

**2014 RESTATED AND AMENDED DEED RESTRICTIONS
FOR EMERALD BAY SUBDIVISION, POLK COUNTY, TEXAS**

WHEREAS, THOMAS E. AIKIN, Trustee for Mortgage Investment Group, (“Developer”), is the record developer of a subdivision known and designated as EMERALD BAY SUBDIVISION (“Subdivision”), in Polk County, Texas as shown in the maps or plats of said subdivision, recorded in the Plat Records of Polk County, Texas, in Volume 8, Page 43, reference to which is hereby made for all purposes; and

WHEREAS, said developer, on April 4, 1983, at Volume 431, Page 93, et seq, has previously filed its “Emerald Bay Subdivision Restrictions” (“Original Restrictions”), applicable to Emerald Bay Subdivision, reference to which is hereby made for all purposes; and

WHEREAS, said developer amended the Deed Restrictions by that certain Amended Subdivision Restrictions and Reservations, Emerald Bay, A Rural Subdivision, (“Amended Restrictions”), filed of record on April 20, 1983, at Volume 432, Page 634, Deed Records, Polk County, Texas; and

WHEREAS, on June 15, 1984 an agreement concerning restrictions was executed, filed of record at Volume 459, Page 790, Deed Records, Polk County, Texas, which provided that Tom Aikin and S. E. Aikin would be solely responsible for enforcing all restrictive covenants and other duties concerning the Subdivision and Restrictions; and

WHEREAS, on November 12, 1985 Articles of Incorporation for Emerald Bay Property Owners Association, Inc., (the “Association”), were filed with the Secretary of the State of Texas and a Charter was issued on the same date; and

WHEREAS, said Amended Restrictions provided, at Vol. 432, page 637, the following procedure to amend the deed restrictions: “These covenants are to run with the land and shall be binding upon them until June 1st, 2000 A.D., at which time said covenants shall be automatically extended for successive periods of Ten (10) years unless an instrument signed by a majority of the then owners of the tract has been recorded, agreeing to change said covenants in whole or in part;” and

WHEREAS, said Amended Restrictions further provided, at Vol. 432, page 637, that “at such time as the Subdivision has been completely sold out, or at such earlier feasible time, at the discretion of the Developer, the then majority of lot owners in the Subdivision shall elect a committee from among their membership to operate and maintain the Subdivision thereafter in accordance with the reservations and restrictions herein contained; and

WHEREAS, Restated and Amended Restrictions were filed of record on September 22, 1993, at Volume 902, Page 346, et seq, Official Public Records of Polk County, Texas, (“1993 Amended Restrictions, Vol. 902”), “subject to the filing of a written instrument signed by a majority of the then owners of the lots”; and

WHEREAS, Restated and Amended Restrictions¹ were filed of record on October 12, 1993, at Volume 904, Page 188, et seq, (“1993 Amended Restrictions, Vol. 904”), and ratified by the filing of Acknowledgments representing the required percentage to amended the Restrictions; and

¹The main difference between the 1993 Restrictions at Vol. 902 and the 1993 Restrictions at Vol. 904 is in Vol. 902 “premises” is used; in Vol. 904 “lots” is used; also “Association” is replaced by “Board of Directors” in some places. Both 1993 Restrictions were signed by the same five directors: Bob Leming, Howard Davis, Joseph Lane, Margaret Main, and Linda Leissner.

WHEREAS, an “Acknowledgment of Agreement to Restated and Amended Restrictions for Emerald Bay Subdivision, Polk County, Texas” was filed of record on February 22, 1994, at Volume 919, Page 14, et seq, Official Public Records of Polk County, Texas, being and representing a recorded instrument signed by a majority of the then owners of the tracts, agreeing to change said covenants as provided by the 1993 Amended Restrictions, Vol. 904; and

WHEREAS, a “First Supplemental Acknowledgment of Agreement to Restated and Amended Restrictions for Emerald Bay Subdivision, Polk County, Texas” was filed of record on August 4, 1994, at Volume 940, Page 78, et seq, Official Public Records of Polk County, Texas, being and representing a recorded instrument filing additional acknowledgments and agreements of then owners of the tracts, agreeing to change said covenants as provided by the 1993 Amended Restrictions, Vol. 904; and

WHEREAS, an “Acknowledgment by Property Owner(s) to Restated and Amended Restrictions for Emerald Bay Subdivision, Polk County, Texas” was filed of record on February 6, 1995, at Volume 959, Page 778, et seq, Official Public Records of Polk County, Texas, being and representing a recorded instrument filing additional acknowledgments and agreements of then owners of the tracts, agreeing to change said covenants as provided by the 1993 Amended Restrictions, Vol. 904; and

WHEREAS, an “Amended Restrictions for Emerald Bay Subdivision, Polk County, Texas” (“1997 Amended Restrictions”), was filed of record on May 30, 1997, at Volume 97-1056, pages 260, et seq, Official Records of Polk County, Texas, which amended Section 2; and

WHEREAS, an “Amended Restrictions for Emerald Bay Subdivision, Polk County, Texas” (“1999 Amended Restrictions”), was filed of record on June 4, 1999, at Volume 99-1139, pages 794,

et seq, Official Records of Polk County, Texas, which amended Section 4; and

WHEREAS, an “Acknowledgment of Agreement to Amended Restrictions for Emerald Bay Subdivision, Polk County, Texas” was filed of record on July 20, 2000, at Volume 2000-1182, pages 746, et seq, Official Public Records of Polk County, Texas, being and representing a recorded instrument signed by a majority of the then owners of the tracts, agreeing to change said covenants as provided by the 1997 Amended Restrictions and the 1999 Amended Restrictions; and

WHEREAS, an “Amended Acknowledgment of Agreement to Restated and Amended Restrictions for Emerald Bay Subdivision, Polk County, Texas” was filed of record on June 15, 2001, at Volume 2001-1218, pages 413, et seq, Official Public Records of Polk County, Texas, being and representing a recorded instrument filing additional acknowledgments and agreements of then owners of the tracts, agreeing to change said covenants as provided by the 1997 Amended Restrictions and the 1999 Restrictions; and

WHEREAS, there are currently 41 lots in Emerald Bay Subdivision owned by 26 owners; and

NOW, THEREFORE, the Association’s Board of Directors hereby restate and amend the Restrictions applicable to Emerald Bay Subdivision, subject to ratification and approval by a majority of the current owners of the property in the Subdivision, to be as follows:

A. DEFINITIONS

1. Association. “Association” shall mean and refer to the EMERALD BAY PROPERTY OWNERS ASSOCIATION, INC., a non profit corporation organized under the laws of Texas, its successors and assigns.
2. Board of Directors. “Board of Directors” shall refer to the board of directors elected by the members of the Association.

3. Common Facilities. “Common Facilities” shall mean the roads, street lights, parks, and entrance features of the Subdivision, and landscaped areas established by the Developer for use as Common Facilities.
4. County Clerk. “County Clerk” shall mean the County Clerk of Polk County, Texas.
5. Declarations and/or Restrictions. “Declaration” and/or “Restrictions” shall mean the declarations and restrictions filed of record with the County Clerk for the Subdivision.
6. Dedictory Instrument. “Dedictory Instrument” shall mean each instrument governing the establishment, maintenance, and operation of the EMERALD BAY PROPERTY OWNERS ASSOCIATION, INC., and includes a declaration or similar instrument subjecting real property to restrictive covenants, certificate of formation, bylaws, or similar instruments governing the administration or operation of a property owners association, to properly adopted rules and regulations of the property owners' association, or to all lawful amendments to the covenants, bylaws, instruments, rules, or regulations, including but not limited to those identified above under “Declaration”. Dedictory Instrument further shall mean the Articles of Incorporation (now known as Certificate of Formation), Bylaws, and other rules, regulations, and resolutions filed of record with the County Clerk.
7. Directors. “Directors” shall mean and refer to any duly elected or appointed member of the Board of Directors.
8. Electronic ballot. “Electronic ballot” means a ballot: (a) given by: (1) e-mail; (2) facsimile; or (3) posting on an Internet website; (b) for which the identity of the property owner submitting the ballot can be confirmed; and (c) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner’s ballot. (Source: Section 209.00592 (d), Texas Property Code).
9. Lot. “Lot” shall mean any residential lot in the Subdivision, and identified in the documents filed of record, identified herein, and on record with the County Clerk.
10. Maintenance Charge. “Maintenance Charge” shall mean the periodic charge collected by the Association, (also known as maintenance fee) for each Lot in the Subdivision for the purpose of maintaining and improving the Subdivision.
11. Maintenance Fund. “Maintenance Fund” shall mean the amounts collected from time to time by the Association, upon payment of Maintenance Charges by the Owners.
12. Member. “Member” or “Members” shall mean and refer to all those Owners who are members of the Association as provided for in the Restrictions and/or in these Bylaws.
13. Owner. “Owner” shall mean and refer to the record owner, whether one or more persons or

entities, of the fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

14. Plats. "Plats" shall mean the plat of the subdivision recorded in the County Clerk's office.
15. Record Date. "Record Date" shall mean the date that the notice of any annual or special meeting is mailed.
16. Regular Assessment. "Regular Assessment" shall mean the annual amount that each owner of property within a residential subdivision is required to pay to the Association, which is designated for use by the Association for the benefit of the property owners of the Subdivision, as provided by the Restrictions, and include maintenance charges and maintenance fees.
17. Special Assessment. "Special Assessment" shall mean any fee and/or due, other than a regular assessment, that each Member is required to pay to the Association, as established by the Members at an annual or special meeting of the members of the Association at which a quorum is present and at which at least thirty (30) days notice is given of the intent to establish a Special Assessment and which action of the Members authorizes the Association to charge for:
 - (a) Defraying, in whole or in part, the cost, whether incurred before or after the assessment, of any construction or reconstruction, repair, or replacement of a capital improvement in the Common Areas owned by the Association, including the necessary fixtures and personal property related to such Common Areas, to the extent such expense is not sufficiently provided for with Regular Assessment funds;
 - (b) Maintenance and improvement of Common Areas owned by the Association; and/or
 - (c) Such other purposes of the property owners' association as stated in the Association's Certificate of Formation or the dedicatory instrument for the Subdivision.
18. Subdivision. "Subdivision" shall mean the Emerald Bay Subdivision, Polk County, Texas, as shown on the plat on file with the Polk County Clerk's office.

B. RESTRICTIONS AND COVENANTS

19. Single-Family Residential Use Only.
 - (a) The lots conveyed shall be used for single family RESIDENTIAL PURPOSES only, and no structure shall be erected or altered or permitted on these lots other than one detached single family dwelling, not to exceed three (3) stories in height, with a maximum height of thirty-five (35) feet from the 1st floor to the roof peak and private garage for not more than three (3) cars, and other out buildings incidental to residential use. No building, whether of a temporary or permanent nature, will be

permitted to be moved upon these lots. All buildings must be constructed on the lots.²

- (b) The term “residential purposes” as used herein shall be held and construed to exclude hospitals, clinics, nursing homes, duplex houses, apartment houses, boarding houses, hotels and all other commercial uses as all such uses of said property are hereby expressly prohibited.
- (c) Rental or lease of the lot and the residence thereon for any period of time less than 180 days shall be prohibited. Any rental or lease shall provide, in writing, that the renter or lessee has received a copy of the Deed Restrictions and agrees to be bound by same and comply with all Deed Restrictions.
- (d) Rental or lease of the lot and residence shall not relieve the property owner from compliance with these Deed Restrictions.

20. Subdivision of Lots. It is intended that there shall be no further sub-division of the lots in this Subdivision and that no more than one residential structure be permitted on any one of the lots as platted and recorded.³

This Deed Restriction does not preclude the sub-division of an included lot owned in common by the adjacent property owners for the purpose of increasing the size of the adjacent lots. In such a case the included lot will no longer be entitled to the previous mentioned “one residential structure” but will be considered to be become part of each of the adjacent lots and as such restricted to one residential structure on the combined lots. Furthermore, the maintenance fees assessed on the included (sub-divided) lot will continue to be paid by the owners of the adjacent lots as if the sub-division did not occur. Prior approval must be obtained from the Board of Directors to insure these conditions are being met before any such sub-division can take place.

Should the Board of Directors not grant and/or refuse to take action on a request meeting the above criteria within 45 days from the date the request was received, then the property owner(s) submitting the request may petition the Board of Directors for a special meeting to allow the membership to vote for or against the variance. In the event such a special meeting is necessary to vote on the request, the property owner(s) submitting the request shall be responsible for the costs of the special meeting, including the postage, security, and all other reasonable expenses normally incurred in the holding of annual and special meetings by the association. At said meeting, at which a quorum is represented in person or by proxy, the variance shall pass if a majority of the persons **requested** represented in person or by proxy

² 1993 Deed Restrictions No. 1.

³ 1993 Deed Restrictions No. 2.

at such special or annual meeting vote in favor of the variance. ⁴

21. No Mobile Homes. No mobile home, including “manufactured housing”, shall be placed on any lot in Emerald Bay. ⁵

22. Architectural Control Committee.

(a) No garages or outbuildings shall be constructed, placed or excavated until plans and specifications shall be approved in writing by the Board of Directors. ⁶

(b) The Board of Directors, shall exercise all authority of an Architectural Control Committee,(referenced at times as the “ACC”).

(c) The Board of Directors shall act to protect the owner of lots hereunder against such improper use of lots as will depreciate the value of their property; to preserve, so far as practical, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures and structures built of improper or unsuitable materials; to obtain harmonious architectural schemes; to insure the highest and best development of said property; to secure and maintain proper setbacks from streets and adequate free spaces between structures; and, in general, to provide adequately for a high type of quality of improvements in said property; and thereby to enhance the value of investments made by purchasers of lots therein.

(d) The Board of Directors may develop and publish Resolutions establishing rules and regulations for applications for architectural approval, which Resolutions shall be filed in with the Polk County Clerk as a dedicatory instrument.

23. Building Plans Approval Required. (A) No building shall be erected on these lots until the building’s plans, specifications and plot plan showing the location of such building have been approved in writing as to conformity and harmony of external design with existing structures in this development, and as to location of them with respect to topography and finished ground elevation, by a majority vote of the Board of Directors. ⁷

(B) No wall, fence, planter or hedge shall be erected or constructed on lots that do not meet the following conditions:

No wall, fence, planter or hedge shall be erected or constructed between the front property line and a point 8 feet in front of the dwelling or associated garage or shed and

⁴ 1997 Deed Restriction No. 2 as amended.

⁵ 1993 Deed Restrictions No. 3.

⁶ 1993 Deed Restrictions No. 13.

⁷ 1993 Deed Restrictions No. 4.

within accordance with the front set back line restrictions. No wall fence, planter or hedge will be erected or constructed on any corner lot between the side property line and the side set back line adjacent to the street. Walls, fences, plants, or hedges may be erected, but may not extend more than 8 feet from a dwelling or associated garage or shed. Decorative fences along the front easement are permitted with approval of the Board. Fences for child and pet containment and safety are permitted, but can extend more than 8 feet from the associated dwelling, garage, or shed and must be approved by the Board of Directors. All swimming pools must be fenced in accordance with state and county laws, but cannot be located closer than 150 feet to the lake.

For the purpose of this Deed Restriction 4(b), the set back and properly line definitions set forth in Deed Restriction 8 here of shall control. ⁸

24. [Exterior Building Requirements](#). All buildings erected on a lot shall be finished on the outside with an acceptable new wood, vinyl, aluminum, composition and/or masonry residential exterior building material. No building or frame construction shall be erected on any lot unless same shall at time of construction receive at least one coat of stain or two coats of paint. Thompson water sealer or similar product shall be considered a stain. ⁹
25. [Minimum Floor Area and Completion Requirements](#). No residential structure shall be erected on any lot in Emerald Bay unless its living area has a minimum of 1,300 sq. ft. of floor area exclusive of porches, decks, patios, carports and garages. [If such construction, placement or alteration is not commenced within eight \(8\) months of such approval, the approval shall be null and void unless an extension is granted in writing. After improvements are begun, work in progress shall be continuous and shall be prosecuted with reasonable diligence until all improvements are completed in accordance with plans submitted and approved by the Board of Directors.](#) Outside construction of all residences shall be completed within six (6) months from date of beginning construction unless such period is extended in writing by the Board of Directors. ¹⁰
26. [Approval of Exterior Changes](#). No changes shall be made in the exterior design thereof after construction is begun, on any lot until plans and specifications for the proposed improvements have been submitted and approved in writing by the Board of Directors. Such approval is to include any exterior design, floor elevation, exterior materials and finish and any and all other matter necessary to assure full compliance with these restrictions and covenants and such approval must be granted or denied within fifteen (15) days from

⁸ 1999 Deed Restriction No. 4(B) as amended 1999.

⁹ 1993 Deed Restrictions No. 5.

¹⁰ 1993 Deed Restrictions No. 6.

submission of plans and specifications or such plans will be considered as approved. ¹¹

27. [International Residential Code](#). [Except as may be provided for in these Restrictions, and/or any waiver or approval by the ACC, the International Residential Code applies to all construction, alteration, remodeling, enlargement, and repair of all structures built in the Subdivision.](#)
28. [Set Back Lines](#). The front property line is that property line adjacent to the roadway. No building shall be located in Block One nearer than ninety (90) feet to the front property line, nor nearer than five (5) feet to a side property line, and nearer than thirty (30) feet to the front property line in Block Two, excepting in the case of where the owners have or own in excess of one lot; then the owners may build on the interior lot lines; but not nearer than five foot to a side lot line not owned by him. ¹²
29. [Front Property Line](#). No detached improvement shall be erected or maintained on any part of any lot forward of the above lines, nor shall any boat, trailer, or truck camper tops be stored there. ¹³
30. [Reservation of Utility Easement](#). A seven and one-half (7.5) foot easement is reserved across the front of this property for utility installation and maintenance, together with all the rights of ingress and egress to or from right of way for the purpose of constructing, inspecting, repairing and maintenance of said easements. ¹⁴
31. [Plumbing and Sanitation](#).
 - (a) All septic systems installed in this Subdivision shall meet the minimum requirements of the Trinity River Authority of Texas and the Texas Water Quality Board. No septic system, sewer connection or any other sewage disposal system shall be installed until the Board of Directors has determined that construction of a permanent dwelling has proceeded to the point of justifying such installation. ¹⁵
 - (b) No outside privies or toilets shall be permitted in this Subdivision. All toilets shall be inside the houses and prior to the occupancy the same shall be connected to a septic tank at the expense of the person building on the building lot. Such septic tank

¹¹ 1993 Deed Restrictions No. 7.

¹² 1993 Deed Restrictions No. 8.

¹³ 1993 Deed Restrictions No. 9.

¹⁴ 1993 Deed Restrictions No. 10.

¹⁵ 1993 Deed Restrictions No. 11.

shall have a field line, shall be constructed and maintained in accordance with the requirements of the State Health Department and the Trinity River Authority, and shall be subject to the inspection and approval of such authorities. Further, whenever a central sewage treatment plant and disposal system shall be established to serve this Subdivision, whether publicly or privately owned or operated, then all of the lot owners, and/or occupants, to whom such sewage service is available, shall connect their lots, thereto for sewage disposal, paying the established rates and all connection fees or charges therefore at their expense and from and after the time such sewage disposal service becomes available to any lot, no septic tank, whether therefore or thereafter built or installed, shall be used in connection with any lot. ¹⁶

32. No Temporary Dwellings.

(a) No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a dwelling, either temporarily or permanently and regardless of sanitation accommodations. This specifically includes recreational vehicles, house or camping trailers, mobile homes, basements, tents, shacks, garages, barns, or other outbuilding. There will be no overnight camping in recreational vehicles, campers or tents on lots upon which there is no dwelling. On lots where there is a dwelling, temporary overnight camping shall be permitted for a maximum period of seven (7) days each time and a total of fourteen (14) days each year. ¹⁷

(b) Garages, attached or otherwise, are considered part of the dwelling. To prevent lots with orphan garages, if construction of an approved garage is begun before construction of the dwelling, the associated dwelling will be completed within one hundred eighty (180) days. Should the property be sold after construction of the garage is begun, it will either be removed or the buyer will be held to this original time period. ¹⁸

33. Signs.

(a) No sign, advertisement, billboard or advertising structure of any kind shall be erected or maintained on any lot without the consent in writing of the Association. The Association shall have the right to remove any such sign, advertisement, billboard or advertising structure which is placed on any lot without the consent of the lot owner or any other person, and in so doing shall not be liable and is expressly relieved from any liability upon any claim, demand and/or cause of action for damages or alleged

¹⁶ 1993 Deed Restrictions No. 12.

¹⁷ 1993 Deed Restrictions No. 13.

¹⁸ 1993 Deed Restrictions No. 14.

damages resulting directly or indirectly, from or anyway connected such removal.¹⁹

- (b) A property owner shall have the right to display “for sale” signs for the sale of their home and/or lot, provided that the sign does not exceed 2' x 3', and further provided that the sign is to be removed within thirty (30) days after sale. A property owners shall be entitled to display “vendor” or “contractor” signs, but any such signs shall be removed within thirty (30) days of completion of the work.
- (c) Political signs shall only be permitted on the lots in this subdivision as authorized by Section 202.009 of the Texas Property Code, (entitled “Regulation of Display of Political Signs), and as may be amended from time to time by the Texas Legislature. One or more political signs may be displayed on the owner’s property advertising a political candidate or ballot item for an election: (1) on or after the 90th day before the date of the election to which the sign relates; or (2) before the 10th day after that election date, provided that the sign must be ground-mounted, and no more than one sign is displayed for each candidate or ballot item. The sign (1) cannot contain roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component; (2) cannot be attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object; (3) cannot include the painting of architectural surfaces; (4) cannot threatens the public health or safety; (5) is not larger than four feet by six feet; (6) does not violates a law; (7) does not contains language, graphics, or any display that would be offensive to the ordinary person; and/or (8) is not accompanied by music or other sounds or by streamers or is otherwise distracting to motorists. A property owners' association may remove a sign displayed in violation of a restrictive covenant permitted by this section.

34. Lot Maintenance and Usage.

- (a) Said lots shall not be used for any purposes whatsoever which is an annoyance or nuisance to the other lot owners in said subdivision, and the placing, allowing or keeping of anything, or the commission of any act, which is an annoyance or nuisance to the owners of other lots is expressly prohibited.²⁰
- (b) No lot or portion of any lot shall be used as a dumping ground for rubbish or trash, nor for storage of items or materials (except during construction of a building), and all lots shall be kept clean and free of any boxes, rubbish, trash or other debris and inoperative cars, vans, or buses. The owners and occupants of each lot shall clear all rubbish and/or other discarded material and shall at all times so maintain their lots

¹⁹ 1993 Deed Restrictions No. 15.

²⁰ 1993 Deed Restrictions No. 16.

so as not to constitute or create an annoyance or nuisance to the other lots.²¹

- (c) No noxious or offensive trade or activity shall be carried on upon this property nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood such as allowing junk automobiles or excessive garbage and trash accumulation on the property
- (d) No building materials or other materials shall be stored or located on any lot except when the storage of building materials is necessary in connection with the construction of improvements then in progress, and then such material shall be placed within the property lines of the tract or parcel of land upon which the improvements are to be erected, and shall not be placed in the streets.²²
- (e) All rubbish and stored building material must be removed before the house is occupied.²³
- (f) The owners and/or occupants of all lots in the Subdivision shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner, and shall in no event use any lot for storage of material and equipment except for normal residential construction requirements, or permit the accumulation of garbage, trash or rubbish of any kind thereon.²⁴
- (g) In the event of default on the part of the owner or occupant of any lot in this subdivision in observing the above requirements, or any of them, the Association may, without liability to the owner or occupant, in trespass or otherwise, enter upon said lot, cut, or cause to be cut, such weeds and grass, and remove or cause to be removed, such garbage, trash, rubbish, etc., so as to place said lot in a neat, attractive healthful and sanitary condition, and remove the incomplete structure or other items at the expense of the offending party. The Association may bill either the owner or occupant of such lot for the cost of such work. The owner or occupant, as the case may be, agrees by the purchase or occupation of any lot in this subdivision, to pay such statement immediately upon receipt thereof.²⁵
- (h) Prior to such entry and correction of the restriction violation, provided for by this Deed Restriction, the lot owner shall be given thirty (30) days notice of the violation and an opportunity to cure the violation. If the violation is not corrected in that period of time, or such period as may be agreed upon by the lot owner and the Association shall have the right to correct such deed restriction violation, and if the cost of such correction is not paid within thirty (30) days of invoice, then a contractual lien is

²¹ 1993 Deed Restrictions No. 16.

²² 1993 Deed Restrictions No. 16.

²³ 1993 Deed Restrictions No. 16.

²⁴ 1993 Deed Restrictions No. 17.

²⁵ 1993 Deed Restrictions No. 17.

retained against the property as security for such expense, together with any legal fees and costs incurred in enforcing this restriction, and the Association shall have the right to judicially foreclose the lien securing such expense, legal fees and costs incurred in enforcing this restriction.

35. Building Maintenance.

- (a) All residences and other buildings must be kept in good repair and in a safe, neat and clean condition and must be painted when necessary to preserve the attractiveness thereof. ²⁶
- (b) In the event of default on the part of the owner or occupant of any building in this subdivision in observing the above requirements, or any of them, the Association may, without liability to the owner or occupant, in trespass or otherwise, enter upon said lot, repair or cause to be repaired said building so as to place said building in a safe, neat and clean condition and may bill either the owner or occupant of such building for the cost of such work; or, if the building be, in the sole discretion, in a hazardous or unsafe, condition, the Association may elect to notify the owner to remove such building within thirty (30) days and upon the failure to remove the same within said period of time, bring suit in the District Court of Polk County, Texas, for an order directing the removal of such building from the lot. ²⁷
- (c) Prior to such entry and correction of the restriction violation, provided for by this Deed Restriction, the lot owner shall be given thirty (30) days notice of the violation and an opportunity to cure the violation. If the violation is not corrected in that period of time, or such period as may be agreed upon by the lot owner and the Association shall have the right to correct such deed restriction violation, and if the cost of such correction is not paid within thirty (30) days of invoice, then a contractual lien is retained against the property as security for such expense, together with any legal fees and costs incurred in enforcing this restriction, and the Association shall have the right to judicially foreclose the lien securing such expense, legal fees and costs incurred in enforcing this restriction.
- (d) The owner or occupant, as the case may be, agrees by the purchase or occupation of any lot in this Subdivision, to pay such statement immediately upon receipt thereof, and/or to the entry of a Court decree ordering and directing the removal of such building. ²⁸

36. Flags & Front Yard Flagpoles.

- (a) Section 202.012, Texas Property Code, controls a lot owners' right to fly (1) the flag

²⁶ 1993 Deed Restrictions No. 18.

²⁷ 1993 Deed Restrictions No. 18.

²⁸ 1993 Deed Restrictions No. 18.

of the United States of America; (2) the flag of the State of Texas; or (3) an official or replica flag of any branch of the United States armed forces.

- (b) An owner has the right to fly the flag of the United States provided that the flag is displayed in accordance with 4 U.S.C. Sections 5-10.
- (c) An owner has the right to fly the flag of the State of Texas be displayed in accordance with Chapter 3100, Government Code.
- (d) An owner has the right to have (1) a flagpole attached to a dwelling or (2) a freestanding flagpole be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling.
- (e) the display of a flag, or the location and construction of the supporting flagpole, to comply with applicable zoning ordinances, easements, and setbacks of record; and
- (f) a displayed flag and the flagpole on which it is flown be maintained in good condition and that any deteriorated flag or deteriorated or structurally unsafe flagpole be repaired, replaced, or removed.
- (g) The Board of directors may adopt a resolution that regulates the size, number, and location of flagpoles on which flags are displayed, except that the regulation may not prevent the installation or erection of at least one flagpole per property that: (1) is not more than 20 feet in height and, subject to applicable zoning ordinances, easements, and setbacks of record, is located in the front yard of the property; or (2) is attached to any portion of a residential structure owned by the property owner and not maintained by the property owners' association. The resolution (1) may govern the size of a displayed flag; (2) may regulate the size, location, and intensity of any lights used to illuminate a displayed flag; (3) may impose reasonable restrictions to abate noise caused by an external halyard of a flagpole; or (4) prohibit a property owner from locating a displayed flag or flagpole on property that is: (A) owned or maintained by the property owners' association; or (B) owned in common by the members of the association.
- (h) A property owner who has a front yard and who otherwise complies with any permitted property owners' association regulations may elect to install a flagpole in accordance with either Subsection (d)(1) or Subsection (d)(2) of this Restriction.

37. Use of Adjacent Lots. This Restriction is intended to comply with Section 209.015, Texas Property Code, entitled "REGULATION OF LAND USE: RESIDENTIAL PURPOSE."

(a) In this section:

(1) "Adjacent lot" means:

(A) a lot that is contiguous to another lot that fronts on the same street;

(B) with respect to a corner lot, a lot that is contiguous to the corner lot by either a side property line or a back property line; or

- (C) any lot that is contiguous to another lot at the back property line.
 - (2) "Residential purpose" with respect to the use of a lot:
 - (A) means the location on the lot of any building, structure, or other improvement customarily appurtenant to a residence, as opposed to use for a business or commercial purpose; and
 - (B) includes the location on the lot of a garage, sidewalk, driveway, parking area, children's swing or playscape, fence, septic system, swimming pool, utility line, or water well and, if otherwise specifically permitted by the dedicatory instrument, the parking or storage of a recreational vehicle.
 - (b) An owner of a lot on which a residence is located may use, for residential purposes, an adjacent lot owned by the property owner.
 - (c) An owner must obtain the approval of the Board of Directors, based on criteria prescribed by the dedicatory instruments specific to the use of a lot for residential purposes, including reasonable restrictions regarding size, location, shielding, and aesthetics of the residential purpose, before the owner begins the construction, placement, or erection of a building, structure, or other improvement for the residential purpose on an adjacent lot.
 - (d) An owner who elects to use an adjacent lot for residential purposes under this section shall, on the sale or transfer of the lot containing the residence:
 - (1) include the adjacent lot in the sales agreement and transfer the lot to the new owner under the same dedicatory conditions; or
 - (2) restore the adjacent lot to the original condition before the addition of the improvements allowed under this section to the extent that the lot would again be suitable for the construction of a separate residence as originally platted and provided for in the conveyance to the owner.
 - (e) An owner may sell the adjacent lot separately only for the purpose of the construction of a new residence that complies with existing requirements in the dedicatory instrument unless the lot has been restored as described by Subsection (d)(2).
38. Liability of Owners to Owners' Families and Guests. Property owners shall be entitled to bring guests to the subdivision and said guests shall enjoy the privileges of using and enjoying any and all of the facilities made available to the property owners. Property owners shall be responsible for any and all guests they allow upon the property, and said property owners shall remain liable for any violations, and any damages arising therefrom, including attorney's fees and court costs, of these Deed Restrictions committed by any of their guests,

and the Association shall not be liable for any such injury.²⁹

39. Firearms, Hunting and Fishing. All fishing and game laws must be observed and obeyed while the subdivision by any owners or their guests. No firearms shall be discharged in the subdivision (including any of the roads, easements, reserve areas, recreational areas and other common grounds) and no motorcycles, motorbikes, four-wheel drive vehicles or other recreational vehicles may be operated in the Subdivision for any purpose except transportation on designated roads and streets.³⁰
40. Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats and other household pets may be kept, provided they are not kept, maintained, or bred for any commercial purposes. Any household pets of any unusual or extraordinary nature must receive the approval of the Board of Directors.³¹
41. Culverts. Each private driveway shall have a drainage structure thereunder and parallel to the roadway which provides a net drainage opening area of sufficient size to permit the free flow of water without backwater, and in no event shall such drainage structure have a new drainage opening area less than that of a minimum of a ten (10) inch diameter, or a maximum of a twelve (12) inch diameter pipe culvert or minimum Polk County, Texas, requirements.³²
42. Property Owners Association.
- (a) Every property owner in the Emerald Bay Subdivision, Polk County, Texas, shall be a member of the Emerald Bay Property Owners Association, Inc. (the "Association"). ~~shall consist of all those persons owning lots in Emerald Bay Subdivision.~~ The Association shall be managed by a Board of Directors and Officers elected as provided for by the Bylaws of said Association. The Association shall have such powers as provided for by law, these restrictions, and the Bylaws.³³
- (b) The Association shall be a Property Owners Association as defined by the Texas

²⁹ 1993 Deed Restrictions No. 19.

³⁰ 1993 Deed Restrictions No. 20.

³¹ 1993 Deed Restrictions No. 21.

³² 1993 Deed Restrictions No. 22.

³³ 1993 Deed Restrictions No. 25.

Property Code. The Board of Directors of the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations now or hereafter imposed by these restrictions, and said lawsuit to be brought in the name of the Association, upon a vote by the majority of the Board of the Directors of the Association at the duly called meeting of the Board at which a quorum of Directors is present, against any lot owner who is delinquent in payment of the maintenance fees, as delinquent is defined in these restrictions, and Bylaws of the Association, as well for enforcement of any other deed restriction violation.

43. Maintenance Fees.

- (a) There shall be established, for the purposes set forth in this Paragraphs 24, 25, and 26 hereof, a maintenance fund to be administered by Emerald Bay Property Owners Association, Inc., a non-profit corporation, chartered by the State of Texas on November 12, 1985, by and through said Association's duly elected Board of Directors (hereinafter called the "Board").³⁴
- (b) Each lot in Emerald Bay Subdivision is hereby subjected to an annual maintenance fee, at a rate to be determined by the Association at its annual meeting in October of each year. Said maintenance fees shall be due on or before June 30 of each year, and shall be deemed to be delinquent if not paid by July 1 in any such year that such fees are due. The Board shall have the right to establish interest and other penalty for failure to timely pay maintenance fees.³⁵ The amount of the annual maintenance fee may be adjusted as shall be determined by a majority vote of the members, represented in person or by proxy, of the Association at the annual meeting of the Association, at which a quorum of the members, represented in person or by proxy, is obtained. Notice shall be given to all lot owners of said annual meeting and of the proposed annual maintenance fee to be determined for the next fiscal year. In the event the proposed maintenance fee fails to obtain the necessary votes at the annual meeting, then the maintenance fee for the next fiscal year shall remain at the same amount as then currently set, but in no event to be less than seventy-six and no/100 (\$76.00) Dollars per year. Said assessments shall be in the form of a covenant to run with the ownership of the said lots. It is expressly provided that the Vendor's Liens retained by Developer and assigned to the Association shall remain in full force and effect.
- (c) It shall be required that each property owner herein shall pay a maintenance fee for the purposes for the maintenance of the subdivision, as set forth by these restrictions,

³⁴ 1993 Deed Restrictions No. 23.

³⁵ 1993 Deed Restrictions No. 24.

and this fee shall be set and approved by the Association, as set forth by these restrictions and the Bylaws of the Association, and, except as may be otherwise provided for by Chapter 209 of the Texas Property Code, any property owner failing to pay the required amount into the fund shall be deprived of all of his privileges of the use and enjoyment of such facilities provided in this subdivision and such privileges shall not be renewed until all delinquent payments into the treasury have been brought up to date, plus interest at the rate as set by the Board of Directors and the Bylaws of the Association.³⁶

- (d) This is a covenant and a restriction to run with the title and the land just as any other covenant and restriction in this instrument and a Vendor's Lien is hereby created and shall exist (which lien shall be subordinate to all purchase and/or construction or improvement loans), and may be retained to secure the payment thereof.³⁷
- (e) Any lot owner who has not paid the annual maintenance fees applicable to the lots he/she owns, once such maintenance fees are payable as provided by these restrictions and the Bylaws, shall be considered in default. Except as may otherwise be provided for by Chapter 209 of the Texas Property Code, any lot owner delinquent in payment of any maintenance fees or other fees due on the record date of any meeting, as determined by the Bylaws of the Association, shall not be entitled to vote at any meeting of the members, whether annual or special, and shall not be entitled to hold any directorship or office of the Association.
- (f) Any lot owner who brings a lawsuit against the Association alleging a violation of any duty of the Association to enforce the deed restrictions, or alleging that the Association, or any director, officer and/or agent of the Association, shall be liable to the Association for any legal fees and costs incurred in defending such lawsuit.
- (f) Notwithstanding any provision to the contrary, nothing herein or in the plats above referenced shall be deemed, interpreted or construed as imposing any obligation or obligations whatever upon the Association, and the Association shall not be liable under any provisions hereof or thereof for any charge, assessment, breach, act or omission to act.
- (g) The maintenance fund shall, to the extent available, be applied to the payment of maintenance expenses and/or construction costs incurred for any or all of the following purposes, as determined by the Board of said Association:
 - (1) Lighting, construction, improving and maintaining streets, sidewalks, paths, and drainage ditches;
 - (2) Doing any other thing necessary or desirable in the opinion of the Board of said Association to keep the property neat and in good order or which is

³⁶ 1993 Deed Restrictions No. 25.

³⁷ 1993 Deed Restrictions No. 25.

considered of general benefit to the owners and/or occupants of Emerald Bay Subdivision, including any expenses incurred in enforcing any provisions of the restrictions, including any amendments thereto, on file in the County Clerk's office of Polk County, Texas. ³⁸

- (h) However, the maintenance charge herein provided is hereby declared to be a second and inferior and a second lien to any vendor's lien, materialman's and mechanic's lien, deed of trust lien, or other security for the payment of any lot in said subdivision, or for improvements made on any lot therein, and such vendor's lien, materialman's and mechanic's lien, deed of trust line, or such other security, made, given or retained therefore, together with any extension or successive extension thereof, shall be and is hereby declared to be a first lien until such time as final payment thereof has been fully made. ³⁹
- (i) If lot owners sell any portion of their land, they are to notify the Association, within ten (10) days of the sale, of the name and address of the buyer so that the aforesaid assessments may be collected from the new owner.

44. Partial Invalidity and Severability.

- (a) In the event any portion of the provisions hereof shall become or be held invalid, , such partial invalidity shall not affect, alter or impair any other provision hereof, which was not thereby held invalid; and such provisions, including Restrictions, Reservations and Covenants shall remain in full force and. The waiver, invalidity, illegality, or unenforceability of any one or more of these restrictions, covenants, or conditions, by abandonment, waiver, estoppel, judgment, court order, action of the Board of the Association, or otherwise, shall in no wise constitute a waiver of or invalidate any other restrictions, covenants and conditions shall continue to remain in full force and effect effect, binding in accordance with their terms, as if such waiver had never existed or such invalid, illegal or unenforceable provision had never been contained herein. ⁴⁰
- (b) The violations of any of these restrictions and covenants shall not operate to invalidate any mortgage, deed of trust or other lien held against said property, or any part thereof, and such liens may be enforceable against any and all property covered thereby, subject nevertheless, to these restrictions and covenants. ⁴¹

³⁸ 1993 Deed Restrictions No. 26.

³⁹ 1993 Deed Restrictions No. 27.

⁴⁰ 1993 Deed Restrictions No. 28.

⁴¹ 1993 Deed Restrictions No. 29.

45. Enforcement of Deed Restrictions.

- (a) Any owner of any lot in the subdivision, or the Board of Directors of Emerald Bay Property Owners Association, Inc. shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, and reservations now or hereafter imposed by the provisions of these restrictions, including any amendments to such restrictions.⁴²
- (b) The Board of the Association shall have the right, but not the exclusive duty, to take action to enforce any violation of these deed restrictions and to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations now or hereafter imposed by these restrictions, said lawsuit to be brought in the name of the Association, upon a vote by the majority of the Board at a duly called meeting of the Board at which a quorum of Directors is present, against any lot owner who is delinquent in payment of the maintenance fees, as delinquent is defined in these restrictions, and Bylaws of the Association.
- (c) Neither the Architectural Control Committee, nor the members of said Committee, nor the directors nor officers of the Association, shall have any liability or responsibility at law nor in equity on account of the enforcement of, or on account of the failure to enforce, these restrictions. An exercise of discretionary authority by the Association concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.
- (d) Subject to the provisions of Chapter 209, Texas Property Code, any lot owner who has not paid the annual maintenance fees applicable to the lots he owns, once such maintenance fees are payable as provided by these restrictions and the Bylaws, shall be considered in default. Any lot owner who is delinquent in payment of any maintenance fees or other fees due on the record date of any meeting, as determined by the Bylaws of the Association, shall not be entitled to vote at any meeting of the members, whether annual or special, and shall not be entitled to hold any directorship or office of the Association.
- (e) Failure to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.⁴³
- (f) Subject to the provisions of subsection (g) of this paragraph, if any person or entity, as defined hereinafter, whether or not lawfully in possession of any real property hereunder, shall either (1) violate or attempt to violate any restriction or provision herein or (2) suffer to be violated (with respect to the real property in which such

⁴² 1993 Deed Restrictions No. 31.

⁴³ 1993 Deed Restrictions No. 30.

person or entity has rights other than the rights granted by this sentence) any restriction or provision herein, it shall be lawful for the Association, and/or any person or entity, as defined hereinafter, possessing rights with respect to any real property hereunder, to prosecute any proceedings at law or in equity against any such person or entity violating, attempting to violate and/or suffering to be violated any restriction or provision herein to (1) prevent such violation, (2) recover damages of other dues for such violation, and (3) recover court costs and reasonable attorney's fees incurred in such proceedings. "Person or entity", as used in the immediately preceding sentence hereof, shall include, but shall not be limited to, all owners and purchasers of any real property hereunder, as well as all heirs, devisees, assignees, legal representatives and other persons or entities who acquire any of the rights (with respect to the real property hereunder) of the owner or purchaser of any real property hereunder.

(g) Notwithstanding any other provisions hereof, the Association shall not be liable or subject to any proceeding at law or in equity on account of any violation or attempted violation of any restriction or provision herein which occurs during such time as there is in force a contract to purchase the property where such violation or attempted violation takes place.

46. Duration and Amendment. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them until June 1st, 2000 A.D., at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change such covenants in whole or in part. ⁴⁴
47. Special Assessments. In addition to the Maintenance Fee assessment set forth above in these 2014 Restated and Amended Restrictions, the owners of lots purchased in said Subdivision shall be subject to a "Special Assessment" for road repairs, in such amount as may be established by the Association at a special or annual meeting of the members, at which a quorum is present and at which notice for an election for the assessment of said Special Assessment is given at least thirty (30) days in advance of such meeting. Should the special assessment be approved by a *(two-thirds) vote* of the members, represented in person or by proxy, of the Property Owners Association at the annual meeting of the Property Owners Association, then the Special Assessment shall become effective on the date noticed, with the proceeds from such special assessment being ear-marked for the specific purpose set forth in the notice of such election. Said Special Assessment shall be secured by a lien against said lot, the same lien as provided for by restrictions. The failure to pay said any Special Assessment shall constitute authorize the Association to bring a lawsuit to judicially

⁴⁴ 1993 Deed Restrictions No. 32.

foreclosure lien against said lot. This lien is in the form of an assessment to run with the ownership of said lots. The Special Assessment shall be deemed delinquent if not paid within thirty (30) days of the date set forth in the notice as being the date the Special Assessment is due.

48. Transport Vehicles. Trucks with tonnage in excess of one (1) ton shall not be permitted to park on the streets, driveways, or lots overnight, and no vehicle of any size which normally transports inflammatory or explosive cargo may be kept in the Subdivision at any time.
49. Drilling and other Activities.
- (a) Drilling or exploration of minerals is not allowed.
 - (b) The water is furnished by Lake Livingston Water System and no private water wells may be drilled on the lot.
 - (c) No property owner shall excavate, remove or sell the oil other than what may be necessary for the reasonable use, upkeep and maintenance of the property.
50. Applicability. Each Contract, Deed, and/or Deed of Trust which may be hereafter executed with respect to any property in the Subdivision shall be deemed and held to have been executed, delivered, and accepted subject to all of the provisions of this instrument, including, without limitation, the Reservations, Restrictions and Covenants herein set forth, regardless of whether or not any of such provisions are set forth in said Contract, Deed or Deed of Trust, and whether or not referred to in any such instrument. These restrictions, conditions, covenants and assessments are, and shall be, deemed and considered covenants running with the herein above described lots, and the same shall be binding upon the lot owners and their heirs, executors, and administrators and assigns. It is especially understood and agreed that the above covenants apply to each and every lot within the Subdivision.⁴⁵

THESE 2014 Restated and Amended Restrictions for Emerald Bay Subdivision, Polk County, Texas APPROVED by the Board of Directors of Emerald Bay Property Owners Association, Inc., at a [Special] [Regular] meeting of the board of Directors, on September ____, 2014, at which a quorum was present, and the President was authorized to execute these 2014 Restated and Amended Restrictions for Emerald Bay Subdivision, Polk County, Texas, and file the same with the

⁴⁵ 1993 Deed Restrictions No. 33.

County Clerk of Polk County, Texas, and these amended and restated restrictions shall become effective upon the filing of a written instrument reflecting approval by at least a majority of the property owners, pursuant to the Deed Restrictions referenced above.

_____, President

ATTEST:

Secretary

STATE OF TEXAS *

COUNTY OF _____ *

This instrument was acknowledged before me on the _____ day of _____, 201____,
by _____, EMERAL BAY PROPERTY OWNERS
ASSOCIATION, INC., a Texas non-profit corporation on behalf of said corporation.

NOTARY PUBLIC, STATE OF TEXAS

After filing return to:

Travis E. Kitchens, Jr.

Lawyer

P. O. Box 1629

Onalaska, Texas 77360