

**9752753 291-00-0946**

THE STATE OF TEXAS

COUNTY OF MONTGOMERY

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF**  
**MONTGOMERY TRACE SUBDIVISION**  
**SECTION IV**

Please refer to the original document for any legal use. Original copies can be obtained from CKM Management Company.

Ebco Land Development, Ltd., hereinafter called "Declarant" is the Owner in fee simple of certain real property located in Montgomery County, Texas, said property being known as Montgomery Trace Subdivision Section IV, as per plat thereof of record in the plat records of Montgomery County, Texas.

Subject property is now or will be divided into smaller parts or tracts, the total of which will hereinafter be referred to as the "Project", or as **Montgomery Trace Subdivision Section IV**.

For the purpose of enhancing and protecting the value, utility, attractiveness and desirability of the tracts constituting such project, Declarant hereby declares that all of the real property described above and each part thereof shall be held, sold, and conveyed only subject to the following easements, authority, covenants, conditions, and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I**  
**DEFINITIONS**

**Section 1.** "Association" shall mean and refer to Montgomery Trace Property Owners Association, its successors and assigns, or corporate entity of similar name as created by Developer, also called P.O.A.

**Section 1A..** "Special Association" shall mean an association formed and with the authority to do all things the Association is authorized to do except that authority is limited to a specific commons dedicated to the use and benefit of designated lots or tracts only who are members of that special association.

**Section 2.** "Declarant" shall mean Ebco Land Development, Ltd., their heirs, successors and assigns. Provided such an assign acquires the project in total, or the remainder in total for purposes of development and sale. Declarant may be referred to as Developer.

**Section 3.** "Tract" shall mean any plot of land as is divided or re-divided within the project.

**Section 4.** "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting, drainage, irrigation systems, commons and other related improvements and fixtures in a condition

comparable to their original condition, normal wear and tear excepted.

**Section 5.** "Member" shall mean every person or entity who holds membership in the Association. Each purchaser of property in the project becomes a member of the association upon such purchase.

**Section 6.** "Mortgagee" shall mean a holder of a bona fide mortgage or a beneficiary under or holder of a Deed of Trust.

**Section 7.** "Mortgage" shall mean a bona fide mortgage, a Deed of Trust, or a Vendor's Lien.

**Section 8.** "Authority" shall mean that authority as created herein and vested in the Association.

**Section 9.** "Board" shall mean the Board of Directors of the Association.

**Section 10.** "Drives" shall mean any common area reserved for use by all Owners for vehicular traffic.

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**Section 11.** "Commons" shall mean any property reserved for or dedicated to the common use of property Owners, or established through easements across tracts, or any properties leased for such purpose.

**Section 11A.** "Specific Commons" shall mean any property reserved or dedicated to the common use of a limited specified group of property owners in a designated section, block, tract or group of lots as designated upon the plat or otherwise identified be recorded document.

**Section 12.** "Owner" shall mean the record Owner, including Declarant, whether one or more persons or entities, of fee simple title to any tract which is a part of the project, and shall include purchasers under contract for deed, but shall not include those holding title merely as security for performance of an obligation.

**Section 13.** "Project" shall mean the real property described herein, and such additions thereto as may be brought within the Jurisdiction of the Association as hereinafter provided.

**Section 14.** "Vote" where one vote per acre is stated herein, it will mean one vote for a full acre and/or a fractional vote for a fraction of an acre, i.e., a 1/4 acre ownership will count as 1/4 of a vote.

## **ARTICLE II** **EASEMENTS, DRIVES, ROADS, AND PRIVATE ROADS**

**Section 1:** Private roads, drives, or access easements and easements for installation and maintenance of utilities, irrigation and drainage, are established by separate instrument or instruments of record or to be placed of record in the office of the County Clerk and as hereinafter set forth. Within such easements and private roads, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of service or utilities, or which may damage, interfere with, or change the direction or flow of drainage facilities in the easements, or which may

interfere with passage along such common or private road easements. The easement area of each tract and all improvements therein shall be continuously maintained by the Owner of such tract, except for improvements or maintenance of which a public, private, or quasi-public authority or utility company is responsible. Easements established as commons for greenbelts, riding trails, hiking trails, etc. will be maintained by the association and may not be fenced into private property except as hereinafter prescribed .

**Section 2:** No dwelling unit or other structure of any kind shall be built, erected, or maintained on any such easement, reservation, or right of way, and such easements, reservations and rights of way shall at all times be open and accessible to representatives of the Authority, to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Declarant, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, or under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved.

**Section 3:** The Association, through its duly authorized employees and contractors shall have the right, after reasonable notice to the Owner thereof, to enter any tract at any reasonable time to perform such maintenance as may be authorized herein.

**Section 4:** The private drive or roadway easements as set forth herein or by separate instruments or as established within the commons upon the ground, are for the private use and benefit of the Owners of the tracts within the project as therein prescribed, and under the conditions as therein set forth, and are not dedicated to the general public.

**Section 5:** The Declarant/Developer or the Association in its authority may take unto itself or execute unto any fresh water supply, electric utility, gas utility, telephone or other utility entity right of way easements in the form and under the conditions as may at that time be required by said entity as a prerequisite to service of this project with fresh water or other utility.

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**Section 6:** The Declarant/Developer or the Association in its authority may take unto itself or execute unto others right of way easements in the form and under the conditions as at that time may be required by said entity to distribute to each and every tract herein water for the purposes of irrigation and/or provide drainage.

**Section 7:** It is understood and agreed that the easements granted herein and to be granted hereafter are reserved as permanent easements for the purpose set forth and are not subject to the time limit applicable to other restrictions.

**Section 8:** There is hereby reserved and established a utility easement adjacent and parallel to all roadway easements and/or drainage easements. Said utility easement is sixteen (16) feet wide upon the ground and sixteen (16) feet wide above the ground and extends from the outside boundary of the roadway easement or right of way - into and upon the adjoining property on each side thereof. There is further reserved an easement into all property adjacent thereto and in addition thereto for the purpose of installation of guy wires where necessary for securing utility poles.

**Section 9:** There is hereby reserved and established an easement for any purposes of the association including but not limited to greenbelt, hiking, biking, horse trails, commons and service of utilities 20 feet in width upon the ground in and across the rear tract line and elsewhere as indicated on the subdivision plats or instruments of dedication. If the commons or greenbelts are not indicated on the recorded plat, they are hereby imposed in and upon the rear of every lot and are imposed in and upon every area where a utility or drainage easement is indicated upon the plat upon any rear or side line, but not upon the front or any street side. These areas are called commons . Such commons may be further dedicated by separate instrument.

### **ARTICLE III** **ARCHITECTURAL CONTROL**

**Section 1:** No external improvements or changes shall be erected, placed, or altered on any tract until the construction plans and specifications and a plan showing the location of the structure, and complete plan of septic system showing relation to tract lines and water lines or sources have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Approval shall be as provided herein.

**Section 2:** The Architectural Control Committee is hereby authorized to enforce any building or fire codes, or any rules, restrictions or requirements concerning the construction of buildings in this project.. Said requirements having been made by an Authority, local, county, state, or otherwise, having the legal authority to make such requirements. It is further stipulated herein that the Architectural Control Committee is empowered to require fire walls to be constructed as wall sections in contiguous housing, should such type housing in the future be allowed, wherever said Architectural Control Committee deems that such requirement is necessary or beneficial to the safety and preservation of property or life. Such requirement would be made based on the requirements of municipalities of the area or some other standard code ordinarily pertaining to the construction industry.

**Section 3:** The Architectural Control Committee is composed of three persons appointed by the Board of the Property Owners Association. In the event of death, dismissal, or resignation of any member of the committee, the remaining members shall have full authority to designate a successor, subject to approval of the Association Board. Neither the members of the committee nor it's designated representative, shall be entitled to any compensation for services performed pursuant to this covenant except as it is budgeted and approved by the Association Board.

**Section 4: Procedure** - The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fail to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with; however, any building or improvements placed upon a lot herein that was not presented to the Architectural Control Committee for approval prior to start of construction or placement will be in violation of these restrictions and may be removed by the Architectural Control Committee at the property owner's expense. If the P.O.A. pays for such removal, the cost, plus interest will become a lien upon the property.

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## **ARTICLE IV.**

### **USE RESTRICTIONS**

**Section 1:** All tracts in this subdivision are designated as residential homesites for single family dwellings.

**Section 2:** Any dwelling constructed on said tracts must have a floor area of not less than 2,000 square feet, exclusive of open or screened porches, terraces, patios, driveways, carports and garages, and shall be constructed of at least standard frame construction. If such building is set on blocks or piers, it shall have an outside or perimeter beam of brick or concrete. Any such structure must be completely dried in within 6 months of beginning of construction.

**Section 3:** No structure of a temporary character, trailer, basement, tent, shack, garage, or other outbuilding shall be used on any tract at any time as a residence, either temporarily or permanently. Outbuildings shall be permitted in the project. Storage buildings may not be utilized as residences on the tract. The owner may place a servants or guest house on the property without conforming to the square footage requirements so long as the building otherwise conforms to these restrictions; however, no such dwelling will be permitted prior to construction of the primary dwelling. Any building of any type must be approved by the architectural control committee the same as a dwelling.

**Section 4:** No tract shall be used or maintained as a dumping ground for rubbish or trash, and no garbage or other waste shall be kept except in sanitary containers. All other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition.

**Section 5:** Animals, livestock, emu, and ostrich, hogs or poultry may be kept, bred, and maintained on any tract under the following conditions:

A. No livestock of any type shall be allowed to run loose upon the streets or commons.

B. All horses, cattle or other livestock or animals shall be kept enclosed by suitable fencing of the tract.

C. No swine may be bred, kept or maintained on any tract in this project, except one per acre owned for personal consumption and/or show competition.

D. No chickens, turkeys, or other poultry may be kept or raised in this project, except five (5) per acre owned for personal consumption and/or show competition.

E. Though horses are permitted, public stables are not permitted.

F. Though cattle are permitted, feed lots are not permitted.

G. The premises shall be maintained in such a manner as to prevent health hazards and shall not be offensive to the neighboring tracts. Should any animal, including but not limited to cats and dogs, become offensive to the neighborhood, that

animal situation constitutes a violation of these covenants.

**Section 5A :** Specific commons created for horse pastures and stables in an equestrian complex estates area will be subject to rules made by the special association governing same, subject to these covenants and subject to any rules promulgated by the Association and these rules hereinafter set forth.

- A. Each member may keep two (2) horses per tract owned in the area served by the specific Commons.

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- No member may rent their space except to another member.
- No stud horses will be kept in the pasture or in any stall upon the premises.
- If any horse is declared dangerous to the other horses or to people by the Board of the specific Commons, the Board may require the owner thereof to remove that horse from the pasture.

**Section 6:** No abandoned or inoperative automobile, other vehicle or trailer shall be permitted to remain on any tract or in front of any tract. This is not to be construed to mean that personal campers, boats, tractors, trailers, recreational vehicles etc. in good and usable condition may not be kept on premises: however, campers, trailers, boats, tractors and utility vehicles of every nature must be kept on the rear 1/2 of the premises or in a garage, shed or other suitable building.

**Section 7:** No commercial activity other than that of permitted livestock shall be conducted on any tract. Raising of trees or farm produce is not considered commercial.

**Section 8:** It is hereby specifically stated that to rent space to campers, recreational vehicles, trailers, or other units for occupancy or storage or to maintain stables, kennels or space for rental to others is considered commercial operation for purposes of these restrictions, and is not permitted.

**Section 9:** No dwelling or garage shall be placed nearer to any property line than one hundred (100) feet from the street or fifteen (15) feet from adjacent owner's property line, or as shown on the plat of this section. Furthermore,

A. No barn, shed or outbuilding shall be placed nearer to the front or street line than one hundred (100) feet, nor nearer to the side line than ten (10) feet, nor nearer the front than the primary dwelling.

B. No barn shed or building designed and/or used for live-stock will be located nearer than twenty-five (25) feet to the dwelling proper of any adjacent owner's dwelling, provided said adjacent dwelling is set no further away from the street line than one hundred (100) feet.

**Section 10:** All lot owners shall provide for the disposal of waste material through a septic system or other disposal system approved by the appropriate governmental authority.

**Section 11:** No tract, as platted in this section, will be re-subdivided, except that the developer, its successors or assigns, may replat tracts for better utilization and function. However, any such replat will be subject to approval by all governmental authorities having jurisdiction, and all purchasers of tracts herein hereby waive the right or necessity of approval.

No tract as herein platted or replatted will be utilized for more than one primary single family residence and one single family guest or servants house.

For purposes of this Section of this project, single family residence means one detached, site-built residential house designed to be occupied by one family only and one two (2) car garage either attached or detached.

**Section 12:** Any fence installed within 100 feet of the front or rear lot line or any street side of any tract herein must be constructed of wood, masonry or wrought iron. All fences must be approved by the architectural committee prior to beginning construction.

**Section 13:** Oil and Mining Operations. No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed (or use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot in this subdivision.

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**Section 14:** No culvert, bridge, or crossing may be installed by lot owners unless approved by the proper authorities and the architectural committee. Conformance to star and grade requirements are mandatory. All culverts will be installed with headers, or retainers on each end to prevent erosion and dress culvert ends. These must be approved by the architectural control committee prior to installation of culvert or wings.

**Section 15:** No "For Sale" signs will be placed upon any vacant lot by individual lot owners, developers or any other person or entity. The property owner's association, or authority has the right to remove and dispose of any such signs. **NO** other signs are permitted without approval of the Architectural Control Committee.

**Section 16:** Prior to beginning construction on any house or building on any lot herein, owner will install a driveway from street to slab of at least four (4") inches of compacted rock, gravel, crushed limestone or better to prevent tracking of mud onto the streets.

**Section 17:** Should any property owner herein violate these covenants and restrictions, the property owners association and the authority created herein will fifteen (15) days after notice, have the power to file suit to enforce compliance. The association and authority will be empowered to charge as a special assessment all cost of time and expenditures, including legal fees, member's time, meeting fees, cost of removal of improvements in violation, and pay all related expenses. This special assessment will attach to the property upon which the violation rests and will become a lien as provided in these covenants for

assessments and liens.

**Section 18:** Any on-going violation may be prosecuted on an on-going basis with the goal of the Property Owners Association being to have the violation corrected by whatever means is necessary. Property Owners Association removal of violations is authorized at the property owner's expense.

**Section 19:** Storage of equipment, materials, or any other product, or pasturing of livestock is strictly prohibited prior to construction of primary residence.

**Section 20:**

A. The lake or lakes, if any, shown upon the plat is to be used only by property owners and their guests.

B: Boats may be placed in the lake for fishing and other recreational purposes. These boats may not have attached thereto any engine or motor other than an electric motor powered by batteries.

C. Sail boats, paddle boats and row boats are permissible.

D. All fishing must be done in compliance with local, state and federal fishing laws, as well as in compliance with P.O.A. rules and regulations as promulgated from time to time.

- Anyone throwing trash or waste into the lake or otherwise violating rules will be denied use of the lake.

**Section 21:** Lots adjoining the lake are subject to rules as follows:

A. No dwelling may be constructed closer to the lake shore than one hundred (100) feet.

B. Boat docks or piers may be installed on the lake shore; however, such structures may not be over twenty (20) feet in length along the shoreline and may not extend into the lake more than six (6) feet from the shore line.

C. All docks and any decks overlooking or attached thereto must be approved by the Architectural Control Committee.

D. No materials treated with creosote or other toxic materials will be allowed in or on the lake.

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E. No bulkheading of the shoreline of the lake will be allowed. All shorelines will be grassed and sloped into the lake by the owner. It will be the responsibility of each owner to maintain the shoreline with good sod and keep the shoreline mowed.

**ARTICLE V.**



## OWNER'S OBLIGATION TO REPAIR

Each Owner shall, at his sole cost and expense, repair and maintain his residence, and other buildings on his tract, keeping the same in a condition comparable to the condition of such building at the time of its initial construction, excepting only normal wear and tear.

## **ARTICLE VI.** **MEMBERSHIP IN ASSOCIATION: VOTING RIGHTS**

**Section 1: Membership** - Every Owner of a tract shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a tract.

**Section 1A: Membership** – Every owner of a tract benefiting from a specific commons as herein defined shall be a member of the special association formed to govern that specific commons. Membership shall be appurtenant to and may not be separated from ownership of a tract. It is hereby stipulated that all sections 2 through 5 of this Article VI, Sections 1 through 9 of Article VII and Sections 1 through 21 of Article VIII pertain to special associations the same as The Association.

**Section 2. Votes Developer** - For purposes of voting, Developer/Declarant will be construed as an owner and member with the same voting privileges of one (1) vote per acre owned, and a fractional vote for a fractional ownership, and Developer is entitled to one vote for each acre sold so long as Developer retains a financial interest or any ownership in this development.

**Amended 7/12/2002:** Section deleted

**Section 3: Votes Per Member** - All Owners shall be entitled to one vote for each full acre owned and a fractional vote for a fraction of an acre owned. When more than one person holds an interest in a given tract, all such persons shall be members and the vote for such tract shall be exercised as they may determine among themselves. In no event shall more than one (1) vote be cast with respect to *any* acre owned by such members.

**Section 4: Voting Procedure** - Voting may be by petition as prescribed for certain specific procedures herein. However, unless otherwise specifically stated herein, all votes will be by ballots mailed to the last known address of each member. These ballots must be mailed back by the member to a certified public accountant designated by the board. The public accountant will tally all votes and certify the results to be true. Each vote will be identified by a lot, block and section number, stating the acreage owned and the number of votes represented thereby.

Any ballot vote must allow no less than a 30 day period between mail out of ballots and the return of mailed ballots.

**Section 5: Boards** - Declarant, shall initially appoint a five (5) member Board of Directors for the Association with terms running one to five years, who shall serve until their respective terms expire. On the anniversary date of such appointments, and the same date of each following year, the members of the Association shall meet for the purpose of electing a member or members of the Board of Directors for that *year* as set forth herein. Such Board of Directors shall have the full powers and duties as may be

reasonably necessary to carry out the purposes and duties of the Association as provided herein. The above stated term and election date may vary fifteen (15) days before or after said date at the option of Board. Mail ballots will be provided for all voters who may return the ballots within the prescribed time and manner or who may bring the completed ballots to the above mentioned meeting.

**Amended 7/12/2002:** Second sentence amended to read as follows: "Beginning with the first annual meeting of members following the date of this Amendment, the Board of Directors shall consist of ten (10) directors elected for staggered two year terms of office at the annual meeting, one director elected by the members in each of Sections I through Section X of Montgomery Trace Subdivision."

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### **ARTICLE VII.**

#### **ASSESSMENTS**

**Section 1:** Declarant hereby covenants for each tract within the project, and each Owner of a tract is hereby deemed to covenant by acceptance *of* his contract or deed for such tract, whether or not it shall be so expressed in his contract or deed, to pay to the Association, (1) annual assessments, and (2) special assessments for capital improvements. Such assessments will be established and collected by the Board as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and a continuing lien on each tract against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation *of* the person or persons who owned the tract at the time the assessment fell due, and such personal obligation shall pass to the successors in title of such person or persons whether or not expressly assumed by them. However, the first owner liable will not be relieved of liability thereby.

**Section 2:** The annual assessments levied by the Board of the Association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents *of* the project, and for the construction, improvement and maintenance *of* the commons, drainage, irrigation systems, or community facilities and private or public roadway easements or rights *of* way within the project. The provision for maintenance of public road ways is made herein only in the case that the county, city, state or other public entity responsible therefore should fail to maintain said roadways properly.

**Section 3:** In addition to the annual assessments authorized above, the Association may levy in any assessment 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, repair, or replacement of the commons or a capital improvement to the project or any designated private roadway, or public roadway within or giving access to project. Any such assessment must be approved by a majority of votes cast by members, in a manner of voting as herein prescribed.

**Section 4:** The Association's Board of Directors shall fix the amount of the annual assessment against each tract at least thirty (30) days in advance of the due date thereof and shall fix the dates such amounts become due. Assessments may be made payable monthly. Notice of the annual assessments shall be sent to every Owner subject thereto. The Association shall, on demand, and for a reasonable charge, furnish a

certificate signed by an officer of the Association, setting forth whether the assessment against a specific tract has been paid, and shall on or before February 15th of each year, cause to be recorded in the office of the County Clerk of the County, a list of delinquent assessments as of that date setting forth and establishing the amount of the lien therefor.

**Section 5:** Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall bear interest from the thirtieth (30th) day after the due date at the highest legal rate per annum. The Association, acting through its Board of Directors, may bring an action at law against the Owner personally obligated to pay the same, and/or may foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas, community facilities, roadway easements, or abandonment of his tract.

**Section 6:** The assessment lien provided for herein shall be superior to the lien of any mortgage hereafter created. A sale or transfer of any tract shall not affect the assessment lien. The sale or transfer of any tract pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall not extinguish the assessment lien as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such tract from liability for any assessments thereafter becoming due or from the lien thereof, except as otherwise provided herein in Section 12 of Article VIII. However any lender, investor or purchaser may accept without further pursuit of diligence a certificate executed by the president and attested by the Secretary of the Association certifying the status of dues, assessments or liens.

**Section 7:** Any expenses of suit brought by the Association and/or Declarant herein and any expenses of defense of any suit brought against the Association, its officers, or directors, and/or Declarant in regard to the functions thereof in the administration or enforcement of these covenants shall be borne by the Association and the Association shall have and hold any rights to recovery of such expenses.

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If the Association, its officers, or directors, and/or declarant prevail in any suit brought against them by any Owner in the project with regard to the Association or declarant's administration or enforcement of these covenants and said Association, officers, directors, or declarant prevail in said suit, then such defendants are entitled to recovery and judgment against the suing owner for their costs of suit, including but not limited to, expert witnesses, attorneys, appraisers, surveyors, and litigation expenses.

The amount of any such judgment obtained for damages or cost shall automatically become a lien against defendant's property in this project and subject to the same stipulations for assessments. This lien will attach as otherwise prescribed by law.

**Section 8:** Each Owner in the project agrees that should suit be brought by Declarant and/or the Association to enforce performance of the covenants the suing party will be and is entitled to judgment for damages and all costs of suit, including but not limited to expert witnesses, attorneys, appraisers, surveyors, and court costs, should the action prevail.

The amount of any such judgment obtained for damages or cost shall automatically become a lien against defendant's property in this project and subject to the same stipulations for assessments. This lien will attach as otherwise prescribed by law.

**Section 9:** It is specifically stipulated that should Developer, its successors or assigns foreclose on any property sold under deed or contract such property will revert to status of inventory free of the obligation of any accrued and unpaid assessments or costs and/or liens therefore. Any such liens of records will be released by the appropriate officer or officers upon presentation of release thereto by Developer. Upon failure of such action by said authority, or in lieu thereof, Developer may file a release executed on and by its own behalf which will be conclusive evidence to all persons that such lien is thereby released unless the Association acting within its authority files a proper court action to invalidate said release within thirty (30) days after recordation. Furthermore, see Section 13. of Article VIII. herein.

## ARTICLE VIII.

### NOTICE OF AUTHORITY FOR ASSESSMENT

**Section 1:** Each interested party or purchaser of a tract or parcel of ground in this project is hereby made aware of the fact that some of the roadways herein within the commons are dedicated or will be dedicated to the use of the property Owners herein and are not dedicated to the county, any municipal body or public authority nor to the public. Such purchaser or other interested party is hereby given notice that the maintenance of such commons and county roads where deemed necessary by the Authority, and other designated areas and facilities, called common areas, and the payment for Security Guards and Patrols, if any, garbage pick-up and other conveniences deemed necessary and requisite to the pleasure, comfort, security and enjoyment of the property Owners in this project, will be provided for through an assessment or assessments, as the case may be, to be levied against each and every tract or parcel of land sold therein that will benefit from the use of common areas and common facilities to be maintained by assessment, such determination to be made by the Authority created herein. Determination of pro-rata assessment will be on a tract basis.

**Section 2: Agreement** - Each purchaser of a property in this project hereby agrees that Montgomery Trace Property Owners Association, as created and chartered by Developer, existing or to become existing under the laws of the State of Texas, has the authority, and in consideration of the necessity of such an authority, to administer the funds and attend to the management and maintenance of all common areas, services and facilities in said project, and does hereby grant and give unto the said Association, its successors and assigns, the authority to levy and collect assessments as necessary, and to expend said funds as necessary. Subject to the requirements as hereinafter set forth, for the purpose of the maintenance of all facilities and areas and services as hereinabove and hereinafter described. Until such association is formed, this authority is vested in Developer.

**Section 3: Commons** - It is herein stipulated that designated common areas may be used for any purpose required or deemed by the Authority advantageous to the property owners in the project, such purpose to include but not be limited to the installation of any or all utilities, and dedication of such easements and rights of way as

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deemed necessary by said Authority. Such dedications may be made upon a plat thereof or by separate instrument in writing and such dedication may be made at the discretion of the authority at anytime, present or future. The Authority may allow the installation of any main or service extensions in said Commons by letter or formal agreement to the utility company, or may allow installation of service

lines from main to dwelling or outlets by oral approval. Any such installations made will be considered approved if the Authority has not ordered such installation halted prior to completion thereof.

**Commons may be of several categories:**

(a) Dedicated commons are those commons owned or to be owned by the Association through dedication upon the plat or by separate dedication by other recorded instruments of conveyance.

(b) Easements as commons for community use by the property owners are those commons dedicated upon and across various lots, tracts and parcels of land, shown as easements and/or commons on the plats thereof and or as cited in separate instruments of record or to be placed of record.

(c) Leasehold commons are those commons not provided as easements or dedicated as fee commons, but are shown as leasehold. Leasehold commons are provided for the use of property owners under the terms and conditions as set forth in the lease agreements.

(d) Temporary Commons are those commons designated on a plat as such or upon the ground as such and may be commons utilizing land being held for future development, or as timberland forest by developer. Temporary Commons may be moved or eliminated.

(e) Limited Commons are those commons limited to a common area servicing a specific area in the project.

**Section 4: Effective Date of Assessments** - Any or all levies for any or all purposes as herein set forth may be made and begun at an appropriate time as will be determined by the Authority. Said action may be made to affect, at different times, any sections or tracts and levies for maintenance of various areas may be made or begun at different dates, and are not required to be made simultaneously.

When such determination is made by the Authority, notice will be given to the Owners of such properties as affected and all said Owners will then be required to pay said assessments to the Authority.

**Section 5: Handling of Assessed Funds** - It is specified herein that all funds collected by the Authority for maintenance and services of commons will be kept in a special bank account or savings account to be used only for the purposes as herein stated, and an itemized amount of all receipts and disbursements will be mailed quarterly to all property owners in said project.

If at any time the Owners of fifty-one percent (51 %) or more of the acres affected by an assessment desire that the fund so established and the books and records pertaining thereto be audited, then said Owners may, by affixing their signatures to a petition, cause such audit to be made. Such petition will cite the account by its proper identification and shall stipulate the name of a Certified Public Accountant who shall make such audit and the date that such records shall be made available to said Accountant. The Authority will then be compelled to make such records available to the named Certified Public Accountant in the offices of the Authority or other place at the discretion of Authority and will be authorized to pay to such Accountant, reasonable accounting fees for said audit from the

funds of the account so audited.

**Section 6: Establishment of Amount of Assessment** - The Authority in initially setting the monthly levy or assessment for any purpose stated herein, will do so on an estimated basis determined by an in-depth study of the requirements of said purposes. Said amount so levied may be changed from time to time as necessary, to pay the allowed expenses as herein set forth or should said assessment prove to be more than needed for such purposes, then. The Authority may reduce said levy accordingly, or carry forward such excess to be used to decrease the amount of future assessments.

**Section 7: Special Assessments** - The Authority will have the right, privilege and powers to levy special assessments as may become necessary for purposes as required and authorized herein. Such special assessments would be made on the same pro-rata basis as herein above set forth and paid to Authority as prescribed by said

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Authority. Upon the approval of the Owners of fifty-one percent (51 %) of the acreage, subject to any special assessment, such special assessments could be made for the purpose of the construction or reconstruction of improvements in the Common areas for the use and benefit of such Owners.

**Section 8: Collection of Assessments** - The Authority will have the sole responsibility and authority to collect all assessments. Such assessments will be levied on a monthly basis and Authority will have the power to allow certain reasonable discounts to Owners paying said assessments semi-annually or annually in advance. Authority will have the power to add to such assessments appropriate and reasonable penalties against said Owners for delinquency in payment of assessments as well as the other remedies set forth herein.

**Section 9: Delinquent Assessments** - Any Owner being thirty (30) days delinquent in the payment of any assessment will have filed against his property a lien for such assessment, plus any penalties and costs. Such lien shall remain in effect until all past due assessments, penalties and costs have been paid or satisfied as otherwise set forth herein.

**Section 10: Enforcement of Liens** - Each lien established by the Authority pursuant to the provisions of this instrument, may be enforced by recording with the County Clerk of this county a notice of delinquency and lien upon said property and may be foreclosed, as and in the same manner as is provided for the non judicial foreclosure of a mortgage upon real property under the laws of the State of Texas, the same as if said Authority had retained a vendor's lien and possessed a Deed of Trust and note against said property. In any action to foreclose any such lien, the Authority shall be entitled to costs, including reasonable attorney's fees, and other allowed costs and penalties. The authority may employ any other process available under the law for collection.

**Section 11. Reservation of Liens** - The Authority does hereby reserve unto itself, establish and impose, a lien, thereby securing each assessment imposed or to be imposed, or in any way provided for herein, together with any costs, interest, or penalties against all the property covered in this instrument

subject only to any limitations and/or provisions in this instrument.

**Section 12 Subordination to Mortgage** - Each and every assessment and lien, together with any cost, penalties or interest, established, reserved or imposed under this instrument and authority shall be subordinate to any prior valid bona fide mortgage or trust deed (and the lien and/or title thereof) which has been given in good faith and for value on any interest covered by this instrument and authority. Any subsequent Owner of any property so covered, purchased at foreclosure or otherwise, shall be bound by restrictions, conditions, covenants, reservations, assessments and liens set out in this instrument, excluding any assessment or lien arising prior to a foreclosure sale brought about by a lender under any valid, bona fide mortgage or trust deed. A valid, bona fide mortgage or trust deed for purposes of this document is one given for funds applied to the purchase of, or improvements of, the property upon which the lien is created. This lien for assessments is also subordinate to future liens as set forth in Section 13 following.

**Section 13: Exclusion of Developer** - The Developer of this project, its successors and assigns, hereinafter called Developer, will sell to purchasers properties within said project. It is specifically stated and agreed that if one or more tracts or parcels of land are sold to any purchaser by Developer, by contract for deed, or deed with lien and note or other instrument, and purchaser defaults in payments of said lien in any manner, such as failure to pay principal, interest, taxes, insurance or assessments set out hereunder and said property be repossessed, or such contract canceled by Developer, or any assignee of Developer's right, title and interest in any such lien or contract, then Developer or said assignee, will not be required to pay to the Authority any delinquent or past due assessments or penalties and any liens for non-payment of same filed by said Authority will be released as regards such property. Evidence of such cancellation, repossession or foreclosure will, in itself be sufficient with no further release or action required by the Authority for this purpose; however, this stipulation does not, by any means relieve the purchaser in default who failed to pay such assessments levied and/or penalties and cost, and from whom said property was repossessed of his personal liability to pay such delinquent funds, though such delinquency will not be attached to such property as a lien in this instance. This provision does not affect the rights of the authority, as a creditor, to pursue other remedies and liens.

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**Section 14: Rules and Regulations Governing Use of Commons and Facilities Therein** - Rules and regulations governing the use of all commons and facilities will be made and enforced by the Authority, to insure the best and mutual enjoyment thereof of all the qualified property owners and their guests. Any Owner who fails to pay assessments levied or fails to comply with any requirements or rules and regulations governing the use of said commons and facilities, will be denied the use thereof. Such rules and regulations to be made and enforced by the Authority will include, but not be limited to, rules concerning guest privileges to commons, recreation facilities, if any, speed limits on streets, type of vehicles on streets and other commons, control of noise, use of irrigation water, channels or canals, use of any lakes, ponds or streams within the commons.

**Section 15: Delegation of Use of Facilities** - Any Owner may delegate his right of enjoyment to the common areas and facilities to the members of his immediate family, his tenants, or contract purchasers who reside on the property.

**Section 16: Maintenance of Tracts** - The Owner of a tract or tracts in the project will be required to keep the grass and weeds cut and will be required to keep said property free of any unsightly or offensive accumulation of trash, garbage, or unsightly deposits of any nature or kind from the date of purchase of said tract. This requirement is effective on occupied and unoccupied tracts. Ten days after notice to Owner of such situation existing, the Authority hereinabove created or its employees will

have the right and authority to enter upon said premises and correct existing violation of the requirements so stated. Such Authority will charge said Owner a reasonable fee for such work accomplished and bill said Owner for said fee plus a reasonable service charge per month, for each instance, until Owner pays said Authority in full as billed. All monies so owed the Authority will become a special assessment against the property of owner.

**Section 17: Exterior Maintenance of Buildings** - In the event the owner of any building in the project should allow such building to fall into disrepair and become in need of paint, repair, restoration of any nature or other corrective measures and become unattractive and not in keeping with the neighborhood, the Authority as herein established will give such owner written notice of such conditions. Fifteen (15) days after notice of such condition to owner, and failure of owner to begin and continue at a reasonable rate of progress to correct such condition, the Authority may enter upon said premises to do or cause to be done any work necessary to correct said situation. The owner thereof shall be billed for cost plus ten percent (10%). All tones so owed the Authority will become a special assessment against the property of owner.

**Section 18:** The Authority herein created is empowered to contract with a utility company for the Owner of each tract or dwelling in this project to pay the amount of \$2.00 (Two dollars) to be paid in cash or added to such owner's electric bill each month, as a contribution toward payment for the operation and maintenance of street lighting in this project. This fee may be adjusted up or down within reason in accord with the rates of the utility company. Authority may include funds for street lights in the general assessment.

**Section 19: Notice** - In all instances herein where notice is required, notice will have been given upon placing in the United States mail, said notice to the last known address of such person or party to whom notice is to be given.

**Section 20:** It is specifically agreed by each purchaser and stipulated herein that the Developer, its successors, and assigns will have the right of use of all commons. Such use will be allowed for the purposes of promotion and sale of property by said Developer and will include the right of Developer to issue passes and permits to guests or prospective purchasers of property and Developer's employees to use and enjoy for limited periods, such commons, facilities, and services. This right is reserved unto the Developer, its successors, and assigns so long as said Developer owns land in the project and is marketing same.

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**Section 21:** It is fully understood that Developer is subjected to the same payments per tract owned to the Authority created herein as is any other tract Owner; save and except those lots or tracts foreclosed on by developer or received by Developer as the result of canceling a contract. However, it is fully understood that Developer may pay in advance any amount of funds in the form of improvements, maintenance, repairs, leases, rentals, and property donation at market value, and will receive full credit for such contributions and advances, plus interest at twelve percent (12%) per annum on such funds advanced against assessments. Each *year* the Authority will charge against such advances and interest any assessments accrued against Developers' tracts, carrying forward any credit balances to the next and ensuing years. Should Developer have a credit balance remaining after sell out of the total project of all sections, such credit balance will not be a charge to the Association, but will, in fact, be written off by



Developer.

## ARTICLE IX.

### UTILITY STANDBY CHARGES

**Section 1:** Should the requirement for utility standby charges become necessary to the installation of any utility or service, the Association shall have the right to establish such standby charges and in such case there shall be levied against every individual tract, severally, a standby charge not to exceed the exact cost per month to the association. Such charge shall be fixed from time to time by the Board of Directors of the Association, which charge shall be due and payable in monthly installments in advance, or as otherwise required; and the payment of such standby charge or charges shall be and is secured by a lien hereby created. The Association does hereby reserve unto itself, its successors and assigns and establish and impose a charge.

**Section 2:** This lien so established, may be foreclosed upon after notice of delinquency to the Owner of any tract, as and in the same manner as is provided for the non judicial foreclosure of a mortgage upon real property under the laws of the State of Texas, the same as though the Association had retained a vendor's lien and possessed a deed of trust and note against said tracts. Any such action of foreclosure will entitle the lien holder to reasonable attorney's fees and other allowed costs and penalties. In addition to this provision, the association may pursue any other procedures of collection as may be provided under the law.

**Section 3:** It is specifically stated herein that all property held by the Developer, its successors and assigns for sale or resale within this project is hereby totally exempt from any and all of the requirements of this Article and no lien shall become effective on any property herein until said property is sold to a bona fide purchaser by contract or deed.

**Section 4:** Such standby charge, the liens securing the payment thereof, and the right and responsibility for the enforcement thereof are hereby reserved unto and given over to the Association. Such charge, and all liens securing the payment thereof, except for delinquents, shall be released and discharged automatically (without further action) on any tract upon the conveyance of any tract to the initial person or persons who will reside on the property and the completion of a dwelling or residence on the property and tie into the utility with continued service. Such completion may be evidenced by the creation and recordation of the first lien mortgage or deed of trust on the improved property *or by* the execution of a release by the holder of said lien or by the Board of Directors of the Association, of the lien created hereunder to secure the standby charge, however, prior to same any and all due or past due charges and fees must be paid in full.

**Section 5:** The Association may assign or pledge to any utility provider this right of assessment and security for standby charges. In such instance, the standby charges will be set at a rate in conformance with published or approved tables of any state agency or authority, if any. In the absence of such an authority, the rates will conform to normal and usual rates. This authority granted and created in this Section is reserved unto Developer until the creation of the Association is accomplished. **lien, thereby securing the assessment as herein set forth for the prescribed utility standby**

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**ARTICLE X**  
**LAW ENFORCEMENT AND STREET RIGHTS**

**Section 1: Traffic Law** - Notwithstanding the fact that some roads and the commons in this project are or may be dedicated not unto the public, but only to the property owners in the project as easements, it is hereby stipulated that the Commissioners Court or other public governing body will have the full authority to establish speed limits or other traffic laws and rules, and penalties for violation thereof upon the streets of this project, and the law enforcement officers of the County or of the State of Texas or any other official body having such authority, may enter upon this project to enforce the speed limits as set by the County Comissioners Court or other entity or authority, just as though said roadways were public.

**Section 2: Public Law** - Notwithstanding the fact that commons in the project are private and dedicated or are made available only unto the property owners within the project, it is hereby stipulated that any law enforcement officer, City, County, State, or Federal, is *hereby* authorized to enter upon the premises of the project for all purposes Just as though the project commons were dedicated unto the public, and every law enforcement officer will have the same rights, privileges and duties within the boundaries of this project as he would in any subdivision whereby the streets and other commons and facilities were dedicated to the public.

**ARTICLE XI**  
**GENERAL PROVISIONS**

**Section 1:** Declarant, the Association, or any Owner shall have the right to enforce, *by any* proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this declaration. Failure by Declarant, the Association, or by any Owner to enforce any covenant, or restriction herein contained shall in no event be deemed a waiver of the rights to do so thereafter.

**Section 2:** Invalidation of *any* one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 3:** Covenants and restrictions of this declaration may be amended by duly recording an instrument executed and acknowledged as approved by the Board, by not less than seventy-five percent (75 %) of the votes cast by members on the basis of one vote per acre owned.

**Amended 7/12/2002:** Section deleted

**Section 4:** No breach of any of the conditions herein contained or re-entry by reason of such breach shall defeat or render invalid the prior lien of any mortgage made in good faith and for value as to the project or any tract therein; provided, however, that such conditions shall be binding on any Owner, except Developer, whose title is acquired by foreclosure, trustee's sale, or otherwise.

**Section 5:** The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any member thereof for a period of twenty-five (25) years from the date hereof, and thereafter shall continue in effect for additional periods of ten (10) years, unless they are canceled or amended by written vote by the then Owners of at least seventy-five percent (75%) of the acres based upon one vote for each acre owned.

**Amended 7/12/2002:** Amended to read as follows: "The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any member thereof for a period of twenty-five (25) years from the date of execution of the original Declaration, and thereafter shall continue in effect for additional periods of ten (10) years unless terminated. The covenants and restrictions of this declaration may be amended at any time, and may be terminated at the end of the original or any extended term, by a vote of the Owners of two-thirds (2/3) of the acres within platted lots in Montgomery Trace Subdivision, Sections I-X, with each Owner being entitled to one vote for each acre owned and a fractional vote for each fractional acre owned. The Board shall execute and record an instrument in the Real Property Records of Montgomery County, Texas to evidence any approved amendment or termination."

**Section 6:** Declarant shall have the right during the term of the continuation of this agreement to add to the real property within the project any area tracts and the Owners of the tracts within such added portion shall become members of the Association on the same terms and conditions and subject to the same restrictions as apply to Owners of tracts within the original project.

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EXECUTED THIS 21st day of August 19 97 .

THE STATE OF TEXAS

COUNTY OF **Montgomery**

EBCO LAND DEVELOPMENT. LTD. BY ITS GENERAL

PARTNER. EBCO INTERESTS. INC.

Bennett Ebner

**ACKNOWLEDGEMENT**

This instrument was acknowledged before me on the 21<sup>st</sup> day of August, 1997 by Bennett Ebner.  
President of Ebco Enterprises, Inc., General Partner of *Ebco* Land Development. Ltd.

Paul C. Hasler  
Notary Public, State of Texas  
Notary's printed name:  
Paul C. Hasler