shall mean and refer to the Articles of Incorporation (and a amendments thereto and restatements thereof) of the Association of file in the Office of the Secretary of State of the State of Texas, Austin, Texas.

1.05 "Assessable Property" shall mean and refer to each and every lot, parcel and tract within the entire property which: (i) the Declarant has subjected to and imposed upon a set of restrictive covenants calling for the payment of an Annual Assessment to the Association; (ii) may have been or will be given a separately identifiable tax or parcel number by the Central Appraisal District ("CAD") or a similar governmental agency; (iii) is not designated an "open space" or otherwise a portion of the Common Properties. The Declarant proposes to cause each residential Lot within the Property to constitute an Assessable Property. However, the Declarant reserves the right and discretion to include or exclude any non-residential Lot from the concept of "Assessable Property" and/or to prescribe a different assessment and/or valuation scheme(s) for any non-residential Lot which is subjected to covenants which require the payment of assessments to the Association.

1.06 "Association" shall mean and refer to Emerald Ridge Estates Owners Association, Inc., a non-profit Texas corporation which has the power, duty and responsibility of maintaining and administering certain portions of the Property and all of the Common Properties,

administering and enforcing the Covenants and otherwise maintaining and enhancing the quality of life within Emerald Ridge Estates Subdivision.

1.07 "Board" shall mean and refer to the Board of Directors of the Association.

1.08 "Bylaws" shall mean and refer to the Bylaws of the Association, as adapted and amended from time to time in accordance with the provisions of the Texas Non-Profit Corporation Act and this Declaration.

1.09 "Central Appraisal District" ("CAD") shall mean and refer to the governmental and/or quasi-governmental agency(ies) (including without limitation the Central Appraisal District of Brazos County) established in accordance with Texas Tax Code Section 6.01 et seq. (and its successor and assigns as such law may be amended from time to time) or other similar statute which has, as one of its purposes and functions, the establishment of an assessed valuation and/or fair market value for various lots, parcels and tracts of land in Brazos County, Texas.

1.10 "Common Properties" shall mean and refer to any and all areas of land within the Property which are known, described or designated as common areas, private streets, gate house and gate apparatus, parks, recreational easements, storm water detention areas, floodway easement areas, lakes, ponds, dams, perimeter fences and columns, off-site monuments and directional signs, landscape easement, greenbelts, open spaces, paths and trails, and the like including without limitation those shown on any recorded subdivision plat of portions of the Property as well as those not shown on a recorded subdivision plat but which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or that may hereafter be constructed thereon. The concept of Common Properties will also include: (i) any and all public right-of-way lands within the Property for which the City of College Station has required that the Declarant and/or the Association expend private, non-reimbursable time and monies to care for and maintain, such as but not limited to: street medians, streetscape, hike and bike trails, park areas and quasi-governmental service facilities; and (ii) any and all facilities provided by the Declarant and/or the Association to or for the benefit of the local police, fire and similar governmental departments for which no reimbursement via public funds is requested or anticipated. Declarant shall convey record title or easements to some or all of the Common Properties to the Association if, as and when deemed appropriate by Declarant or as may be required by governmental officials, and Declarant shall at all times have and retain the right to effect minor redesigns or minor reconfigurations of the Common Properties (particularly along the edges) and to execute any open space declarations applicable to the Common Properties which may be permitted in order to reduce property taxes, and to take whatever steps may be appropriate to lawfully avoid or minimize the imposition of federal and state ad valorem and/or income taxes.

1.11 "Covenants" shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within this Declaration.

1.12 "Declarant" shall mean and refer to Emerald Ridge Estates, Ltd. and any successor(s) and assign(s) of Emerald Ridge Estates, Ltd., with respect to the voluntary disposition of all (or substantially all) of the assets and/or ownership interests of Emerald Ridge Estates, Ltd.,

and/or the voluntary disposition of all (or substantially all) of the right, title and interest of Emerald Ridge Estates, Ltd. in and to the Property. However, no person or entity merely purchasing one or more Lots from Emerald Ridge Estates, Ltd. in the ordinary course of business shall be considered a "Declarant".

1.13 "Declaration" shall mean and refer to this instrument entitled "Declaration of Covenants, Conditions and Restrictions for Emerald Ridge Estates Subdivision", recorded in the Official Records of Brazos County, Texas, together with any and all amendments or supplements thereto.

1.14 "Deed" shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

1.15 "Design Guidelines" shall mean the guidelines described in Section 8.03.

1.16 "Development Period" shall mean a period commencing on the date of the recording of this Declaration in the Official Records of Brazos County, Texas and continuing thereafter until and ending on the earlier to occur of: (i) substantial completion of all development (including without limitation the completion and sale of all Lots in the Subdivision to third parties) within the Property; (ii) the twenty-fifth (25th) anniversary of the date of recordation of this Declaration in the public real estate records of Brazos County, Texas; or (iii) the date determined by Declarant to be the end of the Development Period.

1.17 "Dwelling Unit" shall mean and refer to any building or portion of a building situated upon the Property which is designed and intended for use and occupancy as a residence by a single person, a couple, a family or a permitted family size group of persons.

1.18 "Easement Area" shall mean and refer to those areas which may be covered by an easement specified in Article 11 below.

1.19 "Exempt Property" shall mean and refer to the following portions of the Property: (i) all land and Improvements owned by the United States of America, the State of Texas, Brazos County, the City of College Station or any instrumentality, political subdivision or agency of any such governmental entity acting in a governmental (rather than a proprietary) capacity; (ii) all land and Improvements owned (including legal and beneficial ownership, whether now or in the future) by the Association or constituting a portion of the Common Properties; (iii) all land and Improvements which are not only exempt from the payment of ad valorem real property taxes by the City of College Station, Brazos County, the College Station Independent School District, and the State of Texas, but also are exempt from the payment of any assessment hereunder as expressly determined by written resolution of the Declarant and/or the Association; (iv) all Lots owned by Declarant; and (v) such other land(s) and/or improvement(s) and/or Lot(s) which are specifically exempted from the payment of annual Assessments in accordance with a special resolution of the Board.

1.20 "Fiscal Year" shall mean each twelve (12) month period commencing on January 1 and ending on the following December 31, unless the Board shall otherwise select an alternative

twelve month period.

1.21 "Homebuilder" shall mean and refer to each entity and/or individual which: (i) is regularly engaged in the ordinary business of constructing residential dwellings on subdivision lots for sale to third-party homeowners as their intended primary residence; and (ii) has entered into a contract with the Declarant to purchase one or more Lots.

1.22 "Improvement" shall mean any physical change to raw land or to an existing structure which alters the physical appearance, characteristics or properties of the land or structure, including but not limited to adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape or physical appearance of any land or structure.

1.23 "Lake" shall mean the lake(s) or pond(s) established on the Property by the Declarant.

1.24 "Lake Lot" shall mean a Lot having at least one property line that abuts a Lake or includes a portion of a Lake.

1.23 "Landscape Buffer" shall mean any landscape buffers designated on the Plat and on the attached Exhibit B.

1.24 "Lot" shall mean and refer to each separately identifiable portion of the Assessable Property which is platted, filed and recorded in the office of the County Clerk of Brazos County, Texas and which is assessed by any one or more of the Taxing Authorities and which is not intended to be an "open space" or a portion of the Common Properties.

1.25 "Member" shall mean and refer to each Resident who is in good standing with the Association and who has filed a proper statement of residency with the Association and who has complied with all directives and requirements of the Association. Each and every Owner shall and must take such affirmative steps as are necessary to become and remain a Member of, and in good standing in, the Association. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a Member of the Association.

1.26 "Owner" shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot.

1.27 "Payment and Performance Lien" shall mean and refer to the lien described within Sections 5.08 and 5.09 of Article 5 herein below.

1.28 "Property" shall mean and refer to the land described within Exhibit "A" attached hereto.

1.29 "Resident" shall mean and refer to: (a) each owner of the fee simple title to any Lot within the Property; (b) each person residing on any part of the Assessable Property who is a bona-fide lessee pursuant to a legally cognizable lease agreement with an Owner; and (c) each individual lawfully domiciled in a Dwelling Unit other than Owner or bona-fide lessee.

1.30 "Structure" shall mean and refer to: (i) any thing or device, other than trees, shrubbery (less than two feet high if in the form of a hedge) and landscaping (the placement of which upon any Lot shall not adversely affect the appearance of such Lot) including but not limited to any building, garage, porch, shed, greenhouse or bathhouse, cabana, coop or cage, covered or uncovered patio, swimming pool, play apparatus, clothesline, fence, curbing, paving, wall or hedge more than two feet in height, signboard or other temporary or permanent living quarters or any temporary or permanent Improvement to any Lot; (ii) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; (iii) any enclosure or receptacle for the concealment, collection and/or disposition of refuse; and (iv) any change in the grade of any Lot of more than three (3) inches from that existing at the time of initial approval by the Architectural Control Committee.

1.31 "Subdivision" shall mean and refer to the Emerald Ridge Estates Subdivision, a subdivision of certain land as described within Exhibit "A" attached hereto, in accordance with the map and plat thereof to be filed of record in the Official Records of Brazos County, Texas, as well as any and all revisions, modifications, corrections, or clarifications thereto.

1.32 "Taxing Authorities" shall mean and refer to Brazos County, the College Station Independent School District, the City of College Station and the State of Texas and any and all other governmental entities or agencies which have, or may in the future have, the power and authority to impose and collect ad valorem taxes on real property estates, in accordance with the Texas Constitution and applicable statutes and codes.

1.33 "Trustee" shall mean and refer to that certain individual (s) or entity (ies) designated or appointed from time to time and at any time by the Association to perform the duties and responsibilities described within Section 5.09 of Article 5 below, and its successors and assigns.

1.34 "Zoning Ordinance" shall mean and refer to City of College Station zoning ordinance, governmental regulations, and all amendments thereto.

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

2.01 Existing Property. The Property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration within the Emerald Ridge Estates Subdivision, is more particularly described within Exhibit "A" attached hereto and incorporated herein by reference for all purposes and to be described in the Plat.

2.02 Additions or Reductions to Existing Property. At any time and from time to time, Declarant shall have the right, without the joinder or consent of the Association or the Owners, to add additional property to the land then comprising the Property. As used herein, "Additional Property" shall mean and refer to lands now owned or hereafter acquired by Declarant that Declarant wishes to make subject to this Declaration. The addition of the Additional Property or portions thereof to the Property shall be accomplished by the filing in the Official Records of Brazos County an instrument describing the Additional Property to be

annexed and annexing such Additional Property so described to the Property, thereby imposing this Declaration, as amended from time to time with such additional modifications and additions described in such instrument, upon the Additional Property. Provided further however, such other declaration (s) may contain such complementary additions and modifications of these Covenants as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concept and purpose of this Declaration. Upon the filing of such an instrument, that the Additional Property shall become a part of the Property and the collected assessments applicable to all Lots, including similar assessments then applicable to the Additional Property, may be commingled by the Board and expended for the benefit of the Property, as enlarged, as determined by the Board. Declarant may add Additional Property to the Property as many times as Declarant, in its sole and absolute discretion, determines such additions may be in the best interests of the overall development of Emerald Ridge Estates. Each Owner, by virtue of acceptance of any instrument conveying an interest in a Lot subject to this Declaration, acknowledges and agrees that the addition of Additional Property to the Property may result in an increase in the Assessments, a dilution of their ownership percentage of the Property and a concomitant reduction in their voting rights hereunder, and each Owner, by its acceptance of the instrument conveying an Interest in a Lot, agrees to the provisions of this Section 13.26 permitting the adding of Additional Property to the Property. Declarant shall have no obligation to impose this Declaration on any other land owned by Declarant and nothing contained in this Declaration shall be deemed to create or give rise to any legal or equitable right, servitude, easement or other interest in or to any other lands now owned or hereafter acquired by Declarant, unless and until such lands are expressly made subject to this Declaration by virtue of the recordation of an instrument imposing this Declaration upon such land in accordance with this Section 2.02.

At any time and from time to time, Declarant shall have the right, without the joinder or consent of the Association or Owners to remove any portion of the Property owned by Declarant from the land then comprising the Property. Declarant may remove portions of the Property as many times as Declarant, in its sole and absolute discretion, determines. The removal shall be accomplished by the filing in the Official Records of Brazos County an instrument describing the portion of the Property to be removed, thereby freeing such portion of the Property from the terms of this Declaration, as amended from time to time.

ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.01 Membership. Each and every Owner of each and every Lot which is subjected to these, or substantially similar, Covenants shall automatically be, and must at all times remain, a Member of the Association in good standing. Each and every Resident (who is not otherwise an Owner) may, but is not required to, be a non-voting Member of the Association. During the Development Period, the Association shall have two (2) classes of Members: Class A and Class B. The Class A Members shall include: (a) all Owners (other than the Declarant during the Development Period); and (b) all Residents (not otherwise Owners) who have properly and timely fulfilled all registration and related requirements prescribed by the Association. The Class B Member shall be the Declarant.

3.02 Voting Rights. Two (2) classes of voting Members shall have the following voting rights during the Development Period:

Class A: The Owner (s) of each Lot (other than Declarant) shall be entitled to no votes.

Class B: The Class B Member shall have one (1) vote for each Lot it owns.

After the Development Period, there shall be one class of voting Members as follows: The Owner (s) of each Lot shall be entitled to one (1) vote per Lot. Where more than one (1) Owner owns and holds a record fee interest in a Lot such Owner (s) may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Lot yield more than one (1) vote.

Any Owner, Resident or Member shall not be in "good standing" if such person or entity is: (a) in violation of any portion of these Covenants, or any rule or regulation promulgated by the Board; (b) delinquent in the full, complete and timely payment of any Annual Assessment, special assessment, or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of these Covenants, the Bylaws or any rule or regulation promulgated by the Board.

The Board may make such rules and regulations, consistent with the terms of this Declaration and the Bylaws, as it deems advisable, for: any meeting of Members; proof of membership in the Association; the status of good standing; evidence of right to vote; the appointment and duties of examiners and inspectors of votes; the procedures for actual voting in person or by proxy; registration of Members for voting purposes; and such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

3.03 Board of Directors. During the Development Period, the affairs of the Association shall be managed by a board of three (3) individuals elected or replaced by the Class B Member. However, after the Development Period, the Board shall consist of at least three (3) individual Directors elected by the Members.

The Directors need not be Members of the Association. Directors shall be elected for one (1) year terms of office and shall serve until their respective successors are elected and qualified. After the Development Period, any vacancy which occurs in the board, by reason of death, resignation, removal, or otherwise, may be filled at any meeting of the board by the affirmative vote of a majority of the remaining Directors. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he or she was elected to fill.

3.04 Notice and Voting Procedures. Quorum, notice and voting requirements of and pertaining to the Association may be set forth within the Articles and Bylaws, as either or both may be amended from time to time, and shall be in accordance with permitted Texas law.

ARTICLE 4
RIGHTS OF ENJOYMENT IN THE COMMON PROPERTIES

4.01 Easement. Subject to the provisions of Sections 4.02 through 4.07, each and every Owner in good standing with the Association shall have a non-exclusive right and easement of enjoyment in and to all Common Properties, and such easement shall be appurtenant to and shall pass with every Lot, provided the conveyance and transfer is accomplished in accordance with this Declaration. All Residents in good standing with the Association shall have a nontransferable, non-exclusive privilege to use and enjoy all Common Properties for so long as they are Members in good standing with the Association.

4.02 Extent of Members' Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

- a. The right of the Declarant or Association to prescribe reasonable regulations (e.g. speed limits on the streets and limitations on parking on or in the streets) and policies governing, and to charge reasonable expense reimbursements and/or deposits (e.g., key, access card and/or radio transmitter device deposits) related to, the use, operation and maintenance of the Common Properties;
- b. Liens or mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Declarant to develop and improve the Property or Common Properties or by the Association to improve or maintain the Common Properties;
- c. The right of the Association to enter into and execute contracts with any party (including, without limitation, the Declarant or its affiliates) for the purpose of providing management, maintenance, security personnel, video surveillance, or such other materials or services consistent with the purposes of the Association and/or this Declaration;
- d. The right of the Declarant or the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;
- e. The right of the Declarant or the Association to enter into and execute contracts with the owner-operators of any community antenna television system ("CATV") or other similar operation for the purpose of extending cable or utility or security service on, over or under the Common Properties to ultimately provide service to one or more of the Lots;
- f. The right of the Declarant or the Association in accordance with the requirements of the Chapter 209 of Texas Property Code to suspend the voting rights of any Member and to suspend the right of any Member to use or enjoy any of the Common Properties for any period during which any assessment (including without limitation "fines") against a Lot resided upon by such Member remains unpaid, or during which non-compliance with this Declaration exists, and otherwise for any period deemed reasonable by the Association for any infraction of the then-existing rules and regulations and/or architectural guidelines;
- g. The right of the Declarant and/or the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the Declarant and the Board; and
- h. The right of the Declarant and/or the Association to grant permits, licenses and easements over the Common Properties for utilities, roads and other purposes necessary for the proper operation of Emerald Ridge Estates Subdivision.

4.03 Restricted Actions by Members. No Member shall permit anything to be done on or in the Common Properties which would violate any applicable public law or Zoning Ordinance or which would result in the cancellation of or the increase of premiums for any insurance carried by the Association, or which would be in violation of any law or any rule or regulation promulgated by the Board.

4.04 Damage to the Common Properties. Each Member shall be liable to the Association for any damage to any portion of the Common Properties caused by the negligence or willful misconduct of the Member or his family and guests.

4.05 Rules of the Board. All Members shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and a Member determined to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees.

4.06 Use of Common Properties. The Board shall have the power and authority to prescribe rules and regulations which extend to and cover matters such as (but not limited to) the possession and consumption of alcoholic beverages, loud and obnoxious noises and behavior, and the supervision by attending adults of children. No person or entity (excluding the Declarant) shall use any portion of the Common Properties to:

- a. solicit, promote or conduct business, religious, political or propaganda matters;
- b. distribute handbills, newsletters, flyers, circulars or other printed materials,

without the prior written consent of the Association (which consent may be withheld in its sole and absolute discretion). The Association may, on its own motion, permit and allow reasonable activities to occur on the Common Properties in accordance with rules and regulations deemed reasonable and appropriate by the Association.

4.07 User Fees and Charges. The Board may levy and collect special charges and fees for any and all extraordinary operation and maintenance of the Common Properties and services which the Board determines to be necessary for the advancement, benefit and welfare of the Owners or Residents. Examples (by way of illustration, and not limitation) of these special charges and fees would include: extraordinary utility consumption; additional gate and/or security personnel for parties or special events; management overtime services; and additional insurance conditions or requirements. In establishing special user fees, the Board may formulate reasonable classifications of users. Such fees should be uniform within each class but need not be uniform from class to class. If an Owner shall fail to pay a charge or fee when due and payable, said unpaid charge or fee shall be delinquent and upon written notice to said Owner shall become a personal debt of said Owner. Failure of any Owner to pay said fee and charge when due and payable, in addition, shall be a breach of these Covenants.

4.08 Encroachments. If: (a) construction, reconstruction or repair activities which have been approved by the ACC; or (b) shifting, settlement or other movements of any portion of ACC

approved improvements, results either in the Common Properties encroaching on a Lot or Dwelling Unit or in a Lot or Dwelling Unit encroaching on the Common Properties or on another Lot or Dwelling Unit, and unless otherwise directed by the ACC, a valid easement shall then and there exist to permit the encroachment and reasonable and necessary maintenance activities related thereto.

4.09 Private Streets. The entry gatehouse, streets, sidewalks, walls, street lights, emergency access way and alley network within Emerald Ridge Estates Subdivision are "private" and constitute a portion of the Common Properties which are subject to the jurisdiction and administration by the Association. In addition to the other provisions appearing within this Article, the Board of Directors of the Association is specifically authorized to recommend, adopt, implement and enforce rules, regulations, mechanisms and procedures governing use of the entry gatehouse, sidewalks, streets and alleys covering items such as (but not necessarily limited to):

- a. identification and entry programs for Owners, Residents and Members, their respective immediate families, their guests and vehicles owned or driven by any of them;
- b. speed limits, designated parking areas, restricted parking areas and no-parking areas;
- c. signs and graphics to provide announcements to unauthorized personnel concerning potential criminal trespass matters;
- d. a "fines" system through which the Association can levy and collect fines from its Members for violations of the applicable rules and regulations;
- e. disclaimers of liability for any and all matters or occurrences on or related to the Common Properties; and
- f. upon satisfaction and compliance with the requirements of Section 9.0, each Owner shall be entitled to receive a gate access code from the Association at no cost. Automatic remote transmitters, if any, to open the gates are available for purchase from the Association at a reasonable price to be determined by the Association and/or Declarant. Additional or replacement transmitters for lost or inoperable transmitters maybe purchased by an Owner at a reasonable price to be determined by the Association and/or Declarant. In the event of a sale of a Lot by a Owner, the selling Owner shall notify the Association to deactivate the transmitters at the time of sale. Transmitters maybe by transferred to new Owners. New Owners shall contact the Association to program the new Owner's transmitters.

4.10 Conveyance to City of College Station. The Members may determine by majority vote to convey all or a part of the Common Properties to the City of College Station. Conveyance of the private streets in the Subdivision to the City of College Station would result in removal of the private gate.

4.11 Access by the City of College Station. The City of College Station shall have access to

the Subdivision at any time, without liability, when on official business. The City of College Station may remove obstructions including any gate and guardhouse upon non-compliance by the Association of any terms of the City of College Station's Unified Development Ordinance provisions regarding private streets and the gating of roadways or if necessary, for emergency vehicle access. In the event the City of College Station must remove obstructions to access the Subdivision, the Association will bear all costs of removal.

ARTICLE 5 COVENANTS FOR ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Subdivision, hereby covenants and agrees, and each subsequent Owner of any Lot, by acceptance of a Deed therefor, whether or not it shall be so expressed in any such Deed or other conveyance, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot so as to have affected the purchase price) to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

- a. regular Annual Assessments;
- b. special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided;
- c. special individual assessments levied against individual Owners to reimburse the Association for extra or unusual costs incurred for items such as (but not limited to): maintenance and repairs to portions of the Property caused by the willful or negligent acts of the individual Owner, Member or Resident; the remedy, cure or minimizing of problems cause by, or as a result of, violations of these Covenants by an Owner, Member or Resident; and
- d. individual assessments and fines levied against an individual Owner, Member or Resident for violations of rules and regulations pertaining to the Association and/or the Common Properties.

The regular, special group, special individual and individual assessments, together with such late charges, interest and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made and shall also be the continuing personal obligation of the then-existing Owner, Member and Resident of such Lot at the time when the assessment fell due. Each Owner of each Lot shall be directly liable and responsible to the Association for the acts, conduct and omission of each and every Member and Resident associated with the Dwelling Unit (s) on such Owner's Lot.

5.02 Purposes of Assessments. The assessments levied by the Association shall be used for

the purposes of promoting the comfort, health, recreation, safety, convenience, welfare and quality of life of the Residents of the Property and in supplementing some services and facilities normally provided by or associated with governmental or quasi-governmental entities, and otherwise for the improvement and maintenance of private streets, gates, gatehouse, fences, walls, street lights, floodway easement areas, walkways, common green, ponds, lakes, recreational areas and other properties, services and facilities devoted and related to the use and enjoyment of the Common Properties and operation of the Association, including, but not limited to or for: the payment of taxes on the Common Properties and insurance in connection with the Common Properties; the payment for utilities and the repair, replacement and additions of various items within the Common Properties; paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; carrying out the duties of the Board of Directors of the Association as set forth in Articles 4 and 6 herein; carrying out the other various matters set forth or envisioned herein or in any Amended Declaration related hereto; and for any matter or thing designated by the City of College Station in connection with any zoning, subdivision, platting, building, development or occupancy requirements. The items and areas described above are not intended to be exhaustive but merely illustrative.

5.03 Basis and Amount of Annual Assessments. Until and unless otherwise determined by the Board of Directors of the Association, the initial regular base assessment shall be \$850.00 annually per Lot, except for Lot 11, Block One (1), Emerald Ridge Estates, Phase I whose regular base assessment shall be \$1,275.00, for the maintenance of the Common Properties and private streets. If two Lots are replated into one Lot, the initial regular base assessment for the replated Lot shall be \$1,275.00. The Association's Board of Directors may fix and modify from time to time, the actual regular base assessment.

Notwithstanding any provision herein to the contrary, any and all Lots owned by the Declarant during the Development Period shall be exempt from the payment of any and all assessments of any kind or character.

5.04 Special Group Assessments. In addition to the regular Annual Assessment authorized by Section 5.03 hereof, the Association may levy in any Fiscal Year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement upon the Common Properties, including any necessary fixtures and personal property related thereto or for any unusual or emergency purpose (s) (including without limitation those matters arising out of litigation and/or judgments); provided that any such assessment shall have the affirmative approval of at least two-thirds of the individuals comprising the Board.

5.05 Rate of Assessments. Both regular and special group assessments must be fixed at a uniform rate for all residential Lots owned by Class A Members, unless otherwise approved by at least two-thirds of the individuals comprising the Board.

5.06 Date of Commencement of Assessments; Due Dates. The Annual Assessment shall be due and payable annually on January 1st of each year and shall, if not automatically paid within fifteen (15) consecutive calendar days thereafter, automatically become delinquent. The Board shall use reasonable efforts to provide each Owner with an invoice statement of

the appropriate amount due, but any failure to provide such a notice shall not relieve any Owner of the obligation established by the preceding sentence. The Board may further prescribe: (a) procedures for collecting advance regular Annual Assessments from new Owners, Members or Residents out of "closing transactions"; and (b) different procedures for collecting assessments from Owners who have had a recent history of being untimely in the payment(s) of assessments. The Board may adopt a procedure to allow for the automatic withdrawal of assessments from an Owner's bank account.

5.07 Duties of the Board of Directors with Respect to Assessments.

- (a) In the event of a revision to the amount or rate of the Annual Assessment, or establishment of a special group assessment, the Board shall fix the amount of the assessment against each Lot, and the applicable due date(s) for each assessment, at least sixty (60) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association;
- (b) Written notice of the applicable assessment shall be actually or constructively furnished to every Owner subject thereto in accordance with the procedures then determined by the Board as being reasonable and economical; and
- (c) The Board shall, upon reasonable demand, furnish to any Owner originally liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.

5.08 Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien: and Remedies of Association.

- (a) Effective as of, and from and after the filing and recordation of this Declaration, there shall exist a self-executing and continuing contract Payment and Performance Lien and equitable charge on each Lot to secure the full and timely payment of each and all assessments and all other charges and monetary amounts and performance obligations due hereunder. Such lien shall be at all times superior to any claim of homestead by or in any Owner. If any assessment, charge or fine or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment, charge or fine shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the highest lawful rate of interest per annum and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Lot of the non-paying Owner/Member/Resident which shall bind such Lot in the hands of the Owner and Owner's heirs, executors, administrators, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The personal

obligation of the then existing Owner to pay such assessment, however, shall remain the Owner's personal obligation and shall not pass to Owner's successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any assessment provided herein by non-use of the Common Properties or abandonment of the Lot. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner;

- (b) The Association may also give written notification to the holder(s) of any mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment, charge or fine, particularly where the Association has theretofore been furnished in writing with the correct name and address of the holder(s) of such mortgage, a reasonable supply of self-addressed postage prepaid envelopes, and a written request to receive such notification;
- (c) If any assessment, charge or fine or part thereof is not paid when due, the Association shall have the right and option to impose a late charge (but only to the extent permitted by applicable law) to cover the additional administrative costs involved in handling the account. The unpaid amount of any such delinquent assessment, charge, or fine shall bear interest from and after the date when due at the highest lawful rate of interest per annum until fully paid. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid assessments, charges, fines and delinquent accounts, and there shall also be added to the amount of any unpaid assessment, charge, fine or any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association;
- (d) The Association may, at its discretion be subject to all applicable debt collection statutes: (i) prepare and file a lien affidavit in the public records of Brazos County, Texas which specifically identifies the unpaid assessments, charges or fines; and (ii) publish and post, within one or more locations within the Property, a list of those individuals or entities who are delinquent and, if applicable, their suspended use and enjoyment of the Common Properties until and unless the delinquency has been cured to the reasonable satisfaction of the Association. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association;
- (e) All agreements between any Owner and the Association and/or Declarant, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event

whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Declarant or for the payment of performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstances the Association and/or Declarant should ever receive an amount deemed interest by applicable law which shall exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the actual base assessment amount or principal amount owing hereunder and other indebtedness of the Owner to the Association and/or Declarant and not to the payment of interest of if such excessive interest exceeds the unpaid balance of the actual Annual Assessment hereof and such other indebtedness, the excess shall be refunded to Owner. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between any Owner and the Association and/or Declarant.

5.09 Power of Sale.

- (a) The lien described within the preceding Section is and shall be a contractual Payment and Performance Lien. Each Owner, for the purpose of better securing each and all monetary obligations described within these Covenants, and in consideration of the benefits received and to be received by virtue of the ownership of real estate within Emerald Ridge Estates Subdivision, has granted, sold and conveyed and by these covenants does grant, sell and convey unto the Trustee, such Owner's Lot. To have and to hold such Lot, together with the rights, privileges and appurtenances thereto belonging unto the said Trustee, and to its substitutes or successors, forever. And each Owner does hereby bind himself and/or herself, their heirs, executors, administrators and assigns to warrant and forever defend the Lot unto the said Trustee, its substitutes or successors and assigns, forever, against the claim, or claims of all persons claiming or to claim the same or any part thereof.
- (b) This conveyance is made in trust to secure payment of each and all assessments and other obligations prescribed by these Covenants to and for the benefit of the Association as the Beneficiary. In the event of default in the payment of any obligation hereby secured, in accordance with the terms thereof, then and in such event, Beneficiary may elect to declare the entire indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured due and payable (subject, however, to the notice and cure provisions set forth in Section 51.002 of the Texas Property Code), and in the

event of default in the payment of said indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or its successor or substitute as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the Lot then subject to the lien hereof, and mailing and filing notices as required by Section 51.002, Texas Property Code, as then amended and otherwise complying with that statute, then Trustee shall sell the Lot, then subject to the lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the Lot as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the Purchaser or Purchasers, with general warranty binding upon the Owner, his heirs and assigns; and out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorney's fees provided for, and then to Beneficiary the full amount of principal, interest, attorney's fees and other charges due and unpaid on said indebtedness secured hereby, rendering the balance of the sales price, if any, to the Owner, his heirs or assigns and/or to any other lienholders (if so required by applicable law); and the recitals in the conveyance to the Purchaser or Purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner, his heirs and assigns.

- (c) It is agreed that in the event a foreclosure hereunder should be commenced by the Trustee, or its substitute or successor, Beneficiary may at any time before the sale of said property direct the said Trustee to abandon the sale, and may then institute suit for the collection of said indebtedness, and for the foreclosure of this contract Payment and Performance Lien; it is further agreed that if Beneficiary should institute a suit for the collection thereof, and for a foreclosure of this contract lien, that it may at any time before the entry of a final judgment in said suit dismiss the same, and require the Trustee, its substitute or successor to sell the Lot in accordance with the provisions of this section. Beneficiary, if it is the- highest bidder, shall have the right to purchase at any sale of the Lot, and to have the amount for which such Lot is sold credited on the debt then owing. Beneficiary in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness hereby secured has been paid in full, or until said Lot is sold hereunder, and each substitute and successor trustee shall succeed to all of the rights and powers of the original trustee named herein. In the event any sale is made of the Lot, or any portion thereof, under the terms of this Section, the Owner, his heirs and assigns, shall forthwith upon the making

of such sale surrender and deliver possession of the property so sold to the Purchaser at such sale, and in the event of his failure to do so he shall thereupon from and after the making of such sale be and continue as tenants at sufferance of such Purchaser, and in the event of his failure to surrender possession of said property upon demand, the Purchaser, his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof, is situated. The foreclosure of the continuing contract lien on any one or more occasions shall not remove, replace, impair or extinguish the same continuing lien from securing all obligations arising from and after the date of foreclosure.

- (d) Notwithstanding anything to the contrary contained in this Article 5, the Association's foreclosure of the Payment and Performance Lien shall be subject to the requirements of Chapter 209, Texas Property Code, as amended or replaced from time to time. The terms and provisions of this paragraph shall control and supersede any contrary provisions in this Declaration.

5.10 Rights of City of College Station. In the event that the Association, its successors or assigns, shall fail or refuse to adequately maintain the appearance and condition of the Common Properties which it is obligated to maintain hereunder, the City of College Station, Texas shall have the right and may assume the duty of performing all such maintenance obligations of the Association at any time, upon giving written notice to the Owners or at any time after the expiration of thirty (30) days after receipt by the Association, its successors or assigns, of written notice specifying in detail the nature and extent of the failure to maintain without such failure being remedied, whichever notice shall be deemed appropriate by the City of College Station. Upon assuming such maintenance obligations, the City of College Station may levy an assessment upon each Lot on a pro rata basis for the cost of such maintenance, notwithstanding any other provisions contained in this Declaration, which assessment shall constitute a lien upon the Lot against which each assessment is made. During the period the City of College Station has a right and assumes the obligation to maintain and care for the Common Properties, the Association shall have no obligation or authority with respect to such maintenance. The right and authority of the City of College Station to maintain the Common Properties shall cease and terminate when the Association, its successors or assigns, shall present to the City of College Station reasonable evidence of its willingness and ability to resume maintenance of the Common Properties. In the event the City of College Station assumes the duty of performing the maintenance obligations of the Association as provided herein, then the City of College Station, its agents, representatives and employees shall have right of access to and over the Common Properties for the purpose of maintaining, improving and preserving the same; and in no event, and under no circumstances, shall the City of College Station be liable to the Association or any Owner, Resident or Member, or their respective heirs, executors, administrators, devisees, personal representatives, successors and assigns for negligent acts or construction relating in any manner to maintaining, improving and preserving the Common Properties, or to any Owner, Resident, Member, the Association or any other person for failure to perform such maintenance.

In addition, in the event the City of College Station deems that repairs to the private streets within the Subdivision are necessary in order to insure safe access and passage for emergency service vehicles, the City of College Station (after notice and public hearing as required by ordinance and the failure of the Association to provide satisfactory repairs within the time frame set by the City of College Station at the public hearing) may make the necessary repairs and assess the Association all costs borne by the City of College Station in repair of the private streets. Should the Association fail to reimburse the City within 90 days, the assets of the Association shall be subject to the lien described in Article 8(V)(2)(d) of the Unified Development Ordinance, as amended, of the City of College Station.

5.11 Subordination of the Lien to Mortgages. The lien securing the payment of the assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

- a. bona-fide first mortgage or deed of trust liens for purchase money and/or home improvement purposes placed upon a Lot, in which event the Association's lien shall automatically become subordinate and inferior to such first lien;
- b. liens for taxes or other public charges as are by applicable law made superior to the Association's lien; and
- c. such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien;

provided however, such subordination shall apply only to: (i) the assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien; (ii) the permitted lien on the Lot alone and not on or to any easement appurtenant for use and enjoyment of the Common Properties. Such sale shall not relieve such Lot from liability for the amount of any assessment thereafter becoming due nor from the lien of any such subsequent assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay assessments and/or to hinder the Association in performing its functions hereunder.

5.12 Exempt Property. The following property otherwise subject to this Declaration shall be exempted from any assessments, charges and liens created herein:

- a. All property dedicated to and accepted by a local public or governmental authority;
- b. Common Properties; and
- c. Exempt Property.

ARTICLE 6 GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

6.01 Powers and Duties. The affairs of the Association shall be conducted by its Board. The Board, for the benefit of the Association, the Property and the Owners and the Members and Residents, may provide and may pay for, out of the assessment fund(s) provided for in Article 5 above, one or more of the following:

- a. Care, preservation and maintenance of the Common Properties (including without

- limitation the proper maintenance of the private streets) and the furnishing and upkeep of any desired personal property for use in or on the Common Properties;
- b. Recreational and social programs and activities for the general benefit of the Residents and programs which are designed only for separately identifiable sub-groups of Residents, such as (but not limited to) infants, adolescents, teenagers, students, mothers and senior citizens;
 - c. Supplementing (to the extent, if any, deemed necessary, appropriate and affordable by the Board) the police, fire, ambulance, garbage and trash collection and similar services within the Property traditionally provided by local governmental agencies;
 - d. Taxes, insurance, cable, and utilities (including, without limitation, electricity, gas, water, sewer and telephone charges) which pertain to the Common Properties;
 - e. The services of any person or firm (including the Declarant and any affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager of the Association. The Board is specifically authorized to hire and employ one or more managers, secretarial, clerical, staff and support employees. The Board is specifically authorized to engage personnel and equipment (such as computers, software and electronic communication and transmission devices) for the administration of the Association and the collection of assessments described in Article 5;
 - f. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

The Board shall have the following additional rights, powers and duties:

- g. To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;
- h. To enter into agreements or contracts with insurance companies, Taxing Authorities, the holders of first mortgage liens on the individual Lots and utility companies with respect to: (i) any taxes on the Common Properties; (ii) monthly escrow and impound payments by a mortgagee regarding the assessment, collection and disbursement process envisioned by Article 5; (iii) utility installation, consumption and service matters; and (iv) the escrow or impounding of monies sufficient to timely pay the Annual Assessment applicable to any Lot;
- i. To borrow funds (including, without limitation, the borrowing of funds from the Declarant and/or its affiliates) to pay costs of operation, secured by such assets of the Association as deemed appropriate by the lender and the Association
- j. To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- k. To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court on behalf of the Association and to provide adequate reserves for repairs and replacements;
- l. To make reasonable rules and regulations for the operation of the Common Properties

- and to amend them from time to time;
- m. To prepare an annual operating budget and to make available for review by each Owner at the Association offices within ninety (90) days after the end of each Fiscal Year an annual report;
 - n. Pursuant to Article 7 herein, to adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency; and
 - o. To enforce the provisions of this Declaration and any rules made hereunder and, subject to the requirements of Chapter 209, Texas Property Code as amended and replaced from time to time, to enjoin and seek damages from any Owner, Resident or Member for violation of such provisions or rules. The Board is specifically authorized and empowered to establish (and to revise and amend from time to time) a monetary "fines" system which may include component steps such as warning citations, ticketing, due process hearings and appeals and a flat rate or discretionary range or geometric progression of fine amounts, which, when pronounced, shall constitute a permitted individual Lot Owner assessment secured by the continuing Payment and Performance Lien herein established.

The Association may (i) borrow monies from the Declarant; (ii) lease equipment from the Declarant; (iii) contract with the Declarant concerning the provision of any personnel, labor, supplies, materials and services, provided such contract terms and conditions are: generally comparable (in terms of price, quality and timeliness) with those that might be otherwise obtained from unrelated third parties; and, as to professional management contracts, terminable by the Association at any time for an reason whatsoever and without penalty upon furnishing at least ninety (90) days advance notice thereof to Declarant. The Board shall not be required to solicit bids from unrelated third parties before entering into any contract with the Declarant and the reasonable judgment and resolution of the Board to enter into any such contract with the Declarant (absent fraud, gross negligence or willful misconduct) shall be final and conclusive and binding upon the Association and all of its Members.

6.02 Board Powers. The Board shall have the right and obligation to perform the functions of the Board on behalf of the Association. In the event or if for any reason the Board is not deemed authorized to act for and on behalf of the Association and the Members, then the Declarant may exercise its power and authority under Article 13, Section 13.01, to act for and on behalf of the Association and the Members, and the Association shall reimburse the Declarant for any and all reasonable expenses incurred in so acting.

6.03 Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner, Member or Resident (including, without limitation, the Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

6.04 Liability Limitations. Neither any Resident nor the directors and officers and managers of the Association shall be personally liable for debts contracted for or otherwise incurred by

the Association or for any torts committed by or on behalf of the Association or for a tort of another Resident, whether such other Resident was acting on behalf of the Association or otherwise. Neither the Declarant, the Association, its directors, officers, managers, agents or employees shall be liable for any actual, incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. The Declarant, the Association or any other person, firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other actual, incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof.

6.05 Reserve Funds. The Board may establish reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts or any other recognized bookkeeping or tax procedures in order to better demonstrate that the amounts deposited therein are capital contributions and not net or taxable income to the Association. The Association shall be obligated to establish and fund a street maintenance reserve fund that will provide adequate resources to maintain and repair the streets, alleys and sidewalks on an ongoing basis. The Reserve Fund will be established as a part of the Association annual budget and a copy of the budgeted Reserve Fund balance shall be provided to the City of College Station on an annual basis.

ARTICLE 7 INSURANCE; REPAIR; RESTORATION; COMMUNITY SERVICES ARRANGEMENTS

7.01 Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenant thereto, for the interest of the Association, its Board of Directors, officers, managers, agents and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be deemed appropriate by the Board and/or as specifically required by the mortgagees or insurers. Such insurance may include, but need not be limited to:

- (a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs;
- (b) Comprehensive public liability and property damage insurance on a broad from basis, including coverage of personal liability (if any) of the Board, Owners, Residents and Members with respect to the Common Properties;
- (c) Fidelity bonds for all officers and employees of the Association having control over the receipt or disbursement of funds; and
- (d) Liability insurance regarding the errors and omissions of directors, officers, managers, employees and representatives of the Association.

7.02 Insurance and Condemnation Proceeds. The Association shall be the exclusive representative of the Members in any proceedings, negotiations, settlements or agreements concerning insurance or condemnation. The Association and the Members may use the net insurance or condemnation proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance or condemnation. Any balance from the proceeds of insurance or condemnation paid to the Association, remaining after satisfactory completion of repair and replacement or after the Board has elected to waive the repair, restoration or replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

7.03 Insufficient Proceeds. If the insurance or condemnation proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special group assessment as provided for in Article 5 of this Declaration to cover the deficiency.

7.04 Community Service Arrangements. Declarant and the Association have arranged for the employment and utilization of a mechanical crossing gate, video surveillance, and/or unarmed community services personnel generally stationed at the gatehouse entry point to the Property. The Declarant and the Association hope that the gatehouse and private streets concept will discourage undesired and unauthorized vehicular traffic within the Property and foster a higher degree of peace and tranquility. The gate program is not designed to restrict or impede pedestrian traffic into, within or out of the Property.

Although the Declarant and the Association reasonably believe that the existence and visibility of community services personnel and/or controlled access points may discourage the commission of criminal acts (e.g., burglary, theft, etc.) within the Property nevertheless neither the Declarant nor the Association warrant or guarantee that: (a) the community services personnel and/or gate arrangements are sufficient and adequate to diminish or eliminate the commission of crimes against persons or property; and (b) such acts will not be attempted or actually occur within the Property. These community services arrangements are not designed or intended to replace the conventional police and fire protection and paramedical services available from the City of College Station.

The Association will seek to carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by employees, members or authorized representatives of the Association. The Association will not carry any insurance pertaining to, nor does it assume any liability or responsibility for, the real or personal property of the Owners, Residents and Members (and their respective family members and guests).

Each Owner, Resident and Member expressly understands, covenants and agrees with the Declarant and the Association that:

- a. Neither Declarant nor the Association has any responsibility or liability of any kind whatsoever regarding or pertaining to the real and personal property of each Owner, Resident and Member;
- b. Each Owner, Resident and Member shall, from time to time, consult with reputable

insurance industry representatives of each Owner's, Resident's and Member's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount and kind of insurance deemed satisfactory to each Owner, Resident and Member covering his or her real and personal property;

- c. Each Owner, Resident and Member releases and holds Declarant and the Association harmless from any uninsured liability, claims, causes of action or damages of any kind or character whatsoever arising out of or related (directly or indirectly) to any and all aspects of the community services system and private streets within the Property, including, without limitation:
 - 1. the interviewing, hiring, training, licensing (if any), bonding (if any) and employment of community services personnel;
 - 2. the instructions, directions and guidelines issued to or by the community services personnel;
 - 3. the duties, performance, actions, inactions or omission of or by the community services personnel; and
 - 4. the mis-functioning, mal-functioning, or non-functioning of the mechanical gate access devices.
- d. Each Owner, Resident and Member will cooperate with Declarant, the Association and the ACC in connection with the establishment, evolution and maintenance of reasonable control's on the pedestrian and vehicular traffic into and within the Property and abide by any and all rules and regulations of the Association, as adopted and promulgated from time to time, related to the entry upon and use of any private streets and other Common Properties within the Property.

ARTICLE 8 ARCHITECTURAL CONTROL COMMITTEE

8.01 Architectural Control Committee. The Architectural Control Committee shall consist of at least one (1) and not more than four (4) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Voting Members deem appropriate. The following persons are hereby designated as the initial Voting Members of the ACC: Paul Leventis, Curtis Garrett, and Greg Ricks. The ACC shall maintain records of the member appointments and its actions as a committee. Each Voting Member of the ACC shall hold office until such time as he has resigned or been removed from or his successor has been appointed as provided herein. In the event of the death, incapacity or resignation of any member of the ACC, the Declarant (during the Development Period) shall have full authority to designate and appoint a successor. From and after conclusion of the Development Period, the ACC shall be composed of at least three (3) individuals and shall be appointed, and replaced in the event of death, incapacity or resignation, by the remaining Voting Members.

During the Development Period, Declarant shall have the right to appoint and/or remove all Voting Members of the ACC, which persons need not be drawn from Association Members. Notwithstanding the preceding sentence, Declarant may delegate its right of appointment, or any portion thereof, to the Board by written instrument before such date.

8.02 ACC Jurisdiction. No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications have been submitted to and approved in writing by the ACC, or a majority of its members, as to:

- (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design and proper facing of main elevation with respect to nearby streets in accordance with this Declaration and/or the Design Guidelines and/or bulletins;
- (b) minimum finished floor elevation and proposed footprint of the dwelling;
- (c) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (d) drainage solutions;
- (e) the observance of and compliance with applicable setback lines and easement areas and the enhancement of aesthetic views and visual corridors to and from the Common Properties; and
- (f) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within the Design Guidelines or matters in which the ACC has been vested with the authority to render a final interpretation and decision.

The ACC is authorized and empowered to consider and review any and all aspects of construction, location and landscaping, which may, in the reasonable opinion of the ACC, adversely affect the living enjoyment of one or more Owner(s) or Residents or the general value of the Property. Also, the ACC is permitted to consider technological advances and changes in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the ACC.

The following is a general outline of the steps likely to be involved in the review of plans and specifications:

- (a) Submit preliminary plans and specifications to the ACC;
- (b) Submit final plans and specifications to the ACC; and
- (c) Submit copy of building permit to the ACC.

The ACC may require as a condition precedent to any approval of the final plans and specifications, that the applicant obtain and produce an appropriate building permit from the

City of College Station, Texas. The ACC is also authorized to coordinate with the City of College Station in connection with the applicant's observance and compliance of the construction standards set forth in this Declaration and the Design Guidelines. However, the mere fact that the City of College Station issues a building permit with respect to a proposed structure does not automatically mean that the ACC is obliged to unconditionally approve the plans and specifications. Similarly, the ACC's approval of any plans and specifications does not mean that all applicable building requirements of the City of College Station have been satisfied.

Each and every owner and applicant shall use their respective best efforts to commence construction of all improvements approved by the ACC and the City of College Station, Texas (and any and all other applicable governmental agencies) within sixty (60) days after obtaining all necessary governmental approvals therefor and thereafter diligently pursue the project through to completion.

8.03 Design Guidelines. The ACC may from time to time, publish and promulgate additional or revised design guidelines, and such design guidelines shall be explanatory and illustrative of the general intent of the proposed development of the Property and are intended as a guide to assist the ACC in reviewing plans and specifications ("Design Guidelines"). The ACC shall have the right, power and authority to establish and prescribe architectural restrictions and guidelines pertaining to items and topics such as (but not necessarily limited to):

- (a) A site plan showing the "footprint" of the building, location of all existing trees (indicate size and type) and proposed improvements, including but not limited to: Structures, patios, driveways, parking areas and structures, fences and walls.
- (b) Exterior elevations of all proposed buildings and structures.
- (c) A description and samples of exterior materials, colors, textures and shapes of all buildings, structures and fences.
- (d) Landscape plans, which shall include walkways, fences, walls, details, elevation changes, irrigation and watering systems, vegetation and ground cover (indicating size, spacing and quantity), and the protection and preservation of trees and other existing and introduced vegetation.
- (e) Utility connections, including routing of electrical, gas, water, sanitary sewer, telephone cables and prewired CATV facilities.
- (f) Exterior illumination and location.
- (g) Dimensional floor plan of all enclosed spaces and any garages or parking facilities.
- (h) Smoke detector locations in accordance with the ordinances and/or codes of the City of College Station.
- (i) Mailbox location and design.

- (j) Drainage solutions
- (k) Such other matters as may be required by the then applicable zoning and building codes of the City of College Station.
- (l) The items described within this Section 8.03 above and any other data or information requested or deemed reasonably necessary by the ACC.

PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE AND OWNER OF ANY LOT IN THE SUBDIVISION IS STRONGLY ENCOURAGED TO CONTACT THE DECLARANT OR ASSOCIATION OR THE ACC TO OBTAIN AND REVIEW THE MOST RECENT DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT, CONSTRUCTION AND USE OF THE LOT.

8.04 Preliminary and Final Plan Submissions. The ACC is authorized and empowered to and shall consider, review and comment on preliminary plans submitted in duplicate on an informal basis to assist Owners, developers, Homebuilders and prospective purchasers of the Lots in complying with these Covenants and to assist in the completion of any feasibility studies undertaken by such persons or entities. The ACC shall have the right, however, to prescribe reasonable limitations concerning the time, effort and expense likely to be involved in handling such matters on an informal basis. If the preliminary plans and specifications are approved by the ACC, the Owner or the Owner's designated representative will be so advised by letter. If found not to be in compliance with these Covenants, the Owner or the Owner's designated representative will be so advised by letter containing a reasonable statement and explanation of items found not to comply with these covenants. If the ACC fails to approve or disapprove such plans and specifications within thirty (30) days after the actual date on which the submission is received, approval of the matters submitted shall be presumed. Comments on and approvals of preliminary plans and specifications shall be binding upon the ACC provided that conforming final plans and specifications are submitted within ninety (90) days of such preliminary comments or approvals.

Final plans, specifications, arborist report and surveys shall be submitted in duplicate to the ACC for approval or disapproval. The ACC is authorized to request the submission of samples of proposed construction materials. At such time as the plans, specifications and surveys meet the approval of the ACC, one complete set of plans, specifications and surveys will be retained by the ACC and the other complete set will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these Covenants, one set of such plans, specifications and surveys shall be returned marked "Disapproved," accompanied by a reasonable statement and explanation of items found not to comply with these Covenants. Any modification or change to the approved set of plans, specifications, arborist report and surveys must again be submitted to the ACC for its inspection and approval. The ACC's approval or disapproval, as required herein, shall be in writing. If the ACC fails to approve or disapprove such plans, specifications, arborist report and surveys within thirty (30) days after the actual date on which the submission is received, then the ACC approval shall be presumed.

The ACC may from time to time publish and promulgate architectural standards bulletins and/or lot information sheets which shall be fair and reasonable and shall carry forward the spirit and intention of these Covenants. Such bulletins and lot information sheets shall supplement these Covenants and are incorporated herein by reference. EACH OWNER SHALL SEEK AND OBTAIN AND BECOME THOROUGHLY FAMILIAR WITH ANY AND ALL ARCHITECTURAL STANDARDS BULLETINS AND LOT INFORMATION SHEETS PRIOR TO ACQUISITION OF, AND CONSTRUCTION ON, ANY LOT WITHIN THE SUBDIVISION.

8.05 General. The following declarations within this Section apply to the ACC. The ACC shall be entitled at any time and from time to time, to associate or employ a staff and to seek and obtain professional advice and counsel (including but not limited to architects, attorneys, designers, engineers and landscape technicians) in connection with the performance of its duties with all reasonable costs and expenses related thereto paid for or reimbursed by the Association. The Association may, in turn, reasonably recoup some or all of these expenses from the applicants seeking review and approval of plans and specifications.

The Declarant and/or the Association and/or the ACC may require any Owner to restore such Owner's improvements or alteration to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvement) if such improvements or alterations were commenced or constructed in violation of this Article. In addition, the Declarant and/or the Association and/or the ACC may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such improvements or alterations were commenced or constructed. A material violation of these Covenants shall be deemed to have occurred if no prior express written approval of the ACC has been obtained where it was originally required, even if hindsight reveals that the actual plans and specifications would have been approved by the ACC had they been properly and timely submitted.

Neither Declarant, nor the Association, nor the ACC, nor the Board nor the officers, directors, managers, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. No approval of plans and specifications and no publication of any Design Guidelines, architectural bulletins or lot information sheets shall be construed as representing or implying that such plans, specifications, guidelines, bulletins or sheets will, if followed, result in properly designed improvements and/or improvements built in a good workmanlike manner. Every person or entity who submits plans or specifications, and every Owner of each and every Lot, agrees that he will not bring any action or suit against Declarant, the Association, the ACC, the Board, or the officers, directors, managers, members, employees and agents of any of them, to recover any such damages and hereby releases, remises and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general

release does not extend to claims, demands and causes of action not known at the time the release is given.

After reasonable notice to the Owner (and any applicable Resident), any member or agent of the Committee may from time to time at any reasonable hour or hours enter and inspect any property subject to the jurisdiction of the ACC to confirm improvement or maintenance or alteration in compliance with the provisions hereof. No improvements or addition or change or alteration thereof shall be constructed, erected, placed, altered or maintained on any Lot which is in violation of any of the laws or ordinances of the City of College Station, Texas or any other applicable governmental laws, rules or regulations. However, Declarant, the Association, the ACC and their respective officers, directors, managers, agents and employees shall have no obligation to enforce or to report the violation of any such law, ordinance, rule or regulation.

The ACC shall have the power to grant variances, waivers, tolerances or modifications of the standards set forth within the Covenants under circumstances and conditions deemed reasonable, appropriate and prudent by the ACC. Matters of "quality", "adequacy" and "propriety" are to be considered by the ACC generally from an aesthetic standpoint, rather than from an engineering standpoint. Plans and specifications are not reviewed or approved for engineering or structural design or technical quality of materials, and by approving such plans and specifications neither the ACC, nor the members thereof, nor the Association assumes liability or responsibility thereof, nor for any defect in any structure constructed from such plans and specifications.

ARTICLE 9 GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the following limitations and restrictions:

9.01 Construction of Improvements. No Improvements or Structures shall hereafter be constructed upon any of the Property without the prior approval of the ACC.

9.02 Antennae and Signals. No antenna or other device for the transmission or reception of television signals, radio signals, or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot, whether attached to a building or structure or otherwise, without the prior written approval of the ACC. No radio signals, television signals or any other form of electromagnetic radiation shall originate from any Lot so as to unreasonably interfere with the reception of television or radio signals on any other Lot. Notwithstanding the provisions of this paragraph to the contrary, it shall be permissible for the Owners of any Lot to have one small satellite dish no more than 18 inches in diameter for receipt of television signals provided it is not visible from any street. Notwithstanding the foregoing, the Declarant by promulgating this Section is not attempting to violate the Telecommunications Act of 1996 (the "Act"), as may be amended from time to time. This section shall be interpreted to be as restrictive as possible while not violating the Act.

9.03 Insurance Rates. Nothing shall be done or kept on a Lot which would increase the rate of

insurance or cause the cancellation of insurance on any Lot or any of the Improvements located thereon without the prior written approval of the Board.

9.04 Subdividing. No Lot shall be further divided or subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the ACC; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the ACC.

9.05 Signs. No sign of any kind shall be displayed to the public view on a Lot without the prior written approval of the ACC, except for signs which are part of Declarant's overall marketing plan for the Property. The ACC may permit signs of any type for security, political speech or advertising a portion of the Property for sale or lease or it may set standards for the same.

9.06 Rubbish and Debris. No part of the Subdivision shall be used or maintained as dumping grounds for rubbish. No rubbish or debris of any kind shall be placed or permitted to accumulate upon a Lot and no odors shall be permitted to arise therefrom so as to render the Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. If rubbish or debris accumulates upon any Lot in violation of this provision in the judgment of the Association, the Association may remove the rubbish or debris, and charge a special assessment to the Owner of the Lot.

9.07 Noise. No noise or other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Property or to its occupants.

9.08 Lighting. No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property, except for reasonable security or landscape lighting that has the approval of the Architectural Control Committee.

9.09 Nuisance and Lateral Support. No noxious or offensive activity or work shall be conducted upon any Lot so as to impair the structural soundness or integrity of any Improvement of any other Lot, or which may be or may become an annoyance or nuisance to the neighborhood.

9.10 Repair of Improvements. All Improvements upon the Property, including any Lot, shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner or Owners thereof.

9.11 Alteration or Removal of Improvements. Exclusive of normal maintenance, any construction or removal in connection with any Improvement which in any way alters the exterior appearance of said improvement shall be performed only with the prior written approval of the ACC.

9.12 Roofing Materials. The surface of all roofs of principal and secondary structures shall be

quality composition shingle. The ACC shall have authority to approve other roof treatments and materials when in its determination such treatments and materials in the form utilized will not be a detriment to the quality of the neighborhood.

9.13 Solar Equipment. In the event an Owner desires to use solar panels or other solar equipment in connection with the use of any Lot, the location and installation design thereof shall be submitted to the ACC and approval of such design, including the aesthetics thereof, shall be required before construction may begin.

9.14 Driveway. The ACC shall have the right to impose limitations on driveway design, including materials, aprons, location and point of contact with dedicated roads, streets or private driveways within the Property.

9.15 Tanks. The ACC shall have the right to approve the location of any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, oil or LPG and including swimming pool filter tanks. (No elevated tanks of any kind shall be erected, placed or permitted on any Lot). All tanks shall be screened so as not to be visible from any other portion of the Property.

9.16 Underground Utility Lines. No utility lines, including, but not limited to, wires or other devices, for the communication or transmission of telephone or electric current or power, cable television or any other type of fine or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on Improvements as approved in writing by the ACC, except what has already been constructed by the City of College Station, prior to January 2012; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements which have been previously approved in writing by the ACC. The installation method, including but not limited to location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utilities, shall be subject to review and approval by the ACC.

9.17 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the ACC. Owners shall be responsible for keeping Drainage Easements and Drainage Maintenance Easements free of obstructions and shall not permit fences or other obstructions to be placed in said easements. Owners shall also be responsible for stabilization of slopes in Drainage Easements and Drainage Maintenance Easements.

9.18 Hazardous Activities. No activities shall be conducted on the Property and no Improvements shall be constructed on the Lot that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, and no open fires shall be lighted or permitted except within safe and well designed interior or exterior fireplaces, or in contained outdoor kitchen or barbecue units while attended and in use for cooking purposes.

9.19 Mining and Drilling. No oil drilling, oil development operations, oil refining, quarrying

or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

9.20 Machinery and Equipment. Without the approval of the Association or Declarant, no machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in Brazos County, Texas, in connection with the use, maintenance, or construction of a private residence or appurtenant structures or recreational facilities maintained by the Association; provided however, such machinery or equipment may be placed, operated or maintained by any governmental or quasi-governmental agency, or by a public utility, in the performance of its legitimate functions.

9.21 Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon a Lot without the prior written approval of the ACC, provided however, that the Declarant may maintain or authorize temporary structures necessary for storage of tools and equipment, and for office space for architects, builders and foremen on the Property during any period of actual construction, which authorization, if given, shall include the nature, size, duration and location of such structure or structures,

9.22 Unsightly Articles; Vehicles. No trailer, tent, boat, or stripped down, wrecked, junked, or wholly inoperable vehicle shall be kept, parked, stored, or maintained on any portion of the driveway or front yard in front of the building line of the permanent structure, and same shall be kept, parked, stored or maintained on other portions of a Lot only within an enclosed structure or a screened area which prevents the view thereof from adjacent Lots or streets. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street.

9.23 Mobile Homes, Travel Trailers. Recreational Vehicles. No mobile homes shall be parked or placed on any Lot at any time. No travel trailers or recreational vehicles may be kept on any Lot unless it is enclosed in a garage or is parked so as not to be visible from adjoining property or public or private thoroughfares. In the event a travel trailer or recreational vehicle is not enclosed in a garage, the location of its storage site must be approved by the ACC.

9.24 Fencing. All fencing shall be of a size, design, color, location, height and material as determined and approved by the ACC. The ACC has issued Fencing Guidelines and may amend such Fencing Guidelines from time to time. Such Fencing Guidelines will include, without limitation, requirements regarding fence types, locations and quality of materials. Prior to designing, ordering or acquiring any fencing materials or designs for a Lot, all Owners should obtain the current version of the Fencing Guidelines from the ACC. No fencing shall be constructed which obstructs the Easements unless approved by the ACC.

9.25 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept or maintained on the Property. No domestic household pet shall be allowed to make an

unreasonable amount of noise, or to become a nuisance, and no domestic pets shall be allowed on the Property other than on the Lot of its Owner, except when confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operation shall be allowed. No domestic household pet shall be allowed to run at large and all of such pets shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with Plans and Specifications approved by the ACC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property. No more than three (3) adult dogs and three (3) adult cats may be kept on a single Lot. All domestic household pets shall be kept in strict accordance with all local laws and ordinances.

9.26 Landscape Design and Trees. All landscaping shall be of a design determined and approved by the ACC. All landscaping shall be designed so as to protect and promote, as far as practicable, the natural local landscape environment through use of native materials, natural drainage, indigenous plant selection and site design. All landscaping shall be maintained in a healthy and growing condition. All sod areas must be irrigated with automatic sprinkler systems, and have landscaping acceptable to the ACC. No live trees with a diameter of eight (8") inches or greater shall be removed from a Lot without the approval of the ACC. However, hackberry trees of any diameter may be removed without approval of the ACC. Owner will obtain the advice of a landscape architect in planning the design of the landscaping and construction on the Lot. A copy of such report will be submitted to the ACC as provided in Section 8.04.

9.27 Construction and Sales Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property, or the sale of any Lot thereafter. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. No building material of any kind shall be placed or stored upon any Lot until the Owner thereof is ready to commence Improvements, and then the material shall be placed within the property lines of the Lot upon which the Improvements are to be erected and shall not be placed on the street or on any other part of the Property. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the ACC, provided that such waiver shall be only for the reasonable period of such construction. At such time as the Declarant ceases using any portion of the Property as a model home or sales office, the affected Property shall be altered and/or remodeled, if necessary or desirable, to comply with the covenants and restrictions contained herein.

9.28 Mailboxes. Mailboxes shall be of materials approved by the ACC, shall have an adequate foundation, and shall be located on individual Lots. Mailbox stanchions should predominantly utilize materials also used predominantly in the construction of the exterior of Improvements on a Lot or used in the Subdivision entry feature. The design and construction

of mailbox stanchion must have the prior written approval of the ACC. If Declarant or the Association supplies a designated postal box within the Subdivision for a Lot, then an Owner may be required to utilize the supplied box in lieu of a free standing mailbox on the Access Road in front of such Owner's Lot. Any damaged or leaning mailboxes shall be promptly repaired by Owner.

9.29 Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines from streets on the Property shall be placed or permitted to remain on any corner Lot in violation of the codes and ordinances of the City of College Station.

9.30 Garage Conversions. No garage, or any portion thereof, may be converted into enclosed living space unless an alternative garage of at least equal size is constructed and the plans and specifications for the conversion and construction are first approved in writing by the ACC.

9.31 Window Air Conditioning. Window air conditioning units shall not be used for any Buildings, Structures, Outbuildings or Garages without the prior approval of the ACC.

9.32 Use of Common Properties. On any Common Properties on the Property, the Board may establish rules and regulations for use or prohibitions against use from time to time.

9.33 Compliance with Provisions of this Declaration. Each Owner shall comply strictly with the provisions of this Declaration as the same may be amended from time to time. Failure to comply with any of the Covenants shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by any aggrieved Owner. Declarant, for itself, its successors or assigns, reserves the right to enforce these restrictive covenants, though it may have previously sold and conveyed all subdivided Lots controlled by these Covenants within the Property. The reservation of this right of enforcement shall not create an obligation of any kind to enforce the same.

9.34 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article 9 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance upon one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

9.35 No Pollution. No act may be performed which is likely to pollute the air or water in any part of the Subdivision, nor may any Owner violate any federal, state or local ordinance or regulation designed to eliminate pollution at that time in force.

9.36 Flagpoles. Flag poles will only be allowed in the backyard and its location must be approved by the ACC as part of its review process. Flag poles shall be limited to one per lot. Flag poles shall be no taller than 20 feet high. Without express written approval by the ACC, the only flags which can be flown are the flags of the United States of America, the State of

Texas, or an official branch of the United States Armed Forces; all other flags must be approved by the ACC.

9.37 RESTRICTIONS FOR WATERWAYS AND LAKES. The Lake(s) in the Subdivision have been created under the approval of federal, state and local governmental entities. Any changes to these Restrictions regarding the Lake(s) or to the operation or conditions of the Lakes should not be made without first taking the necessary actions as required by any and all governmental authorities having jurisdiction over the Lake(s).**

- a. Construction on Lake. Unless the prior written approval of Declarant or, after the Development Period, the Association is obtained, which approval may be withheld by Declarant or the Association, as applicable, in their sole and absolute discretion:
 1. no wharf, pier, bulkhead, or other structure or obstruction shall be built or maintained into or upon any Waterway or Lake. No structure or obstruction shall be permitted if it offers any threat whatsoever to safe navigation upon such Waterway or Lake or to the safe and convenient use of such Waterway or Lake as a recreation facility unless approved by the ACC. .
 2. no boat canal shall be constructed or installed upon any Lot nor shall any facility or device be constructed or installed upon any Lot which shall in any way alter the course or boundaries of any Waterway or Lake, or which shall involve or result in the removal of water from any Waterway or Lake.
 3. no boats, hoists, launching facilities or any similar type of structures or equipment shall be installed, constructed or maintained upon any Lot, nor shall any boat trailer be stored on any Lot in such manner as to violate the regulations of the Association.
- b. Boats. No boat powered by gasoline, diesel, propane or hydrocarbon-fueled engine of any kind shall be operated upon any Waterway or Lake without the prior written approval of the Association. Boat operation on any Waterway shall conform to all rules and regulations promulgated by:
 1. Association; and
 2. applicable governmental authorities concerning the use of the boats.
 3. The Association may further, by rule, regulate and limit the size, type and number of water craft used on a Lake or Waterway.
- c. Fishing Regulation. A limit of the type and quantity of fish taken from a Lake or Waterway may be established by rules of the Association from time to time. Owners and their family, guests and tenants shall comply with all applicable government regulations relating to fishing on the Lakes and Waterways.
- d. No Removal of Water. No water may be pumped or otherwise removed from a Lake or Waterway for the private use of any Owner without the prior approval of the ACC.
- e. Erosion Control. The Owner of each Lake Lot shall be responsible for all temporary erosion control measures required during construction on his Lot to ensure that there is no erosion into the Lake and such Owner shall be responsible for any repair or

maintenance required due to erosion caused by construction on his Lot.

- f. Shoreline Clearing Restrictions. The Owner of a Lake Lot shall be responsible for maintaining shoreline vegetation existing along the shore of their Lot, but may not clear or remove natural shoreline vegetation existing along the shore of such Lake Lot or plant new vegetation along the shore without the prior approval of the ACC.
- g. No Dumping. No sewer, drain or other waste water, other than natural watershed drainage, shall be permitted by any Owner to empty, directly or indirectly, into a Lake or Waterway. No Owner or occupant of a Lake Lot shall dump or place refuse or any other material into a Lake.
- h. No Release of Wildlife. No Owner or occupant of a Lake Lot shall release or introduce any wildlife, waterfowl, reptiles or fish into a Lake unless approved by ACC.

9.38 Streams, Channels, Creeks, Borrow Ditches and Waterways. All Waterways, Drainage Easements and Drainage Maintenance Easements, are regulated by the Association through the ACC and may not be impacted by any activity of an Owner on his Lot without written approval of the ACC to be granted or denied in its sole and absolute discretion. No Owner shall impede, restrict, dam or alter any Waterway. Some but not all of the restricted areas are reflected on the Plat(s) as Drainage Easements and other restricted areas may be reflected and described on a Stream Map and Identification Table to be prepared and modified from time to time by the ACC in its sole and absolute discretion.

9.39 Landscape Buffer. All Landscape Buffers are regulated by the Association through the ACC and may not be impacted by any activity of an Owner on his Lot without written approval of the ACC to be granted or denied in its sole and absolute discretion. No vegetation shall be removed or added to without written permission of the ACC.

ARTICLE 10 RESIDENTIAL RESTRICTIONS

10.01 Residential Use. All Lots shall be improved and used solely for residential purposes, inclusive of a garage, fencing and such other Improvements as are necessary or customarily incident to residential use. No Owner shall occupy or use his Lot or any Improvements constructed thereon, or permit the same or any part thereof to be occupied or used for any purpose, including religious, other than as a private residence for the Owner, his family and guests or for long term, single family rental use to be used as a private residence for such tenant. Long term rental use is defined as having a lease term greater than eleven (11) months with a penalty clause for early termination, default, or abandonment in accordance with customary commercial practices. All Lots within the Property shall be used and improved solely for single-family residential purposes, with no more than one (1) residential Dwelling Unit per Lot. If two or more Lots are replatted into a single Lot, two dwellings may be allowed to be constructed on the replatted Lot with the prior consent of the ACC. Anything herein to the contrary notwithstanding, any Lot may be used or improved for greenbelt, open space and/or drain field purposes. No Improvement may be constructed upon any Lot that

would unreasonably obstruct the view from other portions of the Property, and the positioning of all Improvements upon Lots within the Property is hereby expressly made subject to ACC review. The ACC may, but shall not be required to, prevent or allow the construction of a proposed Improvement based upon the effect it will have upon the view from any particular Lot. The ACC may consider the effect the Improvement will have on the Property as a whole, it being expressly understood that neither the ACC nor the members thereof shall be liable to any Owner in monetary damages or otherwise due to the construction of any Improvement within the Property or the creating thereby of an obstruction to the view from such Owner's Lot or Lots.

Notwithstanding the foregoing paragraph, Lots Six (6) and Seven (7), Block One (1), Phase IIIA may have a second single family residential Dwelling Unit with a maximum size of 1,250 square feet. No Owner shall not occupy, use or permit the secondary Dwelling Unit or any part thereof to be occupied or used for any purpose, including religious, other than as a private residence for the Owner, his family and guests, and such Unit shall not be used for rental of any kind. Any secondary Dwelling Unit must be located inconspicuously behind the primary Dwelling Unit and shall have the same exterior Building Materials and Roofing Materials as the primary Dwelling Unit. Any secondary Dwelling Unit must be approved by the ACC in advance as set forth in Article 8 and must comply with the same building requirements as a primary Dwelling Unit.

10.02 Number of Occupants. All occupants of any Dwelling Unit except for one (1) shall be related within the second degree of consanguinity or affinity.

10.03 Garages and Garage Orientation. No Lot shall have improvements erected which do not provide for a minimum of a two vehicle garage. No garage on any Lot shall be constructed so that the overhead doors face the street on which the associated Dwelling Unit is located. However, with prior approval of the ACC, a porte-cochere may be constructed in lieu of or in addition to a side-entry garage.

10.04 Outbuildings. Every outbuilding, inclusive of such structures as a detached garage, storage building or greenhouse, shall be compatible with the Dwelling Unit to which it is appurtenant in terms of its design and material composition. All such buildings shall be subject to approval by the ACC. In no instance shall an outbuilding, other than a detached garage, exceed one (1) story in height, have total floor area in excess of ten percent (10%) of the floor area of the main Dwelling Unit, and be visible from any of the streets in the Subdivision unless approved in writing by the ACC.

10.05 Building Materials: Dwelling Size. All dwellings shall be of recognized standard construction quality, and all exteriors (exclusive of doors, windows, and similar openings) of each Dwelling Unit, Structure and Improvement (exclusive of doors, windows, and similar openings) shall be constructed of at least eighty percent (80%) masonry, non-sheet materials or other materials specifically approved in writing by the ACC. Masonry includes brick, rock and all other materials commonly referred to in the College Station, Texas area as masonry. Non-sheet materials includes wood shingles, solid hard wood siding, synthetic siding, hardy board sheet materials, wood structures built of red wood, whole logs and other quality rot resistant natural wood materials are encouraged and may qualify, at the discretion of the

ACC, for a variance from the 80% requirement set forth above.. All dwellings shall be constructed on a foundation designed and certified by a professional engineer licensed in the State of Texas. The foundation drawings shall be subject to approval by the ACC. Unless an exception is granted by the ACC, Dwelling Units shall contain not less than three thousand (3,000) square feet of enclosed living space, exclusive of porches (open or covered), decks, garages and carports. The foregoing Lots and Blocks are as depicted on the Attachment to this Declaration which is incorporated herein by reference and on the Plat.

10.06 Off-Street Parking. Each Lot shall contain, in addition to a standard driveway, a paved area approved by the ACC and suitable for parking at least two (2) passenger vehicles. Such area may be a circular drive, an addition or extension to the driveway or such other area approved by the ACC.

10.07 Construction in Place. The use of prefabricated materials, including antique homes moved from other locations, will be allowed only with the prior written approval of the ACC.

10.08 Set-back Requirements. No building shall be located or erected nearer to any Lot line than the building line shown on the recorded plat of the Property. For purposes of these covenants, the eaves of buildings shall not be deemed to be part of a building or structure, but steps and porches shall be deemed to be a part of a building or structure. This Section shall not be construed to allow any building or structure to encroach upon another Lot. In the absence of a building line on the recorded plat of the Property, unless otherwise approved by the ACC, the following building set back lines shall govern each Lot:

- a. On Lots, no Improvement or Structure except fences may be located on any Lot:
 1. nearer than thirty-five (35) feet to the front property line of a Lot or a property line abutting an Access Road; however, cul-de-sac Lots shall only be required to meet then current City of College Station front setback requirements;
 2. nearer than ten (10) feet to either side property line not abutting an Access Road; or
 3. nearer than twenty-five (25) feet to the rear property line not abutting an Access Road.
- b. On Lake Lots, no Improvement or Structure may be located on a Lake Lot nearer than twenty (20) feet nearer than the property line abutting the Lake unless an exception is granted in writing by the ACC.

10.09 Landscaping; Maintenance. Construction of each and every residential Dwelling Unit on a Lot shall include the installation and placement of appropriate landscaping. Each Owner, Member and Resident of any Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep and maintain the Lot, and all improvements therein and thereon, in a well maintained, safe, clean and attractive condition at all times. Such maintenance shall include (without limitation):

- a. the proper seeding, consistent watering and mowing of all lawns;
- b. the pruning and cutting of all trees and shrubbery;
- c. prompt removal of all litter, trash, refuse and waste;
- d. watering of all landscape;
- e. keeping exterior lighting and mechanical facilities in working order,
- f. keeping lawn and garden areas alive, free of weeds and attractive;
- g. keeping driveways in good repair and condition;
- h. promptly repairing any exterior damage; complying with all governmental health and police requirements;

all in a manner and with such frequency as is consistent with aesthetics, safety and good property management. The Association and its agents, during normal business hours, shall have the right (after 5 days written notice to the Owner of any Lot involved, setting forth the specific violation or breach of this covenant and the action required to be taken, and if at the end of such time reasonable steps to accomplish such action have not been taken by the Owner), to enter on the subject premises (without any liability whatsoever for damages for wrongful entry, trespass or otherwise to any person or entity) and to take the action(s) specified in the notice to remedy or abate said violation(s) or breach(es). The cost of such remedy or abatement will be paid to the Association upon demand and if not paid within thirty (30) days thereof, shall become a lien upon the Lot affected subject to the requirements of Chapter 209, Texas Property Code. The Association, or its agent, shall further have the right (upon like notice and conditions), to trim or prune, at the expense of the Owner, any hedge, tree or any other planting that, in the written opinion of the Association, by reason of its location on the Lot, or the height, or the manner in which it is permitted to grow, is detrimental to the adjoining Lots, is dangerous or is unattractive in appearance. The lien provided under this section will constitute a lien retained against such property with the same force and effect as the Payment and Performance Lien for assessment set forth in these Covenants.

10.10 Storage of Building Materials. No building material of any kind or character shall be placed or stored upon any Lot more than thirty (30) days before construction of a Structure or Improvements are commenced, and then such material shall be placed within the building set back lines as established above. At the completion of such Structure or Improvements, such excess or scrap material must be immediately removed from the Lot.

10.11 Construction Debris. Exposed stumps, trees, underbrush or any refuse of any kind or scrap material from Improvements being erected on any Lot shall be placed on any other Lot, the Access Roads, the Common Areas, or Easements.

10.12 Change of Elevations. Exposed openings resulting from any excavation made of any Lot shall be backfilled and the disturbed ground shall be leveled. No change of elevation on any Lake Lot greater than six (6) inches shall be made without the approval of the ACC.

10.13 Completion of Construction. After commencement of construction of any Structure or Improvement, the work thereon shall be diligently prosecuted to the end that the Structure or Improvement shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof. In no event shall construction take longer than fifteen (15)

months.

10.14 Stormwater Management. Owners and their contractors shall be responsible for the management of stormwater during construction or ground disturbing activities to prevent erosion and sedimentation from leaving the immediate construction site or entering into any existing or contemplated waterway, drainageways, streets, gutters, stormwater system, and roadside ditches. During construction of a Dwelling Unit, Structure, Improvement, foundations, driveways, barns, approved landscape areas, or any other construction requiring soil grading activities, Owners and their contractors and agents must use appropriate stormwater management measures, such as silt fencing or hay bales between the construction area and drainageways. Final stabilization with seeding or mulch is required to minimize erosion following construction.

ARTICLE 11 EASEMENTS

11.01 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on any plat covering all or any portion of the Property and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most effectively, efficiently and economically developing and marketing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, Common Properties, rights-of-way and easements for public utility purposes (including, without limitation, gas, cable, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot line, any such easement having a maximum width of ten (10) feet on each side of such Lot line.

11.02 Installation and Maintenance. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Property. Within these easements, if any, no structure or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities; or in the case of drainage easements, which may change the direction of flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all Improvements in such area shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible. Neither Declarant nor any utility company using the easements herein or referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements.

11.03 Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees lawns or flowers. However, neither the Declarant nor any

supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity reasonably relating to the construction, maintenance, operation or repair of any facility in any such easement area.

11.04 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the ACC thereon require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the recorded plat of the Property. There shall be no construction of improvements, temporary or permanent, in any drainage easement, except as may be approved in writing by the ACC.

11.05 Blanket Easement. An easement is hereby retained in favor of the Association over all Lots and the Common Properties for the purpose of enforcing the Covenants in accordance with Section 11.05 hereof, and for the construction of a common cable television system, a common sprinkler system, maintenance of landscaping, or any other item for the common benefit of the Owners. An easement is further granted for the purpose of repairing and maintaining any such system so constructed. An entry upon any Lot or the Common Properties to effectuate the foregoing purposes shall not be deemed as trespass.

ARTICLE 12 REGISTRATION

12.01 Registration with the Association. In order that the Declarant and the Association can properly acquaint every Lot purchaser and every Owner, Resident and Member with these Covenants and the day-to-day matters within the Association's jurisdiction, each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, various items of information to the Association such as:

- a. the full name and address of each Owner, Member and Resident;
- b. the full name of each individual family member who resides within the residential dwelling of the Lot Owner;
- c. the business address, occupation and telephone numbers of each Resident;
- d. the description and license plate number of each automobile owned or used by a Resident and brought within the Property;
- e. the name, address and telephone numbers of other local individuals who can be contacted (in the event the Resident cannot be located) in case of an emergency, and
- f. such other information as may be reasonably requested from time to time by the Association.

In the event any Owner, Member or Resident fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner, Member and Resident shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

ARTICLE 13 GENERAL PROVISIONS

13.01 Power of Attorney. Each and every Owner, Member and Resident hereby makes, constitutes and appoints Declarant as his/her true and lawful attorney-in-fact, coupled with an interest and irrevocable, for him/her and in his/her name, place and stead and for his/her use and benefit, to do the following:

- a. to exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Property;
- b. to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and
- c. to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat(s) of the Property, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Brazos County Clerk's Office and shall remain in full force and effect thereafter until conclusion of the Development Period.

13.02 Further Development. During the Development Period, each and every Owner, Resident and Member waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities, and the Association shall not devote or expend any monies or personnel, regarding the following: to contest, object, challenge, dispute, obstruct, hinder or in any manner disagree with the proposed or actual development (including, without limitation, zoning or rezoning efforts or processes) pertaining to residential uses of any real property owned by the Declarant or by the affiliates, assignees or successors of the Declarant within a one-half mile radius of the Subdivision.

13.03 Duration. The Covenants of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or

Owner and Resident of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for an original thirty (30) year term expiring on the thirtieth (30th) anniversary of the date of recordation of this Declaration, after which time these Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Owners of at least fifty-one percent (51 %) of all Lots within this Subdivision and all the Subdivisions and recorded in the Official Records of Brazos County, Texas, which contains and sets forth an agreement to abolish these Covenants; provided, however, no such agreement [where approved by less than seventy-five percent (75%) of the Owners of all Lots within this Subdivision to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

13.04 Amendments.

- (a) By Declarant. During the Development Period, this Declaration may be amended by the Declarant, acting alone. No amendment by Declarant shall be effective until there has been recorded in the Official Records of Brazos County, Texas, an instrument executed and acknowledged by Declarant.
- (b) By Owners. After the Development Period, this Declaration may be amended by the recording in the Official Records of Brazos County of an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty percent (60%) of the number of votes entitled to be cast pursuant to Section 3.02 hereof.

13.05 Enforcement. Each Owner of each Lot shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every Resident, Member, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), Member(s), guests and invitees. The Payment and Performance Lien shall extend to, cover and secure the proper payment and performance by each and every Resident, Member, guest and invitee affiliated with each Owner. Each Owner may, upon appropriate application to and approval by the Association, impose greater or additional restraints and restrictions on the "good standing" qualifications of the Residents and Members of such Owner's Lot. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Property. Enforcement of these Covenants may be initiated by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants; but failure by the Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, from the non-prevailing party.

13.06 Validity. Violation of or failure to comply with these Covenants shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of these Covenants, or any portions

thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants conflicts with mandatory provisions of any ordinance or regulation promulgated by the City of College Station (including, without limitation, the Zoning Ordinance), then such municipal requirement shall control,

13.07 Proposals of Declarant. The proposals of the Declarant, as set forth in various provisions hereinabove, are mere proposals and expressions of the existing good faith intentions and plans of the Declarant and shall not be deemed or construed as promises, solicitations, inducements, contractual commitments or material representations by the Declarant upon which any person or entity can or should rely. Nothing contained in or inferable from this Declaration shall ever be deemed to impose upon any other land owned or to be owned by the Declarant, or any related entity, any covenants, restrictions, easements or liens or to create any servitudes, negative reciprocal easements or other interests in any such and in favor of any person or entity other than the Declarant. Declarant makes no representations of any kind or character concerning any land parcels adjoining the Property. Each prospective Owner should make his/her own investigation concerning those parcels and what impact, if any, same may have on the ownership, use and enjoyment of the Property.

13.08 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

13.09 Notices to Resident/Member/Owner. Any notice required to be given to any Resident, Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when: (i) deposited in the United States Mail, postage prepaid, addressed to the last known address of the person who appears as the Resident, Member or Owner on the records of the Association at the time of such mailing; or when (ii) delivered by hand or by messenger to the last known address of such person within the Property; or when (iii) posted on the Association's bulletin board for at least thirty (30) consecutive calendar days.

13.10 Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

13.11 Disputes. Matters of dispute or disagreement between Owners, Residents or Members with respect to interpretation or application of the provisions (excluding architectural matters which are to be approved by the ACC) of this Declaration or the Association Bylaws, shall be determined by the Board of Directors. Matters pertaining to architectural matters shall be determined by the Architectural Control Committee. These respective determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all

Owners, Residents and Members.

13.12 Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, Declarant, and/or the Board shall have the right to enforce any and all of the provisions of this Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision.

13.13 Nonwaiver. The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

13.14 Liens. The Association shall have the right, when appropriate in its judgment and subject to Chapter 209 of the Texas Property Code, to claim or impose a lien upon any Lot or improvement constructed thereon in order to enforce any right or effect compliance with this Declaration.

13.15 Assignment by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

13.16 Exemption of Declarant. Notwithstanding any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Control Committee. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all other types of Improvements, sales and leasing offices, and similar facilities, and to post signs incidental to construction, sales, and leasing anywhere within the Property.

13.17 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration.

13.18 Construction Restrictions Severable. The provisions of Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine, and neuter.

13.19 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles.

13.20 Deadlines on Business Day. If any deadline in this Declaration should fall on a Saturday, Sunday or a Texas or federal holiday, such deadline shall automatically be extended to the next business day.

13.21 Choice of Law. This Declaration shall be construed in accordance with the laws of the State of Texas.

13.22 Mortgagee. Nothing contained in this document, nor any violation of any provision of this Declaration shall have the effect of impairing or affecting the rights of any mortgagee, or trustee under any mortgage or deed of trust outstanding against all the Subdivision or any portion thereof.

13.23 Run With Land. Every person who now or hereafter owns or acquires any right, title or interest in or to any property in the Subdivision is and shall be conclusively deemed to have consented and agreed to every covenant, condition, reservation and restriction contained herein, whether or not any reference to this declaration is contained in the instrument by which such person acquires an interest in the property.

13.24 Deviations. Declarant reserves the right to make minor deviations from the terms of this document to the extent permissible by law and consistent with the general plan for development as herein set out.

13.25 Severability. The invalidity, violation, abandonment, waiver of or failure to enforce any one or more of or any part of the provision of this document shall in no way effect or impair the remaining provisions or parts thereof which shall remain in full force and effect.

13.26 Amendment. During the Development Period, this Declaration may be amended by Developer without joinder or consent of any of the Owners. After the Development Period, this Declaration may be amended, but not terminated, by amendment approved by the Owners holding not less than sixty-six and two-thirds percent (66-2/3%) of the votes in the Association as of the first day of the month in which such amendment is made effective. Any amendment effective prior to January 1, 2028, must also be approved by Declarant if Declarant owns any part of the Property, and Declarant, in its sole and absolute discretion, may withhold its consent. Any termination or amendment to this Declaration shall be documented by an instrument signed and acknowledged by Declarant if during the Development Period or, if after the Development Period, by the President and Secretary of the Association and Declarant (if prior to January 1, 2028) setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast at least sixty-six and two-thirds percent (66-2/3%) of the number of votes entitled to be cast.

13.27 Failure to Enforce Covenants. The failure of Declarant, the Association, the Owner of any Lot, or their respective legal representatives, heirs, successors and assigns, to enforce this Declaration or any portion thereof shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such other violation or breach occurring prior or subsequent thereto.

13.28 Covenants Do Not Create Reversion. No covenant herein is intended to be, or shall be

construed as, a condition subsequent or as creating a possibility of reverter.

13.29 Relief for Violation or Breach. Damages shall not be an adequate remedy for any breach or violation of any provision hereof. Accordingly, any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction, specific performance, recovery of damages or any other available relief either at law or in equity.

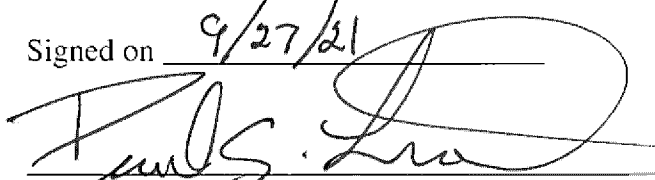
13.30 Time is of the Essence. In regard to the acts, duties, obligations, or responsibilities to be performed by any Member or Owner pursuant to this Declaration, time is of the essence as to such performance.

13.31 Maximum Interest Payable. In all events where interest is due and payable on any obligation pursuant to the provisions of this Declaration, the person to whom such payment is due shall never be entitled to receive, collect or apply as interest on such indebtedness any amount in excess of the highest rate allowed by law. In the event the payee of such indebtedness ever receives, collects or applies as interest any such excess, such amount which would be excessive interest shall be credited against the principal of the indebtedness and, if the indebtedness has been paid in full, any remaining excess shall forthwith be refunded to the payor thereof and, in such event, the payee shall not be subject to any penalties provided by law for contracting for, charging or receiving interest in excess of the highest rate allowed by law.

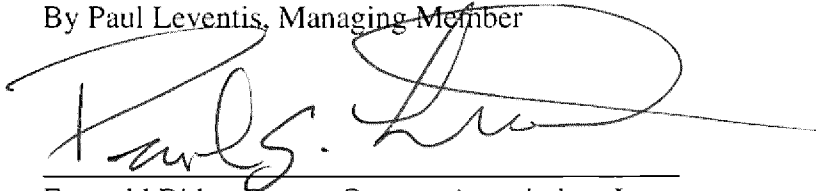
13.32 Replatting. Decalarant shall have the right to replat or subdivide any Lots owned by it by recorded plat or in any other lawful manner.

13.33 Conflict. With respect to any Lot, in the event of a conflict between the terms of this Declaration and the plat upon which the Lot is described, the most restrictive provision or standard shall apply.

Witness the hand of an authorized representative of Declarant on the acknowledgment date noted below.

Signed on 9/27/21


Emerald Ridge Estates, Ltd.
By Brazos Trace, General Partner
By Paul Leventis, Managing Member



Emerald Ridge Estates Owners Association, Inc.
By Paul Leventis, Secretary

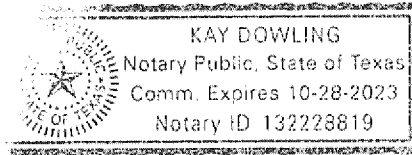
ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 27 day of Sept, 2021, by Paul Leventis, managing member of the General Partner of Emerald Ridge Estates, Ltd., on behalf of said limited partnership.

Kay Dowling
Notary Public, State of Texas



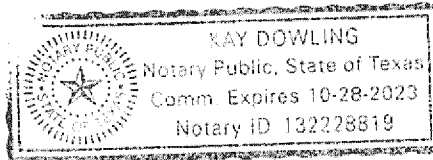
ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 27 day of Sept, 2021, by Paul Leventis, Secretary of the Emerald Ridge Estates Owners Association, Inc., on behalf of said nonprofit corporation.

Kay Dowling
Notary Public, State of Texas



CONSENT AND SUBORDINATION BY LIENHOLDER

Lienholder, as the holder of the lien on the Property, consents to the foregoing Declaration and the covenants, conditions, restrictions and easements contained therein, and Lienholder hereby subordinates its lien to the rights and interests of the Declaration, such that a foreclosure of the lien shall not extinguish the covenants, conditions, restrictions and easements contained in the Declaration.

GREGORY A. RICKS
By: [Signature]
Title: OWNER

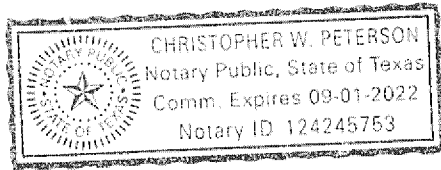
ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

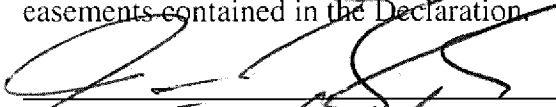
This instrument was acknowledged before me on the 28 day of September, 2021, by Gregory A. Ricks of _____, on behalf of said bank.

[Signature]
Notary Public, State of Texas



CONSENT AND SUBORDINATION BY LIENHOLDER

Lienholder, as the holder of the lien on the Property, consents to the foregoing Declaration and the covenants, conditions, restrictions and easements contained therein, and Lienholder hereby subordinates its lien to the rights and interests of the Declaration, such that a foreclosure of the lien shall not extinguish the covenants, conditions, restrictions and easements contained in the Declaration.

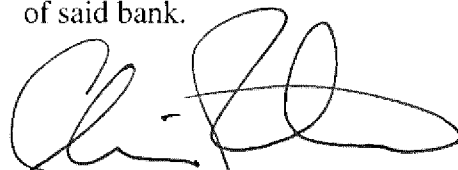

By: Jason Groach
Title: President

ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 28th day of September, 2021,
by Jason Groach of President, on behalf
of said bank.


Notary Public, State of Texas

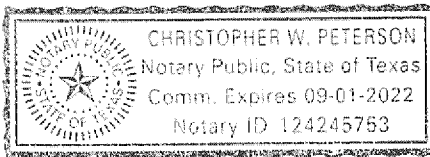


EXHIBIT "A"

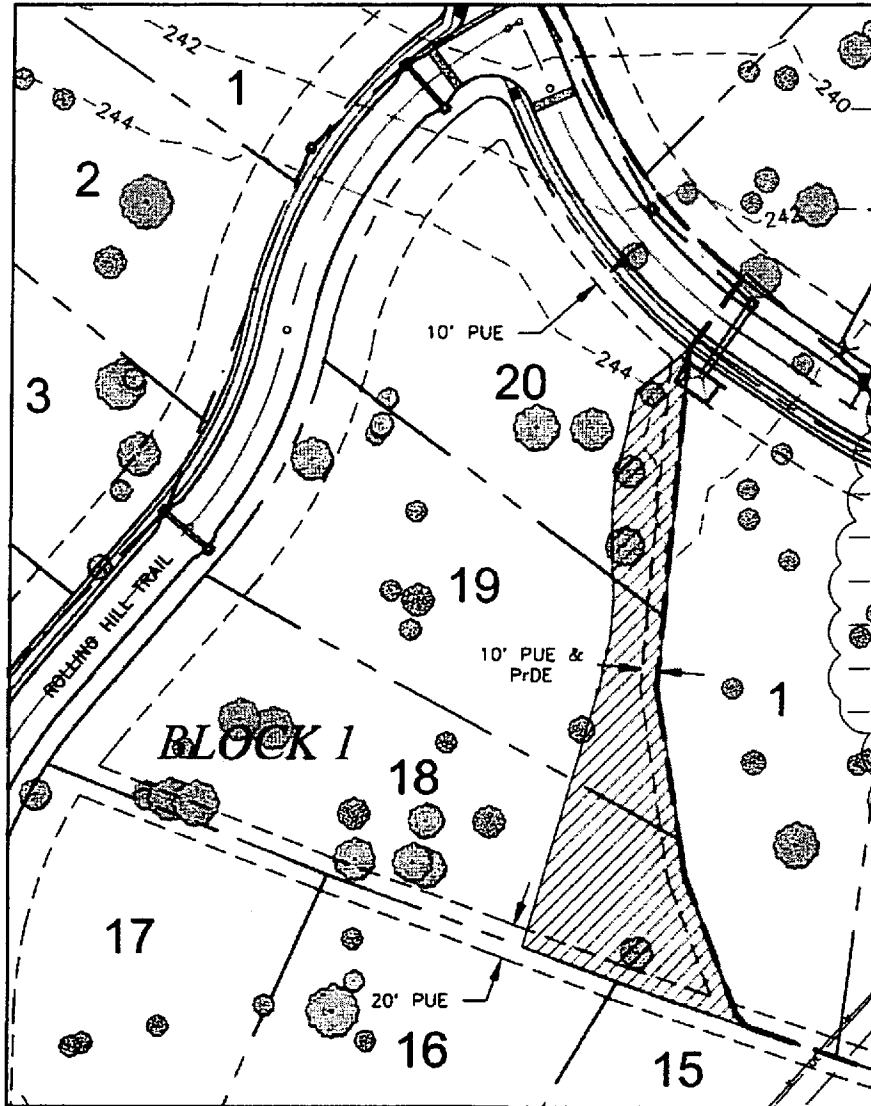
Lots One A (1A) through Twenty A (20A), Block One (1), Emerald Ridge Estates, Phase I, an addition to the City of College Station, Brazos County, Texas, as set forth in Amending Plat recorded in Volume 10555, Page 116, Official Records, Brazos County, Texas;

-and-

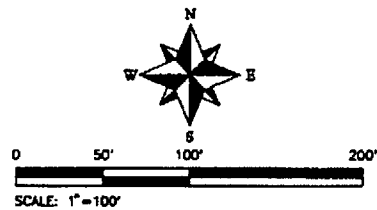
Lots One (1) through Four (4) and Lots Six (6) through Fifteen (15), Block One (1), Emerald Ridge Estates, Phase IIIA, and Lot One (1), Block One (1), Emerald Ridge Estates, Phase IIIB, an addition to the City of College Station, Brazos County, Texas, as set forth in Amending Plat recorded in Volume 17331, Page 126, Official Records, Brazos County, Texas;

and any common areas set forth therein.

EXHIBIT "B"

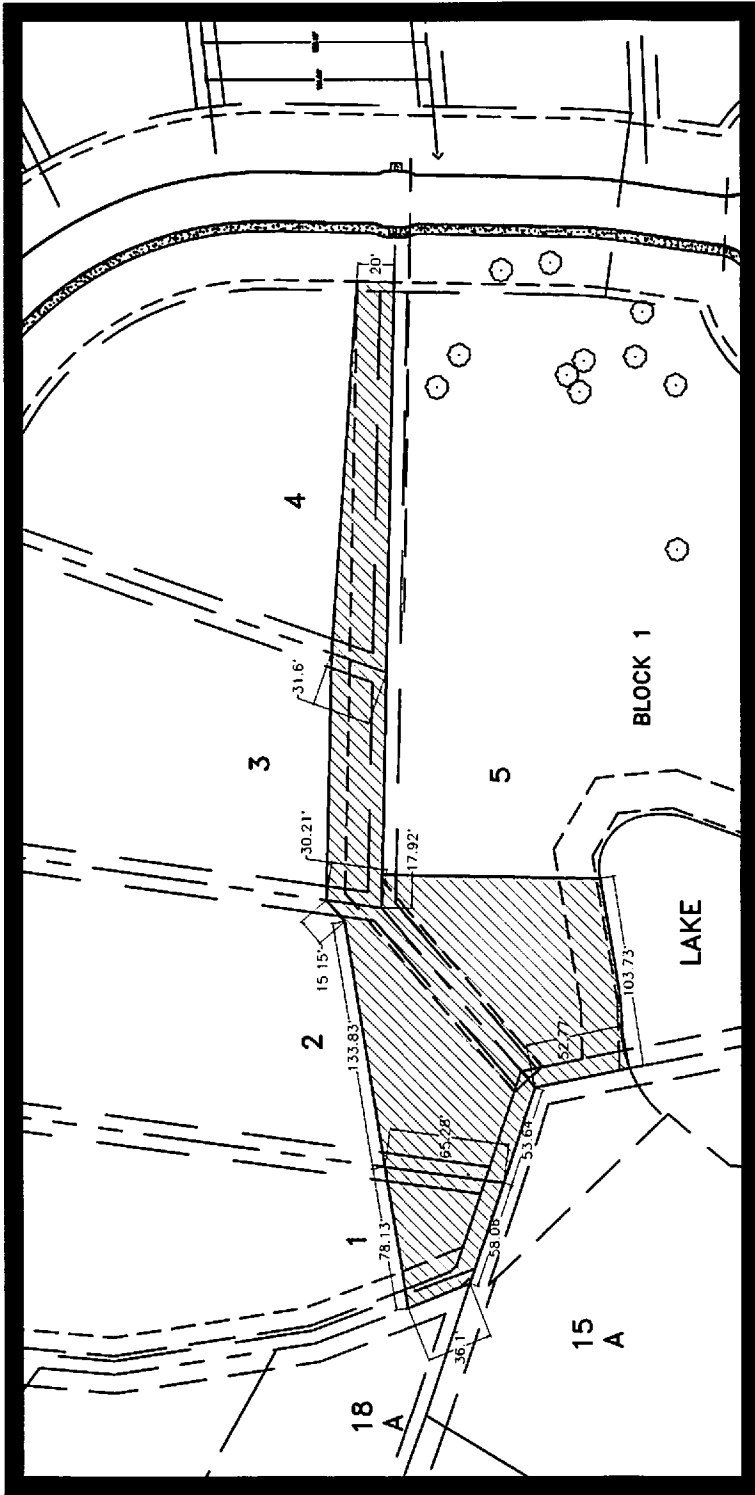


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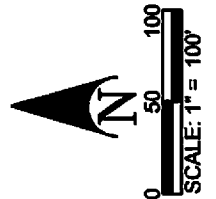
Landscape Buffer Exhibit B

EXHIBIT
B-1
Bamberg No. 5203



LANDSCAPE BUFFER EXHIBIT
EMERALD RIDGE PHASE IIIA
BLOCK 1 LOTS 1-5

Blumberg No. 5206
EXHIBIT
B-2



**Brazos County
Karen McQueen
County Clerk**

Instrument Number: 1447681
Volume : 17391
ERecordings - Real Property

Recorded On: September 28, 2021 02:37 PM

Number of Pages: 61

" Examined and Charged as Follows: "

Total Recording: \$266.00

******* THIS PAGE IS PART OF THE INSTRUMENT *******

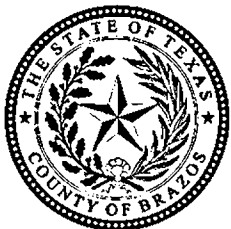
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 1447681
Receipt Number: 20210928000085
Recorded Date/Time: September 28, 2021 02:37 PM
User: Patsy D
Station: CCLERK03

Record and Return To:

Simplifile
5072 NORTH 300 WEST
PROVO UT 84604



STATE OF TEXAS
COUNTY OF BRAZOS

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Public Records of Brazos County, Texas.

Karen McQueen
County Clerk
Brazos County, TX