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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF CAPSTONE ESTATES PHASE 3, SECTION 1**

**Preamble**

This Declaration of Covenants, Conditions, and Restrictions is made on the \_\_\_\_ day of \_\_\_\_\_, 2013, at Victoria, Texas, by Timothy Scott Rampey and wife, Nita Gayle Rampey (collectively referred to as “Declarant”), whose mailing address is 104 Wilshire Drive, Victoria, Texas 77904. The purpose of this Declaration of Covenants, Conditions, and Restrictions is to protect the owners of lots in this Subdivision against such improper use of lots as will depreciate the value of their property; to guard against the erection thereon of poorly designed or proportioned structures and structures built of improper or unsuitable materials; to obtain harmonious architectural schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on lots; to secure and maintain proper setbacks from streets and adequate free spaces between structures; and in general to provide adequately for a high type of quality of improvements in said property and thereby to enhance the value of investments made by purchasers of lots therein.

**Recitals**

1. Declarant is the owner of all that certain real property located in Victoria County, Texas, described as follows: Lot Numbers 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 in Block Number 1 and Lot Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 in Block Number 3 of CAPSTONE ESTATES, a subdivision lying and being situated in Victoria County, Texas, according to the established map and plat of said subdivision of record in Volume 9 at Pages 72A, B, C & D of the Plat Records of Victoria County, Texas, to which reference is here made for descriptive purposes (referred to as “the Property”).
2. The Declarant has devised a general plan for the entire Property as a whole, with specific provisions for particular parts and parcels of the Property. This general plan provides a common scheme of development designed to protect and safeguard the Property over a long period and to protect the owners’ investment and to maintain the quality of the Property.
3. This general plan will benefit the Property in general, the parcels and lots that constitute the Property, the Declarant, and each successive owner of an interest in the Property.
4. Therefore, the Declarant desires to restrict the Property according to these covenants, conditions, and restrictions in furtherance of this general development plan.

NOW, THEREFORE, it is declared that all of the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions.

**ARTICLE 1, Definitions**

**1.01. Declarant.** “Declarant” means Timothy Scott Rampey and wife, Nita Gayle Rampey, and includes their designated successors and assigns.

**1.02. Lot.** “Lot” means any of the lots of land shown as Lot Numbers 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 in Block Number 1 and Lot Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 in Block Number 3 of the Property reflected in the established map and plat of the subdivision recorded in Volume 9 at Pages 72A, B, C & D of the Plat Records of Victoria County, Texas (referred to as the “Map”), on which there is or will be built a single family dwelling. The term “Lot” does not include the

Common Area and does not include Lot Number 1 in Block Number 1, and Lot Number 1 in Block Number 2 of the Property which are expressly reserved for use by Declarant at Declarant's sole discretion.

**1.03. Owner.** "Owner" means the record owner or owners of the fee simple title to any Lot or portion of a Lot in the Property on which there is or will be built a detached single family dwelling. "Owner" includes contract sellers but excludes persons having only a security interest.

**1.04. Qualified Person.** A "qualified person" means a person who is appointed by Declarant or the Board, or a member of the Board.

**1.05. Common Area.** "Common Area" means the entire Property except the Lots, subject to all easements and rights described in this Declaration, and except for Lot Number 1 in Block Number 1 and Lot Number 1 in Block Number 2.

**1.06. Association.** "Association" means Capstone Estates Homeowners' Association, which is a Texas incorporated association consisting of all Owners, which shall have the duty of maintaining, operating, and managing the Common Area as provided in this Declaration. Each Owner shall become a member of the Association contemporaneously with acquiring a Lot, without any further documentation of any kind.

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

## **ARTICLE 2, Architectural Control**

**2.01. Architectural Control Committee.** Declarant shall designate and appoint an Architectural Control Committee consisting of not less than two (2) qualified persons, which shall serve at the pleasure of the Declarant. After the Declarant no longer owns any Lot, the Architectural Control Committee shall serve at the pleasure of the Board.

**2.02. Approval of Plans and Specifications.** The Architectural Control Committee must review and approve in writing all of the following projects on the Property:

- (a) Construction of any building, driveway, fence, wall, or other structure.
- (b) Any exterior addition, change, or alteration in any building, fence, wall, or other structure.
- (c) Any grading of any Lot or Lots.

**2.03. Application for Approval.** To obtain approval to do any of the work described in Paragraph 2.02, an Owner must submit an application to the Architectural Control Committee with two (2) complete sets of plans and specifications for the proposed work. Such plans and specifications shall detail the nature, shape, height, materials, colors, and location of the proposed work. The Architectural Control Committee shall retain one set of such plans and specifications and return one set to the Owner noting its approval or disapproval.

**2.04. Standard for Review.** The Architectural Control Committee shall review applications for proposed work in order to (1) ensure conformity of the proposal with these covenants, conditions, and restrictions and (2) ensure harmony of external design in relation to surrounding structures and topography. An application can be rejected for providing insufficient information. The Committee shall have broad, discretionary authority to interpret and apply these standards and may deviate from these standards in its sole discretion. In rejecting an application, the Committee should detail the reasons for rejection and suggest how the applicant could remedy the deficiencies.

**3.05. Failure of Committee to Act.** If the Architectural Control Committee fails either to approve or reject an application for proposed work within thirty (30) days after submission, then Committee approval shall not be required, and the applicant shall be deemed to have fully complied with this Article.

### **ARTICLE 3, Exterior Maintenance**

**3.01.** If an Owner of any Lot fails to maintain the premises in a neat and orderly manner, the Declarant or the Architectural Control Committee shall have the right, through its agents and employees, to enter the Lot in order to repair, maintain, and restore the Lot, including landscaping, and the exterior of any buildings and other improvements located on the Lot, all at the expense of the Owner.

### **ARTICLE 4, Use Restrictions and Architectural Standards**

**4.01. Residential Use Only.** All Lots shall be used for single-family residential purposes only. Single family use consists of use as a dwelling by two or more natural persons who are related by marriage or kinship, or by not more than six (6) natural persons who are not related by marriage or kinship. However, Declarant, as well as any other person engaged in the construction and sale of residences on the Property, shall have the right, during the construction and sales period, to use facilities as may be reasonably necessary or convenient for its business purpose of constructing and selling residences on the Property.

**4.02. Type of Buildings Permitted.** No building shall be erected, altered, or permitted on any Lot other than one detached single-family dwelling not to exceed two stories in height, with a private garage for at least two (2) automobiles, and outbuildings approved by the Architectural Control Committee. However, Declarant, as well as any other person authorized by Declarant engaged in the construction and sale of residences on the Property, shall have the right, during the construction and sales period, to construct and maintain such facilities as may be reasonably necessary or convenient for its business of constructing and selling dwelling units on the Property, including, but not limited to, offices and storage areas.

**4.03. Design, Minimum Floor Area, and Exterior Walls.** Any single story residence constructed on a Lot must have a ground floor area of not less than two thousand (2,000) square feet of living area, exclusive of open or screened porches, terraces, patios, driveways, carports, and garages. Any two-story residence constructed on a Lot must have a ground floor area of not less than sixteen hundred (1,600) square feet of living area and a second-floor area of not less than six hundred (600) square feet of living area, exclusive of open or screened porches, terraces, patios, driveways, carports, and garages,. The exterior walls of any residence shall consist of not less than seventy-five percent (75%) masonry construction. Hardiplank or other brand of concrete-fiber board may be used for exterior walls when the style of the house requires such and it is approved by the Architectural Control Committee. All roofs shall be constructed of fireproof materials consisting of tile, composition, cedar shakes or shingles, or metal of at least twenty-six (26) gauge material. Roof materials may not contain rocks, gravel, or other loose material. If the roof is composed of wood shakes or shingles, it shall be treated with fire retardant chemicals as approved by the Architectural Control Committee. Roof lines on residences must not be less than 5/12 pitch or greater than 12/12 pitch. All structures must be built at a minimum of eight inches (8") above the natural contour of the ground. All exterior colors, textures, and materials must be compatible with adjacent and surrounding Lots, and overall community appearance.

**4.04. Setbacks.** No building shall be located on any Lot nearer to the front or rear Lot lines or nearer to the side Lot or side street lines than the minimum building setback lines shown on the Map. No one-story residence shall be located nearer to the side street line than ten feet (10'), or nearer to the side Lot line than ten feet (10'), or nearer to the front Lot line than fifty feet (50'). No two-story residence shall be located nearer to the side street line than fifteen feet (15'), or nearer to the side Lot line than fifteen feet (15'), or nearer to the front Lot line than fifty feet (50'). No outbuilding shall be located nearer to the side

street line than twenty feet (20'), or nearer to the side Lot line than ten feet (10'), or nearer to the rear Lot line than fifteen feet (15'), or nearer to the front Lot line than seventy-five feet (75'). No outbuilding more than one story in height shall be placed nearer to the side Lot line than fifteen feet (15'). Water wells shall be located on the Lot as shown on the Map. The Architectural Control Committee may allow lesser setbacks when in their sole and exclusive discretion, unusual topography or design warrants such. For purposes of this provision, driveways, eaves, steps, and open porches shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any portion of the building on any Lot to encroach upon another Lot. If two or more Lots, or portions of two or more Lots, are consolidated into a building site in conformity with Paragraph 4.05, these building setback requirements shall apply to the resulting building site as if it were one original, platted Lot.

**4.05. Resubdivision or Consolidation.** No Lot shall be resubdivided or split except as follows. Any person owning two or more adjoining Lots may subdivide or consolidate those Lots into building sites, with the privilege of constructing improvements, as permitted by this Declaration, on each resulting building site, provided that such subdivision or consolidation does not result in any building site having a front Lot line of less than fifty (50') feet.

**4.06. Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Map. No utility company, water district, political subdivision, or other authorized entity using these easements shall be liable for any damage done by them or their assigns, agents, employees, or servants, to shrubbery, trees, flowers, or to other property of the Owner situated in the easement.

**4.07. Noxious or Offensive Activities Prohibited.** No noxious or offensive activity shall be conducted on any Lot that may be or may become an annoyance or nuisance to the neighborhood.

**4.08. Prohibited Residential Uses.** No structure not approved for residential use by the Architectural Control Committee, including but not limited to trailers, mobile homes, motor homes, basements, tents, shacks, garages, and other outbuildings and accessory structures, shall be used on any Lot at any time as a residence, either temporarily or permanently.

**4.09. Signs.** No signs of any type shall be allowed on any Lot except one sign of not more than five (5) square feet advertising the property for sale or rent. However, Declarant, as well as any other person authorized by Declarant engaged in the construction and sale of residences on the Property, shall have the right during the construction and sales period to construct and maintain signs advertising the construction and sale.

**4.10. Rubbish, Trash, and Garbage.** No Lot shall be used or maintained as a dumping ground for rubbish or trash. All garbage and other waste shall be kept in sanitary containers. There shall be no burning or incineration of trash, garbage, leaves, brush, or other debris.

**4.11. Drainage Easements.** Drainage easements are reserved as shown on the Map. Affected Lots are Lot Numbers 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 in Block Number 1, as shown on the Map. Within these drainage easements, no fence, structure, outbuilding, vehicle, building materials, and/or other various items shall be placed or shall be permitted to remain and no other activities shall be permitted to be undertaken that may damage or interfere with established slope ratios, create erosion or sliding problems, change the direction of flow of drainage channels, or obstruct or retard the flow of water through drainage channels. The drainage easements of each affected Lot, and all improvements located in those areas, shall be maintained continuously by the owner of the affected Lot, except for those improvements for which a public authority or utility company is responsible.

**4.12. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose.

**4.13. Fences, Utility Meters, Water Wells.** To insure an aesthetically pleasing appearance and open views, privacy fencing shall be permitted along the side lot boundary lines from the front house line to a line one hundred sixty feet (160') from the front lot line, provided that such fence does not impair the easements reserved herein or reflected on the Map and is of a fencing material approved by the Architectural Control Committee. Hurricane fencing shall be permitted to extend to the rear lot boundary lines and to the side lot boundary lines, provided that such fence does not impair the easements reserved herein or reflected on the Map and is of a fencing material approved by the Architectural Control Committee. No utility meter shall be placed, or permitted to remain, on the front of any Lot nearer than the line even with the front of the main residence. For the purpose of this provision, any driveways, eaves, steps, open porches, or patios shall not be considered as a part of the main residence in determining this front line. If a private water well is installed, all state and water district setback requirements must be followed unless the well location is permitted by a completed Victoria County Water Conservation District waiver form and located according to the Capstone Estates Water Well Master Plan. Water well pressure tanks must be located within the house or garage.

**4.14. Trucks, Buses, and Trailers.** No truck or bus (except a passenger van for personal use) or trailer shall be left parked in the street in front of any Lot, except for construction and repair equipment while a residence or residences are being built or repaired in the immediate vicinity. No truck or bus (except a passenger van for personal use) or boat or trailer shall be parked on the driveway or any portion of the Lot in such manner as to be visible from the street.

**4.15. Prohibited Activities.** No professional, business, or commercial activity to which the general public is invited shall be conducted on any Lot. No unused, abandoned, or wrecked vehicles or boats shall be allowed on any Lot. No automotive repair work shall be conducted on any Lot, except for minor repairs of a personal vehicle, and such personal vehicle repair work shall be conducted in such a manner as not to be visible from the street. Owners and residents shall not be allowed to park vehicles, boats, or trailers on the public streets in the Property except in the event of an emergency. Visitors may park on the shoulders of the public streets while visiting Owners or residents for short periods of time.

**4.16. Towers.** No poles, masts, antennas, radio or television towers, windmills, wind generators, or satellite dishes of any type, size, or height shall be installed on any Lot unless unseen from the front of the property or located within a building approved by the Architectural Control Committee.

## **ARTICLE FIVE, Easements**

**5.01. Reservation of Easements.** All easements and all alleys for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Map. No fence or other obstruction shall be placed in any easement or alleyway. Right of use for ingress and egress shall be available at all times over any dedicated easement or alleyway for purposes of installing, operating, maintaining, repairing, or removing any utility or any obstruction placed in such easement or alleyway that would interfere with the installation, maintenance, operation, or removal of such utility.

## **ARTICLE SIX, Association**

**6.01. Creation.** The Owners shall constitute the Association. The Association shall become a non-profit corporation known as the "Capstone Estates Homeowners' Association, LLC." Each Owner of a Lot, including Declarant, shall automatically be a member of the Association. Ownership of a Lot is the sole criterion for membership in the Association, subject to Article 2 of the Capstone Estates Homeowners' Association Bylaws.

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**6.02. Management of Association.** The Association shall be managed by the Board pursuant to the procedures set forth in the Association's certificate of formation and bylaws, subject to this Declaration.

**ARTICLE SEVEN, General Provisions**

**7.01. Enforcement.** The Declarant or the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations imposed by this Declaration. Failure to enforce any covenant or restriction shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. All waivers must be in writing and signed by the party to be bound.

**7.02. Building Commencement and Completion.** The construction of the dwelling shall be completed as to the exterior finish and appearance within nine (9) months from the day of the commencement of construction. For the purpose of this provision, the day that the foundation is poured for the dwelling shall be the day of the commencement of construction. If construction of the dwelling is not completed within the above described time period, the Association in its discretion may assess a special assessment against the Owner for each day that Owner fails to comply in an amount not to exceed twenty-five dollars (\$25) per day.

**7.03. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

**7.04. Covenants Running With the Land.** These easements, restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of the Property. Consequently, they shall run with the real property and shall be binding on all parties having any right, title, or interest in the Property in whole or in part, and their heirs, successors, and assigns. These easements, covenants, conditions, and restrictions shall be for the benefit of the Property, each Lot, and each Lot Owner.

**7.05. Duration and Amendment.** The covenants, conditions, and restrictions of this Declaration shall be effective for a term of twenty (20) years from the date this Declaration is recorded, after which period the covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years subject to termination by an instrument signed by more than fifty percent (50%) of the Owners. The covenants, conditions, and restrictions of this Declaration may be amended by an instrument signed by more than seventy-five percent (75%) of the Owners. Neither any amendment nor any termination shall be effective until recorded in the Official Public Records of Victoria County, Texas, and all requisite governmental approvals, if any, have been obtained.

**7.06. Attorneys' Fees.** If any controversy, claim, or dispute arises relating to this instrument, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.

**7.07. Liberal Interpretation.** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the Property.

*Todd P. Francis*



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