

**DECLARATION OF RESTRICTIVE COVENANTS  
OF  
ROLLING PINES SUBDIVISION**

These private land use restrictions for Property situated in Rolling Pines Subdivision in Polk County, Texas (the "Restrictions") are executed effective as of the Date hereafter defined by Owner (as hereafter defined), and in accordance with the definitions, terms, provisions, and other matters hereafter set forth.

**Basic Information**

**Date:** \_\_\_\_\_

**Declarant:** JPR Investments, L.L.C., a Texas limited liability company

**Declarant's Address:**

JPR Investments, L.L.C.  
1202 W. Church Street  
Livingston, Texas 77351

**Property Owners Association:**

Rolling Pines West Property Owners Association, Inc., a Texas nonprofit corporation

**Property Owners Association's Address:**

Rolling Pines West Property Owners Association, Inc.  
1202 W. Church Street  
Livingston, Texas 77351

**Subdivision:** \_\_\_\_\_

**Recitals**

- First. Declarant owns the fee simple title to the land in the Subdivision.
- Second. Declarant desires to carry out and have maintained a uniform plan for the use and improvement of the Subdivision, and Declarant has therefore created the covenants, conditions and restrictions, whether mandatory, prohibitive, permissive, or administrative (collectively called the "Restrictions") to run with the land making up the Subdivision and to regulate the structural integrity, appearance and use of the lots owned by Declarant and depicted upon the plat of the Subdivision and the improvements to be placed on such lots.

Third. Each Owner of a Lot is responsible for, at each Owner's sole cost and expense, acquiring from third parties any water, sewer, or other utility service that an Owner desires.

The installation of any water, sewer or other type of utility system must be done in a good and workmanlike manner approved by the Board and comply with all local, state, and federal regulations and laws.

Fourth. The Restrictions are entitled to run with the land comprising the Subdivision because: (i) the Restrictions touch and concern such land by, among other things, benefitting and controlling the use of such land; (ii) privity of estate exists among all of the land in the Subdivision by reason of the Declarant holding legal and equitable title to the land out of which the land shall be conveyed subject to the Restrictions; (iii) notice is given of the Restrictions contained herein when this instrument is filed in the Real Property Records in Polk County, Texas, being the County in which the Subdivision is situated; and (iv) the Restrictions are reasonable in light of their purpose being for the common benefit of all of the land owners in the Subdivision, in order to reduce uncertainty in living conditions, and to encourage investment in the Subdivision.

Fifth. The Restrictions shall run with the land owned by Declarant in the Subdivision and shall be binding upon and inure to the benefit of the Declarant, as well as the Declarant's successors and assigns; further, each person or entity, by acceptance of title, legal or equitable, to any portion of the Subdivision, shall abide by and perform the Restrictions and the other terms hereof. In the event of the failure of any contract and/or deed to any portion of such land out of the Subdivision to refer to this instrument, the Restrictions and other terms of this instrument shall nevertheless be considered a part thereof, and any conveyance of such land shall be construed to be subject to the Restrictions and other terms hereof. It is understood and agreed that these Restrictions relate to and affect only the Subdivision as described above and no other land owned by Declarant adjacent thereto and/or in the vicinity thereof, and that the only Restrictions are those expressed in this instrument, and no other restrictive covenants are to be implied.

Furthermore, the Restrictions shall apply solely to the Lots and nothing contained herein shall imply that any Reserve, as shown upon the Plat, as well as any other lands of Declarant shall be subject to the Restrictions applicable to the Subdivision, and no restrictions, covenants or conditions shall be created hereby with respect to any Reserve or any other lands owned by Declarant, whether by negative implication or otherwise. In addition to the provisions above, Declarant specifically reserves and retains the right to cut merchantable timber on any lands owned by Declarant adjacent to and/or within the vicinity of the Subdivision, as well as use such other lands as Declarant or the successors or assigns of Declarant may deem appropriate, even if such usage differs from the terms permitted by these Restrictions.

## **Clauses and Covenants**

### **A. Imposition of Covenants**

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

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

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

### **B. Plat, Estates, and Easements**

1. Estate. Each Lot shall be conveyed as a separately designated and legally described freehold estate according to (a) the Plat, subject to these Restrictions, but without the necessity of specifically referring to same and/or (b) a deed executed by Owner to one or more third parties whereby such deed is made expressly subject to these Restrictions.

2. Easements. All Lots are subject to certain easements over and across portions of each lot, as shown by (a) the recorded plat of the Subdivision and/or (b) reference to same in any deed executed by an Owner in which one or more Lots are conveyed. The easements are deemed appropriate or necessary for the purpose of installing, using and maintaining public utilities and/or equipment necessary for the performance of any public or quasi-public utility service or function. The easements include the right of access for the purpose of further construction and maintenance. The right of access shall include the right, without liability on the part of the owners or operators of such utilities, to remove any obstructions on said easements as in its opinion may interfere with installation or operations. The easements are for the general benefit of the Subdivision and the lot owners and are reserved and created in favor of all utility companies serving the Subdivision. Nothing set out above shall prohibit the use of the easements or rights-of-way by abutting Owners for the construction of fences, walks or drives, provided no permanent structures are constructed in it and provided no damages shall accrue to the Owner, the political subdivision or subdivisions of the State of Texas with jurisdiction over the Subdivision, if any, or any utility company because of the removal and non-replacement of all or any portion of such improvements for the purpose of operating utilities in such easements.

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

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

### C. General Provisions

1. *Term.* This Declaration and Restrictions set forth herein shall continue and be binding upon Owner and Owner's successors and assigns for a period of thirty (30) years ("Primary Term") from the date of this instrument, unless terminated or amended. At the expiration of the Primary Term, these Restrictions shall automatically be extended for an additional ten (10) year period ("Extension Term") and for successive ten (10) year periods of the Extension Term thereafter, unless terminated or amended.

2. *No Waiver.* Failure by the Association or an Owner to enforce the Dedicatory Instruments is not a waiver. No waiver or consent, express or implied, by any lot owner to or of any breach or default by any lot owner in the performance by such owner of the obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such lot owner of the same or any other obligations of such lot owner hereunder. Failure on the part of a lot owner to complain of any act of any other lot owner or to declare any lot owner in default, irrespective of how long such failure continues, shall not constitute a waiver by such owner of the rights hereunder until the applicable statute of limitation period has run.

3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

4. *Amendment.* This Declaration may be amended as follows:

- a. By Declarant. This Declaration and Restrictions may be amended or waived in whole or in part, at any time during the initial thirty (30) year period by Declarants, their successors, heirs or assigns. Any amendment or waiver shall be effective only when filed in the Real Property Records of Polk County, Texas, or in such office as conveyance of real estate then may be required to be filed, and then and thereafter the Restrictions set forth in this instrument shall be null, void and of no further force and effect, or shall be modified as such recorded instrument may direct. Furthermore, Declarants reserve the right, at its sole option and discretion, to amend and/or waive, in whole or in part, any of the covenants and or restrictions contained herein, without notice and prior consent of any owner of any lot in the Subdivision, at any time that the Declarants deem such amendment necessary or desirable. Declarant, during the Development Period, reserves the sole and exclusive right, without joinder or consent of the Association or any Owner, to (i) amend, restate, modify or repeal, this Declaration and other dedicatory instruments; (ii) amend, revise, modify or vacate any Plat; and (iii) annex and subject any other property to the scheme of this Declaration, provided that any annexation is not inconsistent with the scheme of the Subdivision. However, this Declaration or other dedicatory instrument of the Subdivision may not be amended during the period of time between which Declarant loses the majority of voting rights and the time a new Board of Directors of the Association, consisting of Owners assume office.

- b. By Owners. During the initial Term, this Declaration may be amended or restated by the written agreement or by signed ballots voting for such of not less than fifty-five percent (55%) of all of the Owners in the Subdivision. There shall be one (1) vote per Property Owner. Anyone owning more than one Lot shall have one vote for each Lot owned. Such amendment must be approved by said Owners within three hundred and sixty-five (365) days of the date the first Owner executes such amendment. Otherwise, such amendment shall fail. If the amendment is adopted it shall bind and affect all the Lots. The date an owner's signature is acknowledged shall constitute *prima facie* evidence of the date of execution and adoption of said amendment by such Owner. Those Members of the Board of Directors of the Association entitled to cast not less than sixty-seven percent (67%) of all of the votes of the Association may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Any such amendment shall become effective when an instrument is filed for record in the real property records of Polk County Texas, accompanied by a certificate, signed by a majority of the Board of Directors, stating that the required number of Owners voted in favor of the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose.
- c. By the Association. The Board of Directors has the right in its sole judgment, from time to time, and at any time, to amend this Declaration without joinder of any Owner or Member for the following purposes:
- i. To resolve or clarify any ambiguity or conflicts herein, or to correct any inadvertent misstatements, errors, or omissions herein; or to confirm this Declaration to the requirements of any lending institution; provided, the Board has no obligation whatsoever to amend this Declaration in accordance with any such lending institution requirements and the Board may not so amend this Declaration if, in the sole opinion of the Board, any substantive and substantial rights of Owners would be adversely affected thereby; or
  - ii. To conform this Declaration to the requirements of any governmental agency including the Federal Home Loan Mortgage Corporation, Federal National Mortgage Agency, Veterans Administration, or Federal Housing Administration, and in this respect, the Board shall so amend this Declaration to the extent required by law upon receipt of written notice of such requirements and request for compliance; or
  - iii. To amend the Rule and Regulations of the Association, if the Board deems appropriate to comply with the scheme of the Declaration and

the Subdivision; and

- iv. To amend the alternative payment schedule for certain assessments, open records policy, records retention policy, and/or other policies to comply the Texas or federal law.

5. *Conflict.* This Declaration controls over the other Dedicatory Instruments.

8. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.

7. *Attorney's Fees.* Any party subject to this instrument who is the prevailing party in any proceeding, whether it is in negotiation, mediation, arbitration or litigation, against any other party brought under or in connection with this instrument or the subject matter hereof, shall be additionally entitled to recover all costs and reasonable attorney fees, and all other related expenses, including deposition costs, arbitrator and mediator fees, and travel and expert witness fees from the non-prevailing party.

8. *Binding Effect.* This instrument shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors and assigns where permitted by this instrument.

9. *Choice of Law.* This instrument shall be subject to and governed by the laws of the State of Texas. Each party hereby submits to the jurisdiction of the state and federal courts in the State of Texas and to venue in Polk County, Texas.

10. *Legal Construction.* In case any one or more of the provisions contained in this instrument shall for any reason be invalid, illegal or unenforceable in any respect, to the extent such invalidity or unenforceability does not destroy the basis of the bargain among the parties, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this instrument shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Whenever required by the context, as used in this instrument, the singular number shall include the plural and the neuter shall include the masculine or feminine gender, and vice versa. The Article and Section headings appearing in this instrument are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Article or Section. This instrument shall not be construed more or less favorably between the parties by reason of authorship or origin of language.

11. *Notices.* All notices must be in writing and must be given as required or permitted by the Dedicatory Instruments or by law. Notice by mail is deemed delivered (whether actually received or not) two (2) days following the date the Notice was properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address according to the Property Owners Association's records, and (b) to the Property Owners Association, the

Board, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

12. *Recitals.* Any recitals in this instrument are represented by the parties hereto to be accurate and constitute a part of the substantive agreement.

13. *Annexation of Additional Property.* At any time during the first five (5) years following the date this instrument is recorded in the real property records of Polk County, Texas, Declarant reserves and retain the right, but not obligation), to add additional property owned by Declarant to be subject to this Declaration by recording in the real property records of Polk County, Texas an annexation agreement that will impose this Declaration and Covenants upon the property described in the annexation agreement. Following the expiration of such five (5) year period, on written approval of the Board and not less than fifty-one percent (51%) of the Members at a meeting in accordance with the Bylaws, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.

14. *Time.* Time is of the essence. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays, and legal banking holidays in the State of Texas. In the event the date for performance of any obligation hereunder shall fall on a Saturday, Sunday or Texas legal banking holiday, then that obligation shall be performable on the next following regular business day.

15. *No Representations or Warranties.* No representation or warranties of any kind, express or implied, shall be deemed to have been given or made by the Declarant, the Association or its agents or employees in connection with any portion of the Subdivision, or any improvement thereon, its or their physical condition, compliance with applicable laws, fitness for intended use, or in connection with the sale, operation, maintenance, cost of maintenance, taxes, or regulation thereof, unless and except as specifically shall be set forth in writing.

#### **D. Use and Activities**

1. *Toilets.* Except during construction of a structure permitted herein, no outside privies or toilets shall be permitted upon the Property. All toilets shall be installed inside any residence hereafter constructed upon the Property and prior to the occupancy thereof. No individual sewerage-disposal system shall be permitted on the Property unless the system is designed, equipped and constructed in accordance with the requirements, standards and recommendations of the Health Department of the State of Texas, the County of Polk and/or any other governmental agency having jurisdiction over the Property. Approval of the system(s) installed and maintained shall be obtained from such authorities. Under no circumstances shall Grantor ever be required to provide the Property with any type of wastewater or sewerage disposal system.

2. *Water Supply Systems.* No individual water-supply system shall be permitted on the Property unless the system is designed, constructed and equipped in accordance with the

requirements, standards and recommendations of the Health Department of the State of Texas, the County of Polk and/or any other governmental agencies having jurisdiction over the Property. Approval of the system(s) installed and maintained shall be obtained from such authorities. Under no circumstances shall Grantor ever be required to provide the Property with any type of water system.

3. *Drainage.* The drainage of wastewater or sewerage into adjoining lands, or into or upon any road, street, alley, ditch, or any water way, either directly or indirectly, is prohibited. However, nothing contained herein shall limit or prohibit the (a) building of one or more ponds or lakes on any part of the Property or installation of one or more sprinkler systems on any part of the Property.

4. *Residential Use.* The Property shall be used for residential, farm and ranch and/or recreational purposes only. The term “residential purposes”, as used herein, shall be held and construed to exclude hospitals, clinic, duplex houses, apartment houses, boarding houses, hotels and all similar commercial uses, and all such uses of the Property are hereby expressly prohibited. Nothing contained herein shall prohibit the grazing and raising of cattle, horses, and other livestock. No more than one large animal per acre will be allowed.

5. *Nuisance.* No noxious or offensive activity shall be carried on upon the Property, nor shall anything be done thereon which may be an annoyance or nuisance to any adjoining property owner or owners (including land owned by Grantor that adjoin the Property).

6. *Temporary Structures.* No structure of a temporary character, trailer, mobile home, house trailer, manufactured home, recreational vehicle, camper, basement, tent, shack, garage, barn or other outbuilding shall be used on the Property at any time as a residence, either temporarily or permanently, without the written consent of Grantor (or, if appropriate, the successors or designated assignee of Grantor, first had and obtained, which consent Grantor shall be under no obligation to give. However, Grantor does consent to allow Grantee (or, if appropriate, the heirs or personal representative of Grantee) to temporarily place and temporarily use recreational vehicles on the Property, provided that they are at least fifty feet (50’) from any property line.

7. *Square Footage Requirement.* No residential structure shall be placed on the Property unless its living area has a minimum of one thousand two hundred (1,200) square feet of floor area, when measured from wall to wall, and excluding porches and garages. The same must be approved through the POA Board of Directors. The temporary placement of recreational vehicles located within the guidelines of paragraph 6 immediately above shall not be considered a violation of this provision. A single recreational vehicle may be placed on the property for living purposes, up to 12 months, and only during construction of a residence. Use of a generator for power to a recreational vehicle or temporary living quarters is prohibited.

8. *Set Back.* All permanent structures must be located at least 10’ from any property line.

9. *Garbage Disposal and Dumping.* The Property shall never be used or maintained as a dumping ground for rubbish, trash, garbage, non-running vehicles, or other wastes. Garbage



and waste shall always be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

10. *Subdivision Prohibited.* No Lot may be further subdivided into smaller tracts of land.

11. *Parking.* Both prior to and after the occupancy of a residence of the Property, the owner shall provide appropriate space for parking any vehicle or vehicles.

12. *Utility Purpose.* These proactive covenants shall not be construed to prevent the use of portions of the Property for roads, streets, or other rights of way or as easements for drainage or utility purposes. All culverts must be appropriately sized and approved by the POA.

13. *Burning and Waste Disposal.* All burning or other disposal of waste material must be in compliance with regulations promulgated from time to time by the State of Texas and/or County of Polk.

14. *Plans and Specifications.* Any residential building constructed on the Property: (a) must be built according to plans and specifications which, in addition to those set forth herein, meet the minimum requirements of all applicable building codes for residential construction in Polk County, Texas and (b) must be sturdy, permanent construction, built of first class materials.

15. *Sanitary Condition.* All parts of the Property shall be maintained in a sanitary and neat condition, free from rubbish, junk, trash, debris, unused or unusable tools and equipment or other unsightly or unsanitary material. All tools and equipment shall be stored or housed in a storage building provided therefore. No part of the Property shall be used for any purposes which may endanger the health or unreasonably disturb the owner and/or occupant or adjoining tract of land.

16. *No Restriction of Free Flow of Drainage Water.* Except for ponds, etc., as previously allowed, no improvements, structure, dirt or other material may be placed on the Property that would in any way tend to restrict or interfere with the free flow of water in or through, or inhibit access for maintenance of, natural drainage easements, drainage ditches or drainage structures placed thereon by Grantor and/or by Polk County, or its successors or assigns.

17. *Road Maintenance.* The roads in Rolling Pines Subdivision are not public or county roads and shall be maintained by the property owners (or property owners association).

18. *No Commercial Sale of Dirt.* There will be no commercial sale of dirt from the Property.

#### **E. Property Owners Association**

1. *Establishment and Governance.* The Property Owners Association is established by filing its certificate of formation and is governed by the certificate, the Declaration, and the Bylaws. The Property Owners Association has the powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property

Code, and the Dedicatory Instruments.

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

3. *Membership and Voting Rights.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot.

4. *Suspension of Voting Rights.* All voting rights of a Lot owner may be suspended by the Board of Directors of the Association during any period in which such Lot owner is delinquent in the payment of any duly established assessment or is otherwise in default and/or violation thereunder or under the By-laws or rules and regulations of the Association.

5. *Registration with the Association.* In order that the Owner and the Association can properly determine voting rights and acquaint every Lot purchaser and every Lot owner with these Restrictions and the day-to-day matters within the Association's jurisdiction, each Lot owner 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 Lot owner; (b) the personal address, occupation and telephone number of other local individuals who can be contacted (in the event the Lot owner cannot be located) in case of an emergency; and (c) such other information as may be reasonably requested from time to time by the Association. In the event any Lot owner 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 Lot owner shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

## **F. Maintenance Charges and Fund**

1. *Maintenance Fund Obligation.* Each Owner, by acceptance of a deed to a Lot, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agreed to pay to the Association an Annual Maintenance Charge except the Owners of Lots, 1, 2, 5 & 6 in Block One of the Subdivision. Lots 1, 2, 5, & 6 of Block One of the Subdivision are exempt from the payment of assessments as the location of their property doesn't inure them to the benefit of the common areas that will be maintained. The Board of Directors, at its first meeting of each calendar year, shall establish the Annual Maintenance Charge for that year.

2. *Exemption from Annual Maintenance Charge.* Until such time as Declarant has sold thirty (30) Lots, Declarant shall be exempted from the payment of the Annual Maintenance Fund. The obligation of Declarant to pay the Annual Maintenance Charge on the Lots then owned by the Declarant following the conveyance of the 30<sup>th</sup> Lot shall commence on January 1<sup>st</sup> of the year following the conveyance of the thirtieth (30<sup>th</sup>) Lot of Declarant.

3. *Maintenance Fund.* The Board of Directors of the Association, for the benefit of the lot owners, shall establish and maintain a maintenance fund into which shall be deposited the Annual Maintenance Charge collected from lot Owners and which maintenance fund shall be used,

without limitation, for the payment of the following:

- A. Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against any Common Area rather than against the individual lot owners, if any.
- B. Care and preservation of the Common Area.
- C. Repair and/or maintenance of Rolling Pines Drive.
- D. Legal and accounting services.
- E. A policy or policies of insurance insuring the Association, as well as its directors and/or officers, against any liability to the public or to the lot owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board of Directors.
- F. Workers compensation insurance to the extent necessary to comply with any applicable laws.
- G. Such fidelity bonds as may be required by the By-Laws or as the Board of Directors may determine to be advisable.
- H. Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessment assessed against an individual lot owner) which the Board of Directors is required to obtain or pay for pursuant to the terms of these Restrictions or by law or which in its opinion shall be necessary or proper for the enforcement of these Restrictions.
- I. Perpetual maintenance and enhancement of all areas maintained by the Association, including walls, gates, roads, landscaping, lights, irrigation and electric for right-of-way and all entry monuments, walls, and signs owned or maintained by the Association.

#### **G. Assessments**

1. *Authority.* To the extent the Annual Maintenance Charge is insufficient, the Association may levy one or more assessments hereafter contained in this part G. (the "Assessments") to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to pay the costs and related expenses need to repair, maintain or replace the roadbed of Rolling Pines Drive, to fund operating expenses of the Association, and to improve and maintain the Common Area.

2. *Personal Obligation.* Each Owner, by acceptance of a deed to a Lot, whether or

not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) The Assessments or charges; and (2) member charges levied against individual Lot owners to reimburse the Declarant or Association (as the case may be) for extra or unusual costs incurred by the Declarant or Association (as the case may be) for curing the lot owner's violation of a restrictive covenant or other provision contained in these Restrictions. The Assessments, together with such interest thereon, reasonable attorney's fees and costs of collection thereof, as are herein provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot or Lots against which each such Assessment is made. Each such assessment, together with such interest thereon, reasonable attorney's fees and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person or entity who was the owner of such Lot at the time the obligation accrued.

3. *Use of Assessments.* The Assessments levied by the Association shall be used for upgrading, repairing and/or maintaining streets and installing, acquiring, maintaining, repairing and up keeping improvements and/or facilities of the Association or the Subdivision (such as paying electricity charges of street lights), as well as for the purpose of promoting the recreation, health, safety and welfare of the lot owners, and in particular, for the improvement, maintenance and operation of the Subdivision, including the Common Area, as well as services and facilities devoted to this purpose and related to the use and enjoyment of the Subdivision by the lot owners.

4. *Creation of Lien.* Each and every Assessment or charge including but not limited to the Annual Maintenance Charge contained in this part G are secured by a continuing vendor's lien on each Lot, which lien is reserved by Declarant and hereby assigned to the Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Association to secure Assessments and charges. Each lot owner, by his, her or its acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such lot owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial or judicial foreclosure by an action brought in the name of the Association, and grants to the Association the power of sale in connection with said lien. The President of the Board of Directors shall have the right to appoint one or more agents, to mail and file the notices required by Texas Property Code § 51.002 (as well as any other applicable section of the Texas Property Code or other applicable laws), to conduct the sale, and to otherwise comply with the applicable statute(s). The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other lot owners. No lot owner may waive or otherwise escape liability for the Assessments provided for herein by abandonment of his, her, it's or their lots.

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

6. *Budget.* Each year, the Board of Directors of the Association shall adopt an annual budget and, when applicable, set the amount of the annual assessment, taking into consideration the Association's operating cost for the then current year, expected increases or decreases in such costs over the next year, and the future needs of the Association. The annual budget shall be adopted by the Board of Directors at least thirty (30) days prior to the commencement of each calendar year.

7. *Member Charge.* In addition to the annual assessment and any special assessment, the Association, by a majority vote of the Board of Directors, may impose a charge (Member Charge) upon any lot owner for the purposes of reimbursing the Association for all direct and indirect costs incurred by the Association with regard to the maintenance, repair or replacement of landscaping or site improvements on any particular lot when the Board of Directors has determined the maintenance, repair or replacement of improvements associated with such owner's lot has been neglected to the point where conditions existing on such lot are not in conformance with the maintenance obligations set forth in these Restrictions. The owner of such lot shall be notified in writing of said determination and the specific deficiencies found to exist and shall be afforded a reasonable period of time to respond to said notice by correcting the deficiencies. The owner of such lot shall be assessed the cost of reimbursing the Association for any and all costs, including attorney's fees, to secure compliance. Member charges are due and payable within thirty (30) days after the lot owner was served with notice by the Association of the amount of such Member Charge.

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

9. *Subordination of Lien to Mortgages.* The lien granted and reserved to the Association is subordinate to the vendor's lien and the lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The lien of the assessments provided for herein shall be subordinate to the lien or liens of any mortgage or mortgages now or hereafter placed upon the lot or lots subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such lot or lots pursuant to a decree of foreclosure, non-judicial foreclosure, or conveyance in lieu of foreclosure or in satisfaction of mortgage debt. Such sale or transfer shall not relieve such lot or lots from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

10. *Notice of Lien.* Notice of the lien may be given, but is not required, by the recordation in the Real Property Records of Polk County, Texas of an Affidavit of Delinquent and Notice of Assessment Lien, duly executed by an officer, managing agent, attorney or officer of the Association, setting forth the amount owed, the name of the last known lot owner or owners of record, and the legal description of the lot.

11. *Delinquent Assessments.* Any Assessment not paid within thirty (30) days after it is due is delinquent.

## **H. Remedial Rights**

1. *Late Charges and Interest.* Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate to be determined, from time to time, by the Board of Directors, not to exceed the maximum rate of interest permitted by law. If the Board of Directors shall refuse or fail to determine a rate of interest, the rate of interest shall be the lesser of ten per cent (10%) per annum or the maximum rate of interest permitted by law. The Board may

change the late charge and the interest rate.

2. *Costs, Attorney's Fees, and Expenses.* In addition to the foregoing charges for delinquent accounts, each lot owner shall be obligated to pay to the Association all actual costs of collection incurred by the Association, including attorney's fees and such reasonable collection charges as the Board of Directors may establish, all of which shall also be subject to the liens of the Association.

3. *Payment Application.* All payments shall be applied first to costs and attorney's fees, then to applicable charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

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

5.

5. *Foreclosure.* At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure, the occupants of such lot shall be required to pay a reasonable rent for the use of such lot and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale be entitled to appoint a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such lot by forcible detainer, by writ of possession, or by any other remedy allowed by law.

6. *Suspension of Rights.* If an Owner violates the Dedicatory Instruments, the Property Owners Association may suspend the Owner's rights under the Dedicatory Instruments in accordance with law.

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

## **I. Powers and Duties of Board**

1. *General Powers and Duties.* The Board of Directors of the Association, for the benefit of the lot owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for in these Restrictions, by law, and in the Bylaws of the Association:

- A. To execute all declaration of ownership for tax assessment purposes and with regard to any Common Area, if any, on behalf of all lots owners.

- B. To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent lot owners if the Board of Directors sees fit.
- C. To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.
- D. To protect or defend any Common Area from loss or damage by suit or otherwise and to provide adequate reserves for replacements.
- E. To make reasonable rules and regulations for the operation of any common areas and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument signed by a majority of the lot owners.
- F. To make available for inspection by lot owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by lot owners at reasonable times and intervals.
- G. 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 lot owners in proportionate amounts to cover the deficiency.
- H. To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any lot owner for violation of such provisions or rules.
- I. To collect all assessments and enforce all penalties for non-payment, including the filing of liens and institution of legal proceedings.
- J. To establish a monetary "fines" system which shall include due process hearings and a discretionary range of fine amounts, which, when levied, shall constitute a permitted Member Charge assessment secured by the lien herein established.
- K. To establish reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses.
- L. To accept title to real and/or personal property for any streets, Common Area, and Reserves.

2. *Exclusive Rights.* The Board of Directors shall have the exclusive right to contract for all goods, services, and insurance payment of which is to be made from the maintenance fund

and the exclusive right and obligation to perform the functions of the Board of Directors except as otherwise provided herein.

3. *Full Authority to Contract.* The Board of Directors, on behalf of the Association, shall have full power and authority to contract with any lot owner or other person or entity for the performance by the Association of services which the Board of Directors is not 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 of Directors may deem proper, advisable and in the best interest of the Association.

4. *Creation of Lien.* The payment of the Annual Maintenance Charge shall be secured by the same lien that is created by the provisions of these Restrictions to secure the payment of Assessments as set forth in part G of these Restrictions. The Board of Directors shall have the same rights of enforcement as well as all remedies that are set for in said part G. The lien to secure the Annual Maintenance Charge shall be subordinate to the lien of a mortgage to the same extent as set forth in paragraph 9 of said part G.

## **J. Common Area**

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

- a. charge reasonable admission and other fees for the use of recreational facilities situated on the Common Area, and if an Owner does not pay these fees, the Owner may not use the recreational facilities;
- b. suspend an Owner's rights to use a Common Area under the Dedicatory Instruments;
- c. grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes; and
- d. dedicate or convey any of the Common Area for public purposes, on approval by a vote of two-thirds (2/3rds) of the Owners at a meeting in accordance with the Bylaws.

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

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

## **K. Enforcement**

1. *Parties Bound.* These Restrictions shall be binding upon Declarant, Declarant's



successors and assigns, and all parties claiming by, through or under Declarant and all subsequent owners of property in the Subdivision, each of whom shall be obligated and bound to observe the terms of this instrument; provided, however, that no such persons, entities or parties shall be liable except with respect to breaches committed during ownership of said lots.

2. *Limitation of Impact on Mortgages.* The violation of any term or provision of this instrument shall not operate to invalidate any mortgage, deed of trust, security agreement or other lien or security interest acquired and held in good faith against any lot, or any part thereof, but such liens or security interests may be enforced as against any and all lots so encumbered.

3. *Standing and Remedies.* The Association, any lot Owner, Declarant, or the holder of a lien, deed of trust, security agreement, or mortgage on any lot or lots in the Subdivision shall have the right to enforce observance or performance of the provisions of this instrument. If any person violates or attempts to violate any term or provision of this instrument, it shall be lawful for the Association, any lot owner, Declarant, any party holding a lien, security interest or mortgage on any lot in the Subdivision to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate any term or provision of this instrument, in order to accomplish any one or more of the following: to prevent the lot owner, or his, her, it's or their tenants, invitees or representatives from so doing; to correct such violation; to recover damages; or, to obtain such other relief for such violation as then may be legally available.

4. *Result of Conflicting Restrictions.* These Restrictions shall not permit any action or thing prohibited by the laws, rules or regulations of any governmental authority. In the event of any conflict, the most restrictive provisions of such laws, rules, regulations, or these Restrictions shall govern and control.

JPR Investments, L.L.C., a Texas limited liability company,

BY: \_\_\_\_\_  
Craig Jones, President

STATE OF TEXAS )

COUNTY OF POLK )

This instrument was acknowledged before me on \_\_\_\_\_, by Craig Jones, President of JPR Investments, L.L.C., a Texas Limited Liability Company on behalf of JPR Investments, L.L.C., a limited liability company.

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

After recording, please return to:

Hannah Law Firm, PLLC  
200 E. Lufkin Ave.  
Lufkin, Texas 75901