

**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF BROWNS LANDING**

Adopted October 21, 2017

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Browns Landing ("Declaration") is adopted and imposed on the Browns Landing Subdivision, Phase 1 and Phase 2, on October 21, 2017 by the Members of the Browns Landing Property Owners Association, a Texas nonprofit corporation.

This instrument has been signed by the Owners of a majority of Lots in the Subdivision pursuant to the procedure set forth in Paragraphs 14 and 15 of the "Declaration of Covenants, Conditions, and Restrictions of Browns Landing Phase I" which was recorded on July 14, 2008 in Volume 2889, Page 839 of the Real Property Records of Henderson County, Texas.

Recitals

This Declaration applies to the subdivision known as Browns Landing which is located in Henderson County, Texas, and described hereinbelow. It replaces the Original Declaration and the First Amendment which are identified hereinbelow. It was adopted by the persons who own real property in the Subdivision.

The Owners have determined that this Declaration is necessary and desirable to continue the common scheme of development, for the benefit of all Owners. These covenants, conditions and restrictions shall run with the land and shall be binding in perpetuity on all real property in the Subdivision; on all persons residing in the Subdivision; and on all persons owning or claiming any right, title, or interest in any real property in the Subdivision regardless of the origin of their ownership claims, including all persons claiming under them, and all persons holding a lien on any property in the Subdivision.

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

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Article One - Definitions

As used herein the following definitions shall apply:

- a. ACC - The Architectural Control Committee, more fully described in Article Three of this Declaration. The ACC was formerly known as the Design Review Committee.
- b. Association - BROWNS LANDING PROPERTY OWNERS ASSOCIATION, a Texas non-profit corporation.
- c. Board - The Board of Directors of the Association.
- d. Common Areas - The real property in the Subdivision other than the Lots. This includes the roads, parking lot, parks, pavilion area, floating dock at the pavilion area, and any other area which now or in the future is owned by the Association and dedicated to common use and enjoyment by the Owners. It shall not include any roads or other areas which have been accepted for maintenance by a governmental entity. At the time of adoption of this Declaration, all Common Areas are owned by the Association. A Lot owned by the Association may become a part of the Common Areas only if it is dedicated to common use by the Owners.
- e. Declaration - This "Amended and Restated Declaration of Covenants, Conditions and Restrictions of Browns Landing." The term is synonymous with "covenants," "covenants that run with the land," "restrictions," and "restrictive covenants." Where appropriate, the term shall refer to the Original Declaration and First Amendment.
- f. Dedictory Instruments - Includes all governing instruments covering the establishment, maintenance, and operation of the Subdivision. The term includes this Declaration; the Association's bylaws and any policies, rules, or regulations; and all lawful amendments to the Declaration, bylaws, rules, or regulations. All Dedictory Instruments, and all amendments thereto, must be filed with the county deed records once they are adopted. If the Association maintains a publicly available website, it shall post all Dedictory Instruments on that site so they may be downloaded by any Owner.
- g. Developer - Browns Landing Limited Partnership, and any of its successors and assigns which assume its rights, powers, and responsibilities as set forth in the Original Declaration.
- h. First Amendment - The "First Amendment to the Declaration of Covenants, Conditions, and Restrictions of Browns Landing" which was recorded on July 9, 2010 in the Real Property Records of Henderson County Texas as Document Number 2010-00009137. The First Amendment extended the Original Declaration so it also covered Phase II and revised the paragraph on Boat Docks, but did not change any of the other provisions of the Original Declaration. The First Amendment was superseded when this Amended and Restated Declaration was recorded.
- i. Improvement - Any structure, addition, or work performed on or change to

the condition of a Lot, whether intended to be temporary or permanent. The term includes but is not limited to residences, outbuildings, sheds, workshops, treehouses, garages, carports, fences, mailboxes, driveways, sidewalks, retaining walls, pools, hot tubs, docks, boathouses, LP tanks, septic tanks, solar panels, rain barrels, irrigation systems, satellite dishes, antennas, and all other structures placed on any Lot. As used herein, the term shall include trees and other large plants, hedgerows, or shrubs, but shall exclude grass, small plants, and other minor landscaping or ornaments. The ACC, and if applicable, the Board shall have the final discretion to determine whether something falls within this definition or not.

- j. Lake - Lake Palestine, which is located in Anderson, Cherokee, Henderson, and Smith Counties, in Texas. The shoreline of the Lake, defined as the border between what is considered a part of the Lake and what is considered to be real property in the Subdivision, shall be defined by the contour line showing an elevation of three hundred fifty-five feet above mean sea level, as depicted on the official government maps of the area (known as the 355' MSL line), unless context requires it to refer to the actual border between the Lake and the land as it exists at that time.

- k. Lease - Any agreement between an Owner and one or more other persons that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a Lot and/or improvement, whether in writing or otherwise, and whether money is paid for rent or not.

- l. Lot - A lot within the Subdivision, as shown on the plat. The term includes all tracts of land within the Subdivision which are owned or may be owned by the Developer or an individual or business entity. It also includes Lots owned by the Subdivision (through foreclosure, conveyance or otherwise), as long as they are not dedicated to common use by the Owners through a conveyance filed of record. The term excludes common areas and areas owned or maintained by governmental entities. All references to Lots by number (for instance, "Lots 1 - 10" or "Lots 1 through 10") shall be inclusive; that is, shall include the first lot listed, the last lot listed, and all lot numbers between them.

- m. Original Declaration - The "Declaration of Covenants, Conditions, and Restrictions of Browns Landing Phase I" which was recorded on July 14, 2008 in Volume 2889, Page 839 of the Real Property Records of Henderson County, Texas. The Original Declaration only applied to Phase I. The First Amendment applied the Original Declaration to Phase II, and changed Paragraph J, which dealt with Boat Docks. The Original Declaration and Amended Declaration were superseded when this Amended and Restated Declaration was adopted and recorded.

- n. Owner - An owner of one or more Lots in the Subdivision. The term excludes tenants, and persons who own an interest in one or more Lots for the sole purpose of securing an obligation, but a lienholder who acquires title to the Lot through foreclosure or conveyance in lieu thereof

shall be considered an Owner and Member. The term is synonymous with "Member."

- o. Phase I - All that certain lot, tract or parcel of land located in Henderson County, Texas described as Lots 40 through 75 of Block A; and Lots 1 and 2 of Block C, the Browns Landing Phase 1 according to plat recorded in Cabinet E, Slide 396 in the Plat Records of Henderson County, Texas.
- p. Phase II - The real property shown on the preliminary plat of Browns Landing Phase II as recorded in Cabinet F, Slide 116 of the plat records of Henderson County, Texas, described as follows: "Lots 1 through 39 of Block A as shown on the preliminary plat of Browns Landing Phase II as recorded in Cabinet F, Slide 116 of the Plat Records of Henderson County, Texas."
- q. Regular assessment - A recurring charge, payable by each Owner to the Association either monthly or annually.
- r. Residence - An improvement constructed on a Lot for the purpose of being used as a residence. All Residences in the Subdivision must meet the architectural standards applicable to Residences.
- s. Resident - A person who resides in the Subdivision, whether he or she is an Owner, family member, Tenant, or otherwise.

- t. Special assessment - A one-time charge payable by each Owner to the Association. A special assessment may be paid in installments if authorized by the Board.
- u. Subdivision - The real property in Henderson County, Texas commonly referred to as Browns Landing, including Phase I and Phase II, such property being more particularly described as follows:
All that certain lot, tract or parcel of land located in Henderson County, Texas described as Lots 40 through 75 of Block A; and Lots 1 and 2 of Block C, the Browns Landing Phase 1 according to plat recorded in Cabinet E, Slide 396 in the Plat Records of Henderson County, Texas, and

Lots 1 through 39 of Block A as shown on the preliminary plat of Browns Landing Phase II as recorded in Cabinet F, Slide 116 of the Plat Records of Henderson County, Texas.
- v. Tenant - One or more persons who have an agreement with an Owner regarding the use and occupancy of a Lot and/or improvement, whether the agreement is in writing or otherwise, and whether money is paid for rent or not.
- w. Waterfront - A waterfront Lot is a Lot whose boundary touches Lake Palestine. The waterfront portion of a Lot is the boundary touching Lake Palestine. For purposes of this Declaration, a body of water other than Lake Palestine (including but not limited to creeks, gullies, and ponds) shall not determine waterfront status.

Article Two - Property Owners Association

a. **Establishment and Organization of Association.**

The Subdivision shall be governed by the Browns Landing Property Owners Association, which shall be formed and maintained as a nonprofit corporation. The Association shall have all powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property Code, and the Dedicatory Instruments.

b. **Membership.**

Each Owner of real property in the Subdivision shall automatically be a Member of the Association. Membership in the Association is appurtenant to and may not be separated from ownership of one or more Lots in the Subdivision. A person shall automatically become a member of the Association when he or she acquires an interest in one or more Lots. A person ceases to be an Owner and Member when he or she no longer owns any interest in any Lot.

Neither membership nor the rights of membership may be assigned, pledged, or transferred in any other way. Any attempt to make a prohibited transfer shall be void.

Any person who becomes an Owner, and any person who transfers a Lot (or any interest in a Lot) shall provide a copy of the deed or other conveyance to the Association within five business days.

The Association is entitled to rely on the records of the appraisal district, or its own records, in making any determination as to ownership of a Lot, the right to cast a vote or exercise any other rights or privileges of an Owner, or any other related matter.

c. **Multiple Owners.**

If a Lot is owned by more than one Owner, then all Owners shall be considered Members of the Association, but in any matter to be decided by the Members only one vote may be cast for each Lot. If a dispute arises among multiple owners of a Lot as to the casting of a vote or exercising of any other right of an Owner pursuant to this Declaration or the other Dedicatory Instruments (including but not limited to casting a vote in an election or other matter conducted by the Association, or deciding whether or not to approve an amendment to this Declaration), then the decision of the Owner who is first named in the deed, conveyance, or other instrument transferring title to that Lot that are filed of record shall be final as to how that right is exercised.

d. **Management of Association.**

The Association shall be managed by its Board of Directors pursuant to the procedures set forth in the Association's Articles of Incorporation and Bylaws, and subject to the

specific provisions of this Declaration. The Board of Directors shall be elected by the Members, and shall have an odd number of Directors, no less than three and no more than eleven.

e. Membership Voting, Elections, and Meetings.

The Owner(s) of a Lot shall have one vote in all matters to be determined by the Members. Owners of multiple lots will have one vote for each lot owned. If there are multiple Owners for any one Lot, they shall attempt to agree on casting any vote. If a dispute arises among multiple Owners of a Lot as to how a specific vote for that Lot shall be cast, and the Owners do not resolve the dispute, then the Owner who is first named in the conveyance(s) or other instruments transferring title that are filed of record shall be entitled to cast the vote for that Lot. The Association may rely on the deeds in its records, or on the records of the appraisal district, in making such determination.

The Members shall be entitled to vote in each election of Directors, to approve or reject amendments to this Declaration, and to decide any other matter as required by the Association's Dedicatory Instruments or as determined by applicable law. The Board may choose to allow the Members to determine any other matter, determined by a majority vote of the Members who cast a vote in such election.

Any Member may bring any matter before the Members at any meeting thereof, subject to any applicable notice requirements.

f. Duties and Powers of Board of Directors.

The Board shall have the general power and duty to manage the Association, subject to the Dedicatory Instruments and to any determination made by the Members.

The Board shall have the following powers and duties, in addition to any powers and duties established by its Certificate of Formation and/or Bylaws:

- i. To adopt, amend, alter, or repeal policies (including rules and regulations) to implement this Declaration, that are consistent with the Association's Bylaws and Certificate of Formation, and that these policies, rules and regulations be specifically authorized by the governing documents.
- ii. To enforce this Declaration, the Bylaws, and the rules and regulations, and to assess fines for violations thereof.
- iii. To elect Officers, from the persons elected as Directors by the Members, and to appoint members of the ACC.
- iv. To delegate its powers to committees, Officers, or employees,

except when the Bylaws or this Declaration specifically require action by the Board.

- v. To prepare a balance sheet and operating income statement for the Association and deliver a report to the membership at its annual meeting.
- vi. To change the amount of regular assessments, and to impose special assessments,
- vii. To collect regular and special assessments.
- viii. To file affidavits claiming liens against Owners because of nonpayment of assessments and other amounts due and payable to the Association, and to foreclose on those liens.
- ix. To enforce the provisions of this Declaration and the other Dedicatory Instruments, and to receive and investigate complaints regarding violations of this Declaration or the other Dedicatory Instruments.
- x. To hold hearings and to exercise discretion to determine whether and to what extent to discipline Owners who violate this Declaration or the other Dedicatory Instruments, including taking legal action and seeking damages, injunctive relief, or other remedies.
- xi. To give reasonable notice to all Owners of all annual meetings of the membership and all discipline hearings.
- xii. To hold regular meetings of the Board, at least quarterly.
- xiii. To hold meetings of the Members, at least annually.
- xiv. To accept and/or dedicate property as a Common Area, to manage and maintain any Common Area, and to provide adequate reserves for repairs or replacements and other expenses.
- xv. To pay taxes and assessments that are or could become a lien on any Common Area.
- xvi. To obtain liability insurance covering the Association and/or its officers, directors, committee members, and volunteers, and casualty insurance on any Common Area, to the extent the Board

sees fit.

- xvii. To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks).
- xviii. To have all other powers incidental to the operation and management of the Association and the Subdivision.

Article Three - Architectural Control Committee.

The Architectural Control Committee (“ACC”) is established as a standing committee of the Association. The purpose of the ACC is to ensure that all Lots, Residences, Improvements, and landscaping within the Subdivision conform to the common scheme of development, are aesthetically pleasing, and conform to the Dedicatory Instruments.

a. Appointment.

The Board shall appoint the members of the ACC. The ACC shall consist of an odd number of members, at least three persons. The Board may remove any ACC member at any time, with or without cause. All ACC members shall serve until their resignation or replacement.

b. Building Permit Required.

Before commencing any of the following Construction Projects in the Subdivision, the Owner(s) of the Lot(s) on which the project will be conducted shall submit an application and obtain a Building Permit from the ACC, and shall pay the required fees:

- i. Construction of any Improvement.
- ii. Making any externally visible construction, addition, repair, replacement, remodeling, change, or alteration of any Improvement, with the exceptions described below.
- iii. Painting any external surface of an Improvement, except that ACC approval shall not be required for repainting an Improvement if neither the color scheme, nor the arrangement of the colors of any improvements, nor the color of any paint thereon is altered.
- iv. Making any significant landscaping changes or grading of any Lot or Lots, or removing any trees, shrubs, or large plants.
- v. Doing any landscaping or planting outside of the setback lines on any Lot.

- vi. Constructing or altering any Improvement or any Lot, if the change could affect drainage or other flow of surface waters.
- vii. Using of building materials that are not new to construct, repair, remodel, add to, change, or alter any Improvement.
- viii. Subdividing, combining, replatting, or changing the boundaries of any Lot. An owner who owns two or more adjacent lots may use them as a single building site, and may construct Residences or other Improvements with portions located on more than one of those lots, if the ACC approves the plans and specifications for the project and if the project complies with all other provisions of this Declaration.

ACC approval is not required for maintenance or repair of an existing improvement, if the external appearance including color remains the same as the original improvement. ACC approval is not required for replacing an existing plant with another of a similar size and shape, at the same location; removing dead bushes, trees, or plants; planting or removing a tree less than fifteen feet tall or a bush, shrub, or other plant less than eight feet tall; or planting a flower bed with a surface area of less than twenty-five square feet (five feet by five feet, or the equivalent).

c. Application Process.

Any Owner who wishes to conduct a Construction Project in the Subdivision, as described above, shall submit an application for the project to the ACC with one copy. At the same time the application is submitted, the Owners shall pay the fees specified in the current Construction Fee Schedule. The ACC shall not consider any application until all fees are paid.

Before submitting a formal application, an Owner may meet with the ACC or its members, to informally review proposed plans and specifications. The Owner may have his or her contractor and/or architect attend. The purpose of this meeting will be to provide informal advice to the Owner and his contractor or architect. It shall be understood that none of the information provided by the ACC or its members during this informal meeting process shall be binding on the ACC, the Board, or the Association.

The application shall include complete construction plans and specifications for the project. The plans and specifications shall describe in detail the type of Improvement or other alteration, shall depict the Improvement(s) both horizontally and vertically, and shall show a general plan of landscaping, if applicable. The plans shall also include a map or plat of the Lot(s) and shall show the specific building materials, color(s), size, shape, height, orientation, and location of the proposed work on the property. If the

project involves any construction or changes to a foundation, the plans shall have an engineered foundation plan. If the project involves any installation of or changes to a septic system, an aerobic septic system must be installed.

Within sixty days of receiving an application and the required fees, the ACC shall investigate the project and Lot(s) to the extent it deems necessary, and shall approve or deny the application. If the ACC approves an application, it shall issue a Building Permit to the Owner and the builder. If the ACC denies an application, it shall notify the Owner and the builder in reasonable detail of the reasons for the denial. An application can be rejected for providing insufficient information. If an application is rejected, then the applicant may resubmit a revised application for the same project within sixty days, without having to pay an additional fee.

If an Owner commences construction or alteration of any Lot without ACC approval, or if an Owner conducts the Construction Project that does not conform to the plans and specifications submitted to the ACC, the ACC can assess a fine of up to 20% of the total cost of the project or \$50.00, whichever is greater, against the Lot and Owner. Payments shall be due thirty days after the violation. The Board may also use any legal means necessary to address the violation, including but not limited to filing a lawsuit seeking to have the Owner(s) temporarily restrained, then enjoined from continuing with the project.

d. Construction Fee Schedule.

The ACC shall recommend a Construction Fee Schedule to the Board, and the Board shall adopt a Construction Fee Schedule, which shall apply to all projects in the Subdivision.

Initially, the Construction Fee Schedule is as follows:

- i. Construction of new Residence (which must be completed within one year of commencement of construction): \$1,500.00. If the Residence is not complete within one year from commencement of construction, an additional \$1,000.00 fee will be assessed. If the Residence is not complete within 18 months of commencement of construction, an additional \$500.00 fee will be imposed. For each additional three months thereafter during which the Residence is not complete, an additional \$500.00 fee shall be assessed.
- ii. Construction of dock, pier, boathouse, shed, or similar structure: \$150.00.
- iii. Addition to or alteration of existing improvement: \$200.00.

- iv. Installation of swimming pool, spa, or hot tub: \$150.00.

Payment of the additional fees for late completion of a Residence shall not automatically entitle the Member to continue with the project. Failing to complete construction of a Residence within one year is a violation of this Declaration. The Board may take any additional action to enforce this Declaration, including but not limited to imposing civil penalties, suspending the Member's right to use and enjoyment of the Common Areas, and seeking an injunction.

The fee for construction of a new Residence will also authorize construction of a pier, boathouse, swimming pool, spa, and/or hot tub, if they are included in the initial plans and specifications submitted to the ACC, are a part of a new home construction, and are completed within one year of the commencement of construction on the Lot.

All building fees shall be segregated from other funds, and shall be used only for construction and maintenance of roads within the Subdivision.

e. Standard of Review.

The Architectural Control Committee shall review applications for proposed Construction Projects considering the following objectives:

- i. Compliance: To ensure compliance with the letter and spirit of this Declaration, the other Dedicatory Instruments, and any other applicable requirements such as utility easements, city ordinances, and state law.
- ii. Common Scheme of Development: Preserving and promoting a common scheme of development.
- iii. Harmony: Ensuring harmony of external design in relation to surrounding structures and topography.
- iv. Property values: Preserving and enhancing the property values of the lots.
- v. Quality: To provide for a high quality of improvements in the Subdivision, and thereby to enhance the value of investments made by the Owners.
- vi. Attractiveness: Protecting and enhancing the attractiveness and desirability of the lots, homes, and other properties, and preserving to the extent practicable the natural beauty of the property.

- vii. Safety: Promoting safety for owners, residents, and other persons in the neighborhood.
- viii. Setback: Securing and maintaining proper setbacks from streets, sufficient visibility for drivers, and adequate free spaces between structures.
- ix. View: Preserving the ability of Owners and residents to enjoy a view of the surroundings from each Residence and Lot.
- x. Treatment of similar projects: Giving due consideration to prior approval or rejection of applications for similar projects.
- xi. Highest and best uses: Encouraging the highest and best development of said property and construction of high quality improvements, and protecting the owners of lots hereunder against such improper or inappropriate use of lots as will depreciate the value of their property, including construction of poorly designed or proportioned structures, and structures built of improper or unsuitable materials.
- xii. Freedom: Balancing those interests with each owner's freedom to make decisions regarding his or her Lot(s).

The ACC shall have broad, discretionary authority to interpret and apply these standards.

f. Failure of ACC to Act.

If the Architectural Control Committee fails either to approve or reject an application for proposed work within sixty (60) days after the application is submitted and the fee paid, and if no lawsuit is filed by the ACC or Association concerning the project, then ACC approval shall not be required. However, under no circumstances shall the ACC be deemed to have approved a construction project if that project violates any provision in this Declaration or the other Dedicatory Instruments.

g. Approval of Contractors.

All builders or general contractors must be approved by the ACC prior to any construction in the Subdivision, and must be registered with the State of Texas, if required by applicable law. Subcontractors need not be approved for projects managed by an approved general contractor, but must be approved if they work directly for the Owner.

A contractor who is not on the ACC approved list may apply for approval to the ACC, or

be submitted for approval by an Owner. The contractor's resume and a list of previous clients with contact information must be submitted to the ACC. The ACC will accept or reject the request within thirty (30) days of receiving the resume and references. The acceptance of any new contractor will not be unreasonably withheld. The intent of this section is to ensure an adequate level of competence and experience for each contractor. Approval of a contractor by the ACC does not constitute an endorsement, and does not in any way assure or guarantee adequate performance by the contractor.

h. Appeal of ACC Determination.

Any Owner affected by a decision of the ACC, including but not limited to an Owner who submitted an application to the ACC or a neighbor, may appeal that decision to the Board. An Owner wishing to appeal an ACC decision must give written notice of the appeal to the Board, within thirty days of the decision of the ACC which is to be appealed. The appeal must identify the specific ACC decision, describe the grounds for the appeal, and identify the requested results. If the Owner submitting the appeal is not the Owner who submitted an application, the appealing Owner must give the same notice at the same time to the submitting Owner, and the submitting owner may submit a response. The Board shall rule on the appeal within thirty (30) days after timely notice of appeal is given, and may conduct an investigation and/or hold a hearing if desired. The determination by the Board is final.

i. No Liability.

NEITHER THE ASSOCIATION, NOR ITS BOARD OF DIRECTORS, NOR THE ARCHITECTURAL CONTROL COMMITTEE SHALL HAVE ANY RESPONSIBILITY FOR ENSURING THAT IMPROVEMENTS ARE SAFELY OR PROPERLY DESIGNED OR CONSTRUCTED, OR THAT THEY COMPLY WITH ANY APPLICABLE BUILDING CODES. APPROVAL OF PLANS AND SPECIFICATIONS BY THE ACC SHALL BE FOR THE SOLE PURPOSE OF CARRYING OUT THE ACC'S RESPONSIBILITIES AS SET FORTH IN THIS DECLARATION, TO ENSURE THAT ALL IMPROVEMENTS COMPLY WITH THE GUIDELINES ESTABLISHED HEREIN. NEITHER THE ASSOCIATION, ITS BOARD OF DIRECTORS, ANY OF ITS COMMITTEES, NOR ANY OFFICER, DIRECTOR, OR COMMITTEE MEMBER ACTING IN AN OFFICIAL CAPACITY FOR THE ASSOCIATION MAY BE HELD LIABLE FOR ANY INJURY, DAMAGES OR LOSSES OF ANY KIND ARISING OUT OF THE APPROVAL OR DISAPPROVAL OF ANY PLANS OR SPECIFICATION, OR THE MANNER OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY RESIDENCE.

Article Four - Assessments

a. Regular Assessments.

On behalf of the Association, the Board may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund

operating expenses of the Association, and to improve and maintain the Common Areas. Each Assessment is a personal obligation of the Owner, and is also secured by a lien on all Lots owned by that Owner.

Each owner shall be obligated to pay a regular assessment to the Association for each lot which he or she owns. The Board may elect to make regular assessments due either annually or monthly.

At the time of adoption of this Declaration, the Regular Assessment for each Lot is \$725.00 per year. Initially, the regular assessments are due on March 15th of each year, for a period of one calendar year beginning on April 15th of the year of the assessment and ending on April 14th of the following year.

To the extent allowed by applicable law, dues and assessments that are not paid within thirty (30) days of the due date or assessment date will incur a late charge equal to five percent (5%) of the overdue dues or assessment, and an additional five percent (5%) late charge on the outstanding balance will be assessed every month thereafter until the outstanding balance is paid in full.

b. Special Assessments.

On behalf of the Association, the Board may levy Special Assessments for capital improvements or other purposes. Each owner shall also pay each special assessment to the Association when due. Any resolution calling for a special assessment shall specify the amount, whether it shall be payable in a single lump sum or in installments, and the due date(s) of the payment(s).

c. Lien.

All Obligations shall be the personal liability of the Owner(s) of the Lot and shall be secured by a lien against all Lot(s) owned by the Owner. "Obligation" as used herein shall mean any amount of money owed to the Association by the Owner, or by reason of the ownership of a Lot, including but not limited to dues, regular assessments, special assessments, cleanup costs, rental fees, late fees, interest, fines, or other charges of any kind whatsoever. It shall also include the reasonable costs of collecting any Obligation, including attorney's fees and court costs.

By accepting ownership of a Lot or any interest thereof, each Owner grants the lien, together with the power of sale, to the Association to secure all Assessments and other Obligations owed by that Owner to the Association.

The Association may collect assessments and other obligations using any method allowed by law, including by foreclosing its lien and/or obtaining personal judgments against the Owner(s). The Association's lien shall have priority over any other charges against the Lot(s) other than a) Obligations such as *ad valorem* property taxes that by

law have priority over the Association's lien; or b) A lien imposed on a Lot under a validly recorded first mortgage. In the event of a foreclosure, the Board may appoint a trustee or agent who shall have the power to sell the Lot(s).

The Association may not foreclose its lien for an Obligation consisting solely of fines, attorney's fees incurred solely to assess or collect fines, charges for compilation, production, and reproduction of the information in the Association's records as requested by an Owner, or costs of conducting a recount of votes requested by the Owner.

Article Five - Architectural and Maintenance Standards.

a. Residence Size.

All Residences located on the Waterfront must have at least 2,600 square feet of heated and cooled floor space. All Residences not located on the waterfront must have at least 2,000 square feet of heated and cooled floor space. A Residence is considered to be on the Waterfront if any Lot on which it is constructed is located on the waterfront. On two (2) story Residences, the main floor must contain a minimum of 65% of the heated/cooled space. However, this requirement shall not apply to a detached guesthouse or secondary Residence that is built attendant to a primary Residence that complies with the requirement. Any secondary Residence shall have a minimum of three hundred square feet of heated and cooled floor space. The primary Residence must be erected prior to or at the same time as the erection of the secondary Residence.

b. Building Materials and Other Architectural Standards.

The following architectural standards apply to all Residences and other Improvements within the Subdivision:

- i. **New materials:** All materials used for exterior construction shall be new unless the ACC approves the use of other materials. No pre-erected, used, or modular houses may be moved onto any Lot or Lots.
- ii. **Exterior walls:** Unless otherwise approved by the ACC, the exterior walls of all Residences and garages attached thereto must be of masonry, stucco, redwood, cedar, stone, Hardie Board, or brick veneer. This shall not apply to foundations, detached garages, gables, windows, door frames and openings, and doors.
- iii. **Paint:** All Improvements which incorporate frame construction on the exterior, other than those comprised of wood exteriors, shall be painted. All painted Improvements on each Lot shall be repainted by the Owner thereof at the Owner's sole cost and expense, as

often as is reasonably necessary to ensure its attractiveness and aesthetic quality.

- iv. Roofs: Roofs may not be constructed of cedar wood shingles or other combustible materials. Unless otherwise required by law, roofs must be constructed of: 1) concrete or clay tiles; 2) slate; 3) non-reflective metal (subject to ACC review); 4) or fiberglass/asphaltic architectural shingles with a thirty (30) year minimum warranty. All roofs must have a minimum eight in twelve pitch (a rise of at least eight inches in a horizontal length of twelve inches). The ACC may waive this restriction, if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design or material, and the resulting structure will not detract from the general appearance of the neighborhood.
- v. Air conditioners: No window unit air conditioners are permitted in the Subdivision.
- vi. Propane: Residences may use propane gas. All primary and secondary Residences may have an unrestricted number of fireplaces or appliances that burn propane gas or firewood. Tanks containing propane or other gases must be certified to be buried, and may not be exposed above ground.
- vii. Pools: No above ground swimming pools are allowed.
- viii. Mailboxes: Mailboxes shall be constructed of brick or stone and designed to match the architecture of the Residence. An eighteen inch (18") mail box set back from the street pavement edge is required on all properties except as mandated by U. S. Postal requirements.
- ix. Antennas: No exterior television, radio or other antenna of any type shall be placed, allowed or maintained upon any Lot without the prior written approval and authorization of the ACC, except small satellite dishes less than 24" in diameter.
- x. Underpinning: All buildings other than boathouses shall be completely underpinned, with no piers or pilings exposed to view.
- xi. Signs: No signs of any type shall be allowed on any Lot except (1) one sign of not more than six (6) square feet advertising the Lot or Residence for sale, while it is listed for sale; (2) a sign owned by the Association' or (3) a political sign with a combined total of not more than six (6) square feet advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal. Political signs may only be displayed in the Subdivision beginning ninety (90) days in advance of the election to which they pertain and ending within ten (10) days after such election.

- xii. Unusual structures: Structures that are not normal and customary to a residential subdivision of this type, such as geodesic domes and/or underground residences, are prohibited.
 - xiii. Building code: All improvements constructed on any Lot must comply with the current building code published by the Congress of American Building Officials, and all applicable local building codes that are enforced by governmental agencies having jurisdiction over the Subdivision. The Owner is responsible for applying for and obtaining all applicable governmental permits and other approvals for any Construction Project on his or her Lot(s), including payment of all fees for those permits and other approvals.
- c. Setback Restrictions.

“Front lot line” as used herein shall refer to the boundary separating a Lot from a street and designated as the front lot line on the plat or by the ACC. “Back lot line” as used herein shall refer to the Lot’s boundary opposite the front lot line. “Side lot line” as used herein shall refer to the Lot’s boundaries other than the front and back lot lines.

No Residence shall be constructed so any part of it is closer than twenty-five feet (25') to the back lot line, without ACC approval. No Improvement shall be constructed or placed so any part of it is closer than ten feet (10') to a front, side, or back lot line, without ACC approval. On a corner Lot (a Lot where two or more lot lines separate the Lot from a street), no Improvement shall be constructed or placed so it is closer than fifteen feet (15') to any side lot line which is adjacent to a street. There is no setback restriction requiring improvements to be any specific distance from the three hundred fifty-five foot mean sea level (355 MSL) line, for waterfront Lots.

No Improvement shall be located on any Lot closer to any street upon which the Lot fronts than the building line shown on the plat approved by the ACC.

- d. Waterfront Sidewalks and Seawalls.

Within one year of acquiring any waterfront Lot, the Owner must install a concrete sidewalk at least four (4) feet wide, and a bulkhead wall or retaining wall, on the entire waterfront portion of the lot. Each Owner must also maintain the sidewalk and bulkhead wall or retaining wall, so they are structurally sound and in good repair, within the lot lines of his or her waterfront Lots as shown on the Plat. If a waterfront Lot does not have a compliant sidewalk and bulkhead or retaining wall at the time this Declaration is adopted and recorded, the Owner must install them within one year.

e. Maintenance of Lots and Improvements.

Each Owner is responsible for providing maintenance of all portions of the Lot(s) which he or she owns. The required minimal maintenance includes but is not limited to mowing; removing dead trees and fallen tree limbs; keeping each Lot free of trash, garbage and debris at all times; keeping each Lot free of weeds and brush; and keeping each Lot free of any unsanitary or hazardous conditions. The Owner of each waterfront Lot must provide maintenance down to the water, and must ensure that dirt is kept behind the sidewalk and behind the bulkhead wall or retaining wall, to avoid erosion.

Each Owner shall at all times keep all Improvements located on his or her Lot(s) in good working condition and repair. If any Improvement is damaged, destroyed, or becomes unduly worn, the Owner must repair, replace, or remove the Improvement and restore the Lot and Improvements to a clean, orderly, and attractive condition within sixty (60) days. The ACC can extend this period upon written request from the Owner.

If the ACC determines that an unsanitary or hazardous condition exists, or if the height of grass or other vegetation on a Lot is nine (9) inches or higher, the Association can clean up, mow, and/or correct the unsanitary or hazardous condition(s). If the Association performs or pays for any cleanup, mowing and/or repairs to any Lot (or any improvement thereon), then the costs of those services shall be charged to the Owner(s) of that lot.

f. Procedures During Construction.

In addition to the other limitations in this Declaration, the following procedures shall apply while any Construction Project is underway:

- i. Working hours: Construction crews will not be allowed to work before 7 a.m. or after 7 p.m., or at all on Sunday, except with prior approval of a member of the ACC.
- ii. Completion Deadline: The exterior of all dwellings and/or improvements shall be completed (including exterior painting) within one year from the commencement of construction. For good cause shown, the ACC may grant extensions of this deadline.
- iii. Traffic, safety, and disturbances: Each Owner and contractor shall take all reasonable precautions to minimize interference with traffic, to protect the general public and residents of the Subdivision from injury, and to prevent excessive dust, noise, or other disturbances.
- iv. Storage of Building Materials: Building materials stored on a Lot during construction will be kept in a neat condition so as not to detract from the appearance of the neighborhood and so as to give the visual impression from adjacent streets of a clean, orderly work

site. All excess construction materials must be removed or stored within approved buildings after construction is completed.

- v. Scrap Materials and Trash: Scrap materials and trash produced in connection with the construction of a Residence shall be placed in a commercial grade metal twenty (20) or forty (40) yard trash container (or similar), which shall be kept if possible to the side or behind the house. Scrap materials and trash will be placed in the trash container at the end of each workday, and removed from the Lot frequently enough so that trash does not overflow from such container.
- vi. Fire extinguishers: At least one 10-pound ABC-rated dry chemical fire extinguisher shall be available in a conspicuous place on the construction site at all times.

g. Trash Containers.

“Trash” as used herein shall include household garbage, lawn clippings, brush, downed tree branches, and all other materials that should be removed from Residences and Lots to maintain a neat and clean neighborhood. All household garbage shall be placed in sixty (60) to eighty (80) gallon containers of a type approved by the ACC. Brush, grass clippings, and similar materials may be placed in tied garbage bags. The placement, maintenance and appearance of trash containers and garbage bags shall be subject to reasonable rules and regulations of the ACC. Trash containers and garbage bags must be stored so they are not visible from the roads or streets from any angle, except that they may be placed near the street beginning on the evening before the day trash is picked up and ending on the evening of the day trash is picked up. All rubbish, trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. The Association shall select a waste disposal service for the entire Subdivision and contract for such service for a one (1) to three (3) year period. Each owner shall pay for such service to his or her Lot(s).

h. Septic Tanks and Utilities.

Each Residence must use an aerobic septic system which was designed by a licensed sanitarian and/or a state licensed engineer. All septic systems must be approved by the Upper Neches Municipal River Water Authority or the governmental agency with jurisdiction over the matter, prior to their construction. No installation of any type of device for disposal of sanitary sewage shall be allowed which would result in raw or unsanitary sewage being carried into any body of water or water source, or onto the streets, Common Areas, or any Lot. All Residences and septic systems must comply with all state, federal, and county laws.

No outside toilets of any kind are permitted in the Subdivision, except that chemically treated outside toilets may be maintained on a Lot in a manner subject to ACC approval while a Construction Project is underway on that Lot.

“Utilities” as used herein shall include any such services provided to a Lot or Residence, including but not limited to water, sanitary sewer, electricity, natural gas and/or propane, telephone, and cable or satellite television. All utility lines in the Subdivision shall be installed underground. Each Owner shall construct, furnish or install all on-site utility extensions, including without limitation, water, sanitary sewer and electrical lines, from the point of connection adjacent to the perimeter of the Lot. Each Owner shall pay all utility deposits and other charges for establishing and maintaining utility service to his or her Lot(s). This shall include but not be limited to the cost of any meters; the costs of connecting utility service to that Owner’s Residence and/or other improvements; the cost of removing and replacing any Improvements or landscaping; and any inspection and/or licensing fees.

i. Temporary Structures; Guests.

No temporary structure, trailer, cellar, tent, shack, garage or other outbuilding, motor home, mobile home, manufactured home, house trailer or camper shall be used as a residence, either temporarily or permanently. No Improvement in the Subdivision may be used as a residence unless it meets the architectural standards applicable to Residences. However, once a Residence is built on a Lot, temporary guests visiting the Owner or occupants of a Lot may occupy a motor home, house trailer, or camper for a period not to exceed fourteen (14) consecutive days, and for a total of no more than twenty-four (24) days per calendar year.

j. Vehicles.

Motor homes, travel trailers, campers, boats, trailers and similar wheeled vehicles may not be parked or located in the Subdivision for a period of more than fourteen (14) consecutive days, or for a total of more than twenty-four (24) days per calendar year.

Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, construction vehicles, farm equipment, motorized tools, recreational vehicles, trailers (whether with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas designated by the Board. However, such vehicles may be parked in the Subdivision while they are being used in Construction Projects, or to provide services or deliver goods.

Vehicles which are not operated for any period of fourteen continuous days or more, which are inoperable, or which do not have current licenses are not permitted in the Subdivision except within enclosed garages. Any vehicles which become inoperable must be removed from the Subdivision or placed within a garage within seventy-two (72) hours. Any vehicle parked in the Subdivision in violation of this Declaration may be towed at the Owner’s expense. No vehicle which is used for the transportation of inflammatory or explosive cargo, may be stored in the Subdivision at any time. Unlicensed utility vehicles with four (4) or six (6) wheels which are intended to carry passengers and cargo may be operated on the roads and the owner’s Lots in the

Subdivision, but may not be operated on the other Common Areas. Other unlicensed motorized vehicles such as 4-wheelers, 3-wheelers, motorcycles, dirt bikes, and similar vehicles may not be operated in the Subdivision.

k. Garages.

Each Lot with a residence must have a garage which is constructed and maintained to accommodate at least two (2) full-sized automobiles. All garages must be designed to match the architecture and exterior building materials of the primary residence. No carports are allowed in the Subdivision.

Detached garages are permitted with approval of the ACC. No garage shall be permanently enclosed for use as a living space, or converted to any use other than as a garage. No garages may be constructed in the Subdivision facing the street, without the approval of the ACC.

l. Driveways.

Each driveway must be at least ten feet (10') wide, constructed of concrete, asphalt, or another material approved by the ACC, and must be large enough to allow at least two vehicles to park on the driveway outside of the garage. All driveways and approaches must meet all regulatory requirements, and must be completed before the Residence is occupied.

No driveway or other roadway may be constructed to allow access to any adjoining Lots or other property, without approval of the ACC. All driveways shall be constructed in such a manner that all surface water run-off will not cause erosion to adjacent Lots or create dust when vehicles enter and exit. No part of any culvert shall be located closer than five (5) feet from any side property line.

m. Combining, Subdividing, and Replatting of Lots.

Lots may only be further subdivided, combined with other lots, or replatted with the prior approval of the ACC. Fractions of Lots may also be separated to add space to adjacent whole Lots if the combination of whole and fractional Lots is used as a single building site, if prior ACC approval is obtained, and if all other requirements of this Declaration are met.

n. Fencing.

The fencing on Lots 1 through 53 in Block A, and on Lots 1 and 2 in Block C shall be constructed of wrought iron material painted black or dark green, extending to a maximum height of six feet (6') from the ground. Brick or stone columns may be used, but must be built at least sixteen feet (16') apart and may extend to a maximum height of six feet six inches (6'6") from the ground.

On Lots 54 through 74 in Block A, fencing which is visible from the street and built on or

near to the side lot line must be wrought iron, painted black or dark green, extending to a maximum height of six feet (6') from the ground. Black vinyl-coated chain link fencing may be used in back yard areas, extending from the front wrought iron fencing to the rear property line. Black vinyl-coated chain link fencing may be used on the back lot line, extending to a maximum height of six feet (6') from the ground.

o. Boat Docks.

Docks and other structures built on, over, or under the Lake may only be constructed or maintained in the Subdivision and the adjoining parts of the Lake as follows:

- i. Association-built or maintained: The Association may construct and maintain boat docks, boathouses, floating docks, platforms, and piers for the use of the Owners and residents and their guests. The Developer may maintain any such structures which exist in the Subdivision at the time this Declaration is adopted, for the common use and benefit of the Owners, residents, and guests.
- ii. Owner-built or maintained: No Owner may construct or maintain any type of dock, boathouse, floating dock, platform, pier, or other structure of any kind with any part which extends on, over, or under the lake, except as provided for herein.
- iii. Lot 52: The Owner of Lot 52 may maintain the floating dock which exists on that Lot at the time this Declaration is adopted, as long as it is maintained in good repair and remains the same size, shape, and design.
- iv. Lots 9, 10, 12 through 15, 31 through 38, and 40 through 45: The Owners of Lots 9, 10, 12 through 15, 31 through 38 and 40 through 45 may build and maintain docks on their respective Lots, but only in the abutting recessed bulkhead areas which are provided for that purpose. No dock may be constructed or maintained on any of these lots with any portion closer than six feet six inches (6' 6") to the adjoining side property line, or with any portion closer than six feet six inches (6' 6") to the allocation line that extends into the lake, as shown on the Plat. Docks and other structures built on these Lots and the adjoining parts of the Lake not extend further than twenty (20) feet into the lake, measured from the non-recessed bulkhead at the shoreline. Each dock shall not exceed fifty (50) feet in width, measured along the bulkhead wall.
- v. Lots 2 through 8, 16, 17, 27 through 30, and 46 through 53: The Owners of Lots 2 through 8, 16, 17, 27 through 30 and 46 through

53 may build and maintain docks on their respective Lots, as follows:

- (1) Each dock shall be rectangular in shape and built abutting the bulkhead wall.
- (2) Each dock shall not extend more than forty (40) feet into the lake, measured from the bulkhead.
- (3) Each dock shall not exceed fifty (50) feet in width, measured along the bulkhead wall.
- (4) No dock may be constructed or maintained with any portion closer than ten feet (10') from the extended side allocation line as shown on the plat.

- vi. Lot 18: The Owner of Lot 18 may maintain the boat dock and other structures which exist on that Lot at the time this Declaration is adopted, as long as no part of such structures are located further than one hundred feet (100') or closer than ten feet (10') from the side lot line separating Lot 18 from Lot 19.
- vii. Lot 11 and 39: The Owners of Lots 11 and 39 may maintain the docks which exist on those respective Lots at the time this Declaration is adopted, as long as no such structure shall extend more than twenty feet (20') into the Lake, as measured from the bulkhead at the shoreline. No part of any dock or other structure on Lot 11 or the adjoining portion of the Lake may be located any closer than ten feet (10') from the side lot line separating Lot 11 from Lot 10. The recessed bulkhead areas and concrete surrounds for Lot 11 and Lot 39 are strictly for the use of those respective lots.
- viii. Lot 27: The Owner of Lot 27 may maintain the dock and/or other structures which exist on that Lot at the time this Declaration is adopted, as long as no such structure is located any closer than one hundred fifty feet (150') from the common corner shared by Lots 26 and 27, and no closer than one hundred fifty feet (150') from the side lot line separating Lots 26 and 27,
- ix. Lot 26: The Owner of Lot 26 may maintain the dock and/or other structures which exist on that Lot at the time this Declaration is adopted, as long as no such structure is located any closer than one hundred fifty feet (150') from the common lot corner shared by

Lots 25 and 26, and no such structure is located any closer than fifty feet (50') from the side lot line separating Lots 25 and 26. No dock or other structure may be built or maintained in the bay, or to the North or West of the property pin marking the northernmost point of Lot 26.

x. Lots 1, 2, and 19 through 26: The Owners of Lots 1, 2, and 19 through 26 may maintain the dock and/or other structures which exist on their respective Lots at the time this Declaration is adopted, as long as those structures are built and maintained in compliance with the guidelines established by the Upper Neches Municipal River Water Authority (UNMRWA).

xi. General guidelines for all owner-built or maintained docks:

- (1) The terms "dock" and "structure" as used in this section shall include docks, boathouses, floating docks, platforms, piers, and other structures of any kind with any part which extends on, over, or under the Lake.
- (2) Wherever reference is made to building a dock "on" a lot, the reference shall include building a dock on the surface or above the lake, if the dock is connected to or constructed off the shore of that Lot.
- (3) Any dock or other structure which an Owner is authorized to build and/or maintain must be kept in good repair, and must remain the same size, shape, and design, unless the ACC authorizes specific changes. If any dock authorized by this Declaration for an Owner to build and/or maintain is ever destroyed, or damaged to the extent that repairs will cost fifty percent (50%) or more of the original construction cost, then that structure may not be repaired, rebuilt, or replaced, must be removed within sixty (60) days, and that Lot shall thereafter be subject to all requirements in this Declaration including the prohibition on owner-built or maintained docks.
- (4) Each Owner who is authorized to build and/or maintain a dock on his Lot(s) and the adjoining portion of the Lake may construct and maintain a waterproof deck above his or her dock, instead of a roof, if desired. No structure built above the deck shall be greater than forty-two (42) inches in height, as measured from the deck, including but not limited to

handrails and storage compartments. The use of umbrellas and other shade-providing devices are permitted, but such items must be removed and stored when not in use. Furniture and other items used on any dock or deck must also be stored or secured when not in use.

- (5) The maximum height of the primary deck shall not exceed eighteen (18) inches above the three-hundred-forty-eight (348) feet MSL elevation.
- (6) All plans must be submitted and approved by the Architectural Control Committee prior to submission to the UNMRWA.
- (7) The use of anything that is a fire hazard (including grills, candles, fire pits and fireworks) is not permitted on boathouses. Repairs to damage to other property as a result of not properly storing or securing these items shall be the responsibility of the Owner from which these items originated.
- (8) Guidelines for the construction, renovation and additions to boathouses are subject to change on Lake Palestine. Please consult the Upper Neches River Municipal Water Authority at 903-876-2237 for permit applications and guidelines.
- (9) An Owner, resident, or guest may moor a boat to the floating docks at the Pavilion/Park area for up to three consecutive days. The Board may approve storage of boats at the docks for a longer period.
- (10) The ACC may authorize an Owner to build and maintain a dock or other structure on his or her Lot and the adjoining portion of the Lake, and may establish or revise any limitations or other requirements pertaining to such structures.

p. Clean Roads and Utilities.

Each Owner shall protect from damage all pavement, curbs, gutters, swales or drainage courses, sidewalks, streets, utility structures, fire hydrants, manhole covers, valve boxes, second stage inlets, and other similar items located on or near his or her Lots. Each Owner shall keep pedestrian and road right-of-way and drives, and other property, clean and clear of equipment, building materials, structures or improvements, dirt,

brush, debris, or anything else that could block them. All delivery trucks, construction crews, waste disposal trucks, or any other vehicles exceeding eight thousand (8,000) pounds in gross weight must use the construction entrance east of the main entrance. Each Owner shall maintain in good functional condition, storm water pollution prevention materials adequate to comply with the guidelines promulgated by the Environmental Protection Agency.

Article Six - Permitted and Prohibited Activities.

a. Single Family Residential Use Only.

All Lots shall be exclusively designed for and exclusively used for single-family residential purposes. No multi-family dwellings, apartment buildings, condominiums, duplexes, or similar buildings may be constructed on any Lot. However, an Owner may construct one detached guesthouse or secondary Residence on each Lot, but no secondary residence may be used as a rental unit.

As used in this Declaration, "single family" shall mean any number of persons related within the second degree of consanguinity or affinity, living as a single household unit, with not more than one (1) additional person who is not so related.

b. Occupancy.

Each primary and secondary Residence may be occupied by a single family, as defined above. Owners and residents are allowed to house temporary guests visiting them, for up to fourteen (14) consecutive days.

c. No Commercial Activities.

No commercial, manufacturing, business, industrial, or institutional activities may be conducted in the Subdivision, except for the following:

- i. Delivery: Goods may be delivered to Residences in the Subdivision.
- ii. Installation: Installation and repair may be conducted on items or systems installed in Residences or buildings, or on Lots in the Subdivision.
- iii. Construction and similar projects: Construction projects, lot maintenance, landscaping, lawn care, and maintenance and repair of Improvements may be conducted in the Subdivision in compliance with the guidelines set forth in this Declaration and the other Dedicatory Instruments.
- iv. Permitted services: Services which are customarily provided at a

person's residence, and which may not be conducted elsewhere without significant inconvenience, may be conducted in the Subdivision. Examples of services which meet this exemption include babysitting, catering, and repair of appliances.

- v. Undetectable commercial activities: An owner or occupant of a Lot may conduct commercial activities inside his or her residence and/or outbuildings that do not cause any nuisance or annoyance whatsoever to any other owners or residents, and which are not detectable to other owners or residents from outside the Owner's Residence. Examples of activity that could qualify for this exclusion include computerized trading of investments owned by the owner, communicating by telephone regarding business matters, and preparing tax documents inside of one's residence.

Any commercial activity which generates additional nuisance, noise, pollution, visible activity outside of a Residence or outbuilding, or traffic in the Subdivision is prohibited. Commercial signs are prohibited.

No commercial vehicles, tractor-trailers, construction equipment, or similar vehicles may be parked in the Subdivision, except 1) when they are conducting approved business or being used for permissible activities, or 2) an Owner or resident who uses a commercial car, pickup truck, van, or similar sized vehicle without signage both as his or her personal vehicle and for business may park it within the Subdivision.

d. Nuisances and Other Prohibited Activities.

The following acts and omissions are prohibited within the Subdivision:

- i. Conducting or allowing any noxious, unlawful, or offensive activity in the Subdivision, or doing anything which may be or may become an annoyance or nuisance to the other Owners and Residents.
- ii. Changing oil or conducting maintenance or repairs on any vehicle or equipment on any Lot or in the Subdivision, except in a garage or outbuilding, unless there is an emergency such as a flat tire that requires minor repairs before the vehicle can be moved.
- iii. Allowing concrete suppliers or other contractors to clean their equipment in a way that could damage any Lot, street, Common Area, or the environment, or to clean their equipment within the Subdivision except at a specific location designated in the building permit governing the project.

- iv. Dumping trash, brush, leaves, lawn clippings, or any other material in the Subdivision.
- v. Removing any rocks, plant material, topsoil, or similar items from any Lot or Common Area in the Subdivision, including construction sites, unless prior approval is obtained from the ACC and the Owner of the Lot.
- vi. Using fireworks, playing loud music, or creating any other loud or offensive noises in the Subdivision.
- vii. Using disposal methods, dumpsters, or trash containers other than those approved by the ACC.
- viii. Carelessly disposing of cigarettes, cigars, or other flammable materials, or otherwise creating a fire hazard.
- ix. Exploring for or extracting gas, oil, or minerals; drilling for oil or gas; conducting oil or gas development operations; or conducting refining, quarrying or mining operations of any kind. Oil wells, derricks, tanks, tunnels, mineral excavations, shafts, or other structures designed for used for boring for oil or natural gas are not permitted in the Subdivision.

e. Hunting and Shooting.

Firearms, bows, crossbows, and similar devices may not be discharged in the Subdivision. No hunting is allowed in the Subdivision.

f. Livestock, Household Pets, and Other Animals.

No animals, livestock, or poultry may be kept or raised in the Subdivision except for common domesticated household pets, such as dogs and cats. A maximum of four household pets may be kept on each Lot.

An Owner or Resident may keep a maximum of one (1) litter of cats or dogs born during each calendar year on his or her Lot(s), for up to six (6) months after their birth. The litter may comprise no more than ten (10) puppies or kittens, and must be born from one of the dogs or cats being kept on his or her Lot(s) at the time of the birth of the litter.

No animals, including household pets, may be kept, bred, or maintained in the Subdivision for the purpose of breeding or selling same, whether for profit or not. Selling animals or exchanging them for anything of value shall constitute a "sale" and is therefore prohibited.

No dog, cat, other household pet, or other animal shall be allowed to run free in the Subdivision. Each household pet must at all times either be 1) Restrained by a fence or chain on the Owner's lot, 2) Kept within a Residence, or 3) Restrained at all times on a leash controlled by an individual of adequate strength to control the pet.

g. Damage to Common Areas.

Each Owner is liable to the Association for damage to Common Areas caused by the Owner or the Owner's family, tenants, guests, agents, independent contractors, invitees, and residents of the Owner's Lot(s), in accordance with law.

No Owner or other person may erect or alter any Improvement on any Common Area, or clear, landscape, or disturb any Common Area, except as approved by the Board.

Article Seven - Leasing/Rental Restrictions.

a. Residential Purposes.

A Lot or Residence may be leased to a Tenant, but only for single family residential purposes. "Residential purposes" means use as a permanent residence. Any lease of a Residence must be in writing.

No Residence or Lot in the Subdivision may be used as transient housing, including but not limited to as a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, bed and breakfast, and/or vacation rental.

b. Term of Lease.

Any lease of a Residence must be at least one year in duration.

c. Copy of the Lease.

Within five business days of leasing any Residence in the Subdivision, the Owner shall provide the Association with a copy of any Lease. If the lease states the social security number, driver's license number, government-issued identification number, or account, credit card, or debit card number of any Tenant(s) or occupants, the Owner shall redact that information from the copy of the lease before providing it to the Association.

d. Tenants Bound.

All Tenants are required to comply with all provisions of the Dedicatory Instruments. Each Owner who leases any Residence in the Subdivision shall provide his or her Tenants with copies of all Dedicatory Instruments. Every Owner and his or her Tenants are jointly and severally responsible for compliance with the Dedicatory Instruments, including any violations, charges, penalties, fines, losses or damages caused by a Tenant. In addition to all other remedies available to the Association in the event of a Violation by a Tenant, the Association may require that the Tenant be removed from

and not allowed to return to the Browns Landing Subdivision and/or that any lease, agreement or permission given allowing the Tenant to be present be terminated.

Article Eight - Enforcement.

a. **Right to Enforce Dedicatory Instruments.**

The Dedicatory Instruments, including this Declaration, may be enforced by the Association or by any Owner by proceedings seeking an injunction, to recover damages, or any other available procedure at law or equity. No alleged waiver, abandonment, or failure by the Association or one or more Owners to enforce this Declaration or of any provision thereof shall in any way invalidate any provision of this Declaration, or limit the Association or Owners to enforce it thereafter.

b. **Notice of Claim.**

Before the Association suspends an Owner's right to use a common area, files suit against an Owner (other than a suit to collect assessments or foreclose its lien), charges an Owner for property damage, or levies a fine for a violation of this Declaration, the Bylaws, or the rules and regulations, the Association or its representative must notify the Owner in writing by certified mail to his or her last known address. The notice must describe the violation or property damage and state the amount of any Obligation of the Owner, must provide the Owner with a specific date giving the Owner a reasonable time to cure the violation and avoid the fine or suspension, and must notify the Owner that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after the deadline for curing the violation. The notice must also notify the Owner that he or she may request a hearing before the Board within thirty (30) days of the date notice was mailed, and that he or she may have special rights or relief related to the enforcement action under federal law, including the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.), if the owner is serving on active military duty. This notice requirement does not apply if the violation is not curable, if it could materially affect the physical health or safety of an ordinary resident, or if the Owner was given notice under this Section for the same violation within the preceding six (6) months.

No lawsuit may be filed by an Owner against the Association or an officer or director of the Association (acting in his or her official capacity) until at least twenty-one (21) days have elapsed after the owner notifies the Board in writing of his or her specific complaints. This period shall be extended until mediation has been conducted, if the Board requests mediation of the dispute in writing within that period. This requirement shall not apply to actions in which the owner files a verified pleading seeking a temporary restraining order or other emergency relief.

c. **Dispute Resolution.**

If the Board requests mediation in writing, any dispute with an Owner, Resident, officer, director, or Tenant shall be submitted to mediation conducted by an attorney admitted to practice in Texas and trained to mediate civil matters. The Mediator may not reside in the Subdivision, must not have ever worked for or represented any of the parties, and must not have any other conflict of interest. The Association and Owner may represent themselves in mediation, or be represented by an attorney. Each party shall pay an equal share of the mediator's fees and expenses. If the parties cannot agree on a mediator, then the Association shall select a qualified mediator who does not have a conflict of interest, and that mediator shall conduct the mediation.

This requirement shall not apply to actions in which the owner files a verified pleading seeking a temporary restraining order or other emergency relief.

d. Board Discretion.

The Association shall not be obligated to institute or participate in any legal actions to enforce this Declaration; rather, the Board shall have the sole discretion to determine whether and to what extent to take action to enforce this Declaration and the other Dedicatory Instruments.

In determining whether to take action in response to a violation, and choosing the course of action, the Board may consider any relevant factor, including but not limited to the following:

- i. The seriousness of the violation;
- ii. The degree of danger or risk to health or safety which may be caused by the violation;
- iii. Any potential damage or destruction to Lots, Common Areas, or other property, any pollution or environmental damage, any possible harm to plant or animal life; or any risks of any of those factors which may be caused by the violation;
- iv. The degree of nuisance, annoyance, noise, odors, visible effects, and other disruption which may be caused by the violation;
- v. Any formal or informal complaints received by the Association, officers, directors, employees, or the ACC from other Owner(s) or residents, regarding the violation;
- vi. Any interference with the right of Owners or residents to enjoyment of their Lot(s) or of the Common Areas which may be caused by the

violation;

- vii. Any potential reduction in property values which may result of the violation;
- viii. Whether the conduct violates any laws, regulations, or ordinances;
- ix. The degree of cooperation or lack thereof by the Owner(s) and residents, including the responses to any request by the Association to voluntarily comply with the Dedicatory Instruments;
- x. Any defenses or excuses which the Owner or resident offers for the conduct;
- xi. Any other violations by the same Owner(s) or residents, or involving the same Lot(s);
- xii. The likely costs to the Association of various enforcement actions; and
- xiii. The funds and other resources available to the Association.

e. Hearing Before Board.

Any Owner who is notified by the Board of an alleged violation of this Declaration or the other Dedicatory Instruments has the right to a hearing before the Board. The Owner must submit a request for a hearing to the Board, within thirty (30) days of the date the notice of the violation is sent to him or her. If the Board sends proper notice then receives a request for a hearing before the deadline, then the Board shall notify the Owner of the date, time, and place of the hearing at least ten (10) days before it is commenced, and shall conduct a hearing to verify facts and determine a course of action, within thirty (30) days of receiving the request. The Board may postpone the hearing for up to ten (10) days, at its request or the Owner's request, and the hearing may be postponed additional times by agreement. The Board or Owner may make an audio recording of the hearing. The Board is not required to hold a hearing if the violation is not curable, if it could materially affect the physical health or safety of an ordinary resident, if the Board formally notified the Owner of the same violation within the preceding six (6) months, if the Association alleges a violation as a counterclaim in a suit filed by the Owner, if the Association files suit seeking a temporary restraining order or injunction, or if the Board files a court action for foreclosure.

The Board may temporarily suspend a person's right to use the Common Areas if it finds that a violation occurred in a common area which involved a significant and immediate risk of harm to others in the Subdivision. The temporary suspension shall be

effective until the Board formally notifies the Owner of the violation, conducts a hearing if requested, and makes a final determination as to the violation and the course of action. The determination by the Board is final.

f. Fines/Civil Damages.

Each Owner shall comply with the Association's Dedicatory Instruments. For purposes of this paragraph, any violation of the Association's Dedicatory Instruments shall be considered a violation of this Declaration. The Board may assess a fine or civil damages for any violation of this Declaration, up to a maximum of \$200.00 per day for each violation. If state law is amended to increase this limit, then the Board may assess a fine up to the current limit allowed by law.

The Board may not impose a fine on an owner for failure to timely pay Assessments.

g. Suspension of Rights.

If an Owner violates the Dedicatory Instruments, the Property Owners Association may suspend the Owner's rights under the Dedicatory Instruments in accordance with law until the violation is cured, provided, however, that the right of an Owner to cast a vote in a matter to be determined by the Owners, or to run for a position on the Board shall not be limited, except as provided by law.

h. Attorney's Fees, Costs, and Expenses.

An Owner who fails to timely pay all Obligations owed to the Association, or who violates the Dedicatory Instruments, is liable to the Association for reasonable attorney's fees, court costs, fees of any collection agent for actions undertaken to collect any Obligation, and other expenses incurred in collecting such Obligations or enforcing the Dedicatory Instruments, to the maximum extent allowed by law.

i. Responsibility for Tenants, Guests, and Third Parties.

All Owners shall ensure that their family members, tenants, agents, guests, representatives, employees, service providers, builders, contractors, and subcontractors, and any other persons who come into the Subdivision based on the request, invitation, or permission of the Owner or any person residing on the Owner's Lot(s) shall comply with the terms of this Declaration and the other Dedicatory Instruments.

Article Nine - Miscellaneous Matters

a. Conflicts Among Documents.

This Declaration runs with the land and is binding in perpetuity.

b. Term.

If there is any conflict between the Articles of Incorporation or Bylaws of the Association

and this Declaration, this Declaration shall control.

This Declaration replaces the Original Declaration and the First Amendment. If there is any conflict between the Original Declaration and this Declaration, this Declaration shall control. If there is any conflict between the First Amendment and this Declaration, this Declaration shall control.

c. Policies, Rules, and Regulations.

The Board may adopt policies, rules, and/or regulations that do not conflict with applicable law, this Declaration, or the other Dedicatory Instruments.

d. Required Policies.

The Board shall adopt the following policies, taking into account applicable legal and accounting requirements:

- i. Open Records and Copying: A policy establishing reasonable guidelines for the Association to make its books and records, including financial records, open to and reasonably available for examination and/or copying by an owner or the owner's agent, attorney, or certified public accountant. No Owner may inspect or copy the interior floor plan or security system design of any other Owner.
- ii. Alternative Payment Schedules: A policy establishing reasonable guidelines for alternative payment schedules by which owners may make partial payments to the Association for past due amounts owed to the Association.
- iii. Document Retention: A policy establishing reasonable guidelines for retaining documents (including both paper records and electronic files).

e. Outside Property.

Real property which is located outside of the Subdivision but which is adjacent to or in close proximity to the Subdivision may be incorporated into the Subdivision if:

- i. A formal agreement is prepared, suitable for filing with the real property records, incorporating the outside property into the Subdivision, defining the Lots and Common Areas in the outside property, and establishing any additional terms and conditions;
- ii. All owner(s) of the outside property sign and authenticate the agreement and submit it to the Board;
- iii. Owners of a majority of the Lots currently subject to the declaration sign the document and have it authenticated;

- iv. All required governmental approvals, if any, are obtained; and
- v. The agreement is recorded in the real property records of Henderson County, Texas.

Once the foregoing conditions have been met, the Lots comprising the outside property and its Owners shall be subject to this Declaration as if the outside property had originally been described as part of the Subdivision, and any Common Areas in the outside property shall become Common Areas owned by the Association.

f. Grandfather Clause.

- i. Any Lot or Improvement constructed prior to the date this Declaration is adopted and filed, which failed to meet one (1) or more of the requirements set forth in Article Five of this Declaration as of that date, but which met the corresponding requirements of the Original Declaration and First Amendment which were in effect immediately before this Declaration was adopted, shall remain exempt from these requirements but subject to the corresponding requirements in the Original Declaration and/or First Amendment until that Lot is brought into compliance with this Declaration.
- ii. Any Lot or improvement as described in paragraph (i.) above that is sold after the date this Declaration is adopted and filed, must be brought into full compliance with all of the requirements of this Declaration within one (1) year of the date of purchase by the new owner, while being subject to the requirements of the Original Declaration and/or First Amendment until that Lot or improvement is brought into compliance with this Declaration.
- iii. Any noncompliant Improvement that is destroyed, or is damaged to the extent that repairs will cost fifty percent (50%) or more of the original construction cost, shall be subject to all requirements in this Declaration and may be repaired or rebuilt only in full compliance with all its provisions, with the exception of the "Cottage" at 5655 Browns Landing Drive, Chandler, Texas 75758, which must be rebuilt to approximately the same size unless specifically approved by the ACC.

g. Easements.

The Association and its representatives and contractors shall at all times have full rights of ingress and egress upon each Lot, for carrying out the rights, functions, duties, and obligations under this Declaration and the other Dedicatory Instruments; provided, that

any such entry shall be made with as minimum inconvenience to the Owner as practical, and that the user of the easement shall repair any damage to a Lot or Improvement which it causes.

The Association hereby reserves for itself, its successors and assigns, the right to (1) dedicate streets, walks, alleys, and other Common Areas throughout the Subdivision, and (2) reserve or grant easements of ingress and egress and for the installation, construction, maintenance, repair and replacement of utilities, related facilities, or amenities and services to the Common Areas, which may include but shall not be limited to, sewer (sanitary and storm), gas, electric, telephone, cable television, electronic communications of all sorts, and water lines, upon, over, under, and across the Subdivision, as it in its sole discretion deems proper or appropriate. Further, the Association hereby reserves temporary construction easements for the construction, repair, removal, maintenance, and reconstruction of improvements within the Subdivision, including the right to remove, on a temporary basis, fences, driveways, sprinkler systems, landscaping, and other improvements as shall be reasonably necessary to enable the Association to complete the development and improvement of the Subdivision; provided that any such improvement removed by the Association shall be replaced and/or restored, upon completion of the construction activities, to substantially their former condition. Each Owner hereby waives all claims for damages, if any, arising out of such construction or other activities by the Association.

The Association, any governmental entity having jurisdiction over the Subdivision, and any utility provider who provides service to the Subdivision shall have full rights of ingress and egress at all times over any dedicated easement for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation, or installation of such utility. Each Owner hereby waives all claims for damages, if any, arising out of the installation, construction, operation, maintenance, repair or removal of utilities on account of temporary or other inconvenience caused thereby, against the Association or any utility company or governmental authority.

h. Partial Invalidity.

If any covenant, condition, or restriction contained herein, or any portion thereof, is declared to be invalid by a final order, judgment, or award by any Court or governmental entity with proper jurisdiction, such invalidity shall in no way affect any other condition, covenant, or restriction, each of which shall remain in full force and effect. If it is found that any provision contained in this Declaration is in violation of any law, then the remaining portions of that provision shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by applicable law.

i. Amendments to this Declaration.

