

September 10, 2019

Emerald Forest HOA DEED RESTRICTIONS AMENDMENTS

~~~~~ **NEWS ALERT** ~~~~~

### HOMEOWNER VOTING INFORMATION

On September 16, 2019, you will find in your e-mail inbox an important Announcement containing a Personal Registration Code enabling you to **vote online** for amendments to the deed restrictions governing the use of real property in the Emerald Forest Subdivision.

You will use the Personal Registration Code — a unique number assigned to your Emerald Forest property — for the one-time purpose of accessing the Official Ballot and voting for or against the ***First Amended and Restated Declaration of Covenants, Conditions and Restrictions of Emerald Forest Phases 1 through 11*** (Amended & Restated Deed Restrictions) .

The Amended & Restated Deed Restrictions document in its entirety, along with a ***SUMMARY & RATIONALE FOR CHANGES*** and the link to the Official Ballot, will be posted on the HOA's website [www.emeraldforesthwa.org](http://www.emeraldforesthwa.org) beginning September 16, 2019. The ***SUMMARY & RATIONALE*** document also is included as part of this ***NEWS ALERT*** with the annual meeting materials mailed to you today.

The HOA Board of Directors believes online voting is an efficient and cost-effective method to achieve maximum participation in the voting process and requests that you vote and submit your ballot by October 18, 2019.

**If the HOA does not have your e-mail address, you of course will not receive the Announcement containing a Personal Registration Code. In that case, you should call the HOA Management Department at (979) 703-1819 and request a Personal Registration code number to proceed with the online voting process. A paper ballot will be provided to homeowners who do not have online access.**

Upon the advice of legal counsel, the HOA Board of Directors has unanimously approved the proposed ***First Amended and Restated Declaration of Covenants, Conditions and Restrictions of Emerald Forest Phases 1 through 11***, but to become effective, it must be adopted by an affirmative vote of the majority of homeowners in each of the 11 phases in the Emerald Forest subdivision. This is an important event in the history of Emerald Forest, and the Board of Directors thanks you for taking time to vote.

Questions: Please phone the HOA Management Office, (979) 703-1819 or email questions to [hoa@bhscaliber.com](mailto:hoa@bhscaliber.com) .

**EMERALD FOREST HOA  
DEED RESTRICTIONS AMENDMENT PROJECT**

**SUMMARY & RATIONALE FOR CHANGES**

Five years ago, as the Texas Legislature continued to amend and add to the laws governing HOA's, the Board of Directors of the Emerald Forest HOA was concerned that the subdivision's deed restrictions were becoming out-dated. Emerald Forest's deed restrictions documents (all 11 of them) are formally known as Declaration(s) of Covenants, Conditions, and Restrictions (CC&Rs). CC&Rs govern the use of real property in a deed restricted subdivision like Emerald Forest. Our CC&Rs date from when Emerald Forest was first established in the mid- to late-1970's and have remained unchanged as the subdivision developed through its 11 phases — each phase having a separate CC&R document.

The Board determined that Emerald Forest's deed restrictions required some changes to avoid problems that could worsen over time. Rather than attaching a few amendments to a cumbersome set of out-dated, developer-crafted documents, the HOA Board resolved to thoroughly review, analyze, and amend — and ultimately to restate — Emerald Forest's CC&Rs. The project was launched with three goals:

1. To **CONSOLIDATE** CC&Rs into a single document and remove inconsistencies across the 11 Phases;
2. To update CC&Rs to **COMPLY** with changes in Texas law governing HOAs; and
3. To amend and add provisions to **CLARIFY** the intent and purpose of the CC&Rs so that property values and lifestyle would be maintained and improved in a changing, developing city like College Station

Early on, the Board appointed a drafting/steering committee comprised of three board members who were assisted by a review and advisory group of 38 Emerald Forest homeowners. To ensure the project goals were met, the drafting/steering committee identified and adopted 10 guiding objectives:

- To eliminate obsolete provisions
- To eliminate provisions no longer observed or enforced
- To eliminate State required provisions applicable to a developer in a start-up development
- To eliminate developer roles, privileges and involvement which were no longer relevant
- To provide a single CC&R document appropriate for a completely built-out development
- To provide for changes in technology
- To provide a governing document that was user friendly and easily understood
- To improve poorly drafted language by clarifying ambiguous provisions
- To correct mistakes and errors
- To tailor the document to fit the living experiences and expectations of homeowners

The project involved contributions from scores of conscientious, dedicated and talented homeowners and board members. Legal counsel, knowledgeable and experienced in property and HOA law, was hired to advise, review and fine-tune their work to produce improved deed restrictions in a new CC&R document that is compliant with the law and protects the interests of homeowners and the HOA.

On July 25, 2019, the Board of Directors unanimously accepted and approved the proposed ***First Amended and Restated Declaration of Covenants, Conditions and Restrictions of Emerald Forest Phases 1 through 11***. To become effective, the document must be adopted by an affirmative vote of the majority of homeowners in each of the 11 phases of Emerald Forest. We are confident the proposed document will protect the integrity of our neighborhood and enhance the quality of life and maintain property values in Emerald Forest in the years ahead. We thank you for your time and interest in this important matter and urge you to vote YES for the adoption of the recommend changes.

John Woods, President  
Emerald Forest HOA  
September 10, 2019



WHEREAS, Deed Restrictions for Emerald Forest, Phase VI, College Station, Texas, was recorded in Volume 531, Page 557, Deed Records, Brazos County, Texas, covering Emerald Forest Phase VI, as described by plat recorded in Volume 530, Page 665, of the Deed Records of Brazos County, Texas (the "Phase 6 Property");

WHEREAS, Deed Restrictions for Emerald Forest, Phase VII, College Station, Texas, was recorded in Volume 605, Page 151, Deed Records, Brazos County, Texas, covering Emerald Forest Phase VII, as described by plat recorded in Volume 930, Page 649, of the Deed Records of Brazos County, Texas (the "Phase 7 Property");

WHEREAS, Deed Restrictions for Emerald Forest, Phase VIII, College Station, Texas, was recorded in Volume 1583, Page 295, Deed Records, Brazos County, Texas, covering Emerald Forest Phase VIII, as described by plat recorded in Volume 1581, Page 323, of the Deed Records of Brazos County, Texas (the "Phase 8 Property");

WHEREAS, Deed Restrictions for Emerald Forest, Phase 9, College Station, Texas, was recorded in Volume 2080, Page 12, Deed Records, Brazos County, Texas, covering Emerald Forest Phase 9, as described by plat recorded in Volume 2075, Page 91, of the Deed Records of Brazos County, Texas (the "Phase 9 Property");

WHEREAS, Deed Restrictions for Emerald Forest, Phase 10, College Station, Texas, was recorded in Volume 2388, Page 173, Deed Records, Brazos County, Texas, covering Emerald Forest Phase 10, as described by plat recorded in Volume 2379, Page 333, of the Deed Records of Brazos County, Texas (the "Phase 10 Property");

WHEREAS, Declaration of Covenants and Restrictions for Emerald Forest, Phase Eleven, College Station, Texas, was recorded under Document No. 0074542 of the Official Records of Brazos County, Texas, covering Emerald Forest Phase 11, as described by plat recorded in Volume 4580, Page 196, of the Official Records of Brazos County, Texas (the "Phase 11 Property");

WHEREAS, all restrictive covenants listed above in this Recitals section, along with any amendments thereto, shall be referred to herein as the "Restrictions";

WHEREAS, the Phase 1, Phase 2, Phase 3, Phase 4, Phase 5, Phase 6, Phase 7, Phase 8, Phase 9, Phase 10, and Phase 11 Properties, along with any amended plats, supplemental plats, or replats thereto, shall be referred to herein as the "Property" or the "Subdivision";

WHEREAS, pursuant to the Restrictions, Owners who hold a majority of the total votes in each phase described above may amend the Restrictions and desire to do so by adopting this First Amended and Restated Declaration of Covenants, Conditions and Restrictions of Emerald Forest Phases 1 through 11;

WHEREAS the undersigned Owners desire to amend, create, and carry out a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future Owners of the Property;

WHEREAS, when recorded, this First Amended and Restated Declaration of Covenants, Conditions and Restrictions of Emerald Forest Phases 1 through 11 fully restates, replaces, and supersedes all Restrictions.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared (i) that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, liens, and charges, which are for the purpose of preserving the value and desirability of and which shall run with the Property, and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof; and (ii) that each contract or deed that may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to the following covenants, conditions and restrictions regardless of whether or not the same are set out or referred to in said contract or deed.

## **ARTICLE 1 DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the following meanings hereinafter specified:

- 1.01 Architectural Committee. “Architectural Committee” or “Committee” shall mean the committee created by the Board to review and approve plans for the exterior construction of Improvements on the Property. If the Board does not appoint an Architectural Committee, the Board shall serve as the Architectural Committee.
- 1.02 Architectural Committee Rules. “Architectural Committee Rules” shall mean the rules and regulations adopted by the Architectural Committee, as the same may be amended from time to time.
- 1.03 Articles. “Articles” shall mean Articles of Incorporation of Emerald Forest Community Improvement Association., as that instrument may be amended from time to time, which instrument is filed in the office of the Secretary of State of the State of Texas.
- 1.04 Assessment. “Assessment” or “Assessments” shall mean such assessments as may be levied by the Association under the terms and provisions of the Declaration.

- 1.05 Association. "Association" shall mean Emerald Forest Community Improvement Association, a Texas nonprofit corporation, which has authority and responsibility for all of the communities and Subdivisions of Emerald Forest, as hereafter defined.
- 1.06 Board. "Board" shall mean the Board of Directors of the Association
- 1.07 Bylaws. "Bylaws" shall mean the Bylaws of the Association, which may be from time to time amended by the Board of Directors.
- 1.08 Common Areas. "Common Areas" or "Common Properties" shall mean any land conveyed, leased, dedicated, or assigned by the developer of the Property, or a third party with the Association's consent, to the Association for maintenance and operation, including, but not limited to, easements, roads, entryways, roadways, rights-of-ways, parkways, median strips, sidewalks, parks, recreational areas, pavilions, walking trails, tennis courts, swimming pools, water features, trails, paths, ponds, creeks, or lakes within the Property.
- 1.09 Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.
- 1.10 Dedictory Instruments. "Dedictory Instruments" shall mean all Dedictory Instruments as that term is defined in the Texas Property Code. It includes but it not limited to this Declaration, as the same may be amended from time to time, the Emerald Forest Rules, Architectural Committee Rules, Articles of Incorporation, Bylaws and any other policies or rules of the Association as the same are in effect from time to time.
- 1.11 Emerald Forest Rules. "Emerald Forest Rules" shall mean the rules, regulations, and policies adopted by the Board as the same may be amended from time to time.
- 1.12 Fines. Fines shall mean a fixed monetary amount which may be levied and collected against Owners for any violation of the Dedictory Instrument. Fines shall be uniform according to a fine policy and schedule to be established from time to time by the Board.
- 1.13 Improvement. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, pole signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, walls, tanks, reservoirs, pipes, lines, meters, antennae, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities. This definition does not include interior renovations.

- 1.14 Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on a recorded plat of the Property, together with all Improvements located thereon.
- 1.15 Member. "Member" or "Members" shall mean any person(s), entity, or entities holding membership rights to the Association pursuant to Article 4.02 herein.
- 1.16 Mortgage. "Mortgage" or "Mortgages" shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.
- 1.17 Mortgagee. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.
- 1.18 Owner. "Owner" or "Owners" shall mean a person or persons, entity, or entities holding a fee simple interest in any Lot on the Property but shall not include a Mortgagee.
- 1.19 Person. "Person" or "Persons" shall mean an individual or individuals, entity or entities that hold title to real property.
- 1.20 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including, but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, elevation drawings, floor plans, specifications on all building products and construction techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to such Improvement.
- 1.21 Property. "Property" shall mean the real property in Brazos County, Texas which is identified in the Recitals of this Declaration as Emerald Forest, Phases 1 through 11, and additional lands that may subsequently be annexed into the Declaration pursuant to its terms.
- 1.22 Single Family. "Single family" shall mean persons related by blood, adoption, or marriage living with not more than one (1) person who is not so related as a single household unit. No residential dwelling on any Lot within the Subdivision shall be occupied by more than one (1) single family. It is not the intent of this provision to exclude from a Lot any individual who is authorized to so remain by law. If it is found that this provision is in violation of any law, then this provision shall be interpreted to be as restrictive as possible to preserve as much of the original provision as allowed by law.

**ARTICLE 2**  
**GENERAL RESTRICTIONS**

All of the Property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the limitations and restrictions set out in this Declaration, as it may be amended.

- 2.01 Residential Use Only. Lots shall be used for single family residential use only and may not be occupied by more than one single family as defined in Article 1. Single family residential use refers not only to the architectural design of the buildings and Improvements on a Lot but also the number of inhabitants and permitted uses which must be residential in nature. Trade, business, and commercial activities are prohibited except where (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all governmental requirements and other dedicatory instruments applicable to the Lot; (c) the business activity does not involve visitation to the residence or Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation in the Subdivision; and (d) the business activity is consistent with the residential character and use of the Subdivision, does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, as may be determined in the sole discretion of the Board. The uses set out in this Section 2.01 (a) through (d) are referred to singularly or collectively as an "Incidental Business Use." At no time may an Incidental Business Use cause increased parking or traffic within the Subdivision or the use will be deemed to be a violation of this Declaration. A day-care facility, home day-care facility, church, nursery, pre-school, beauty parlor, or barber shop or other similar facility, vacation rental by Owner, boarding house, "Airbnb", or bed and breakfast are expressly prohibited and are not considered an Incidental Business Use.
- 2.02 Construction or Modification of Improvements. No buildings or other Improvements shall be erected, placed, or altered on any Lot until the Plans and Specifications have been approved by the Architectural Committee as to use, quality of workmanship and materials, harmony of external design with existing structures, and location with respect to topography and finish grade elevation. Any tree with a diameter of eight (8) inches or greater which an Owner or builder plans to remove must be shown on the Plans and Specifications and the reason for removal must be given before the Plans and Specifications will be considered by the Architectural Committee pursuant to Article 5 of this Declaration.
- 2.03 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, debris, or materials. Trash, garbage, compost, and other waste shall be stored in appropriate containers and such containers shall be kept in an enclosed structure or otherwise screened from view. If rubbish, debris, or materials accumulate upon any Lot in violation of this provision, as determined in the sole discretion of the Board of Directors, the Association may enter the Lot without liability for trespass, remove all such items, and charge the costs for such removal to the Owner of the Lot. Notice will be provided to the

Owner as required by law.

- 2.04 Leasing of Units. Residential dwellings on Lots within the Subdivision may be leased subject to the occupancy restrictions contained herein. Leasing must be for single-family residential purposes only. Lots may be leased only in their entirety with all Improvements; no fraction or portion of a Lot, residential dwelling, or other Improvement may be leased separately. All leases shall be in writing and shall be for an initial term of not less than six (6) months. Short-term leasing, meaning leasing for a term of less than six (6) months, is prohibited. Game day or weekend rentals are prohibited. Advertising a residential dwelling on websites such as vacation rental by Owner (VRBO), AirBNB, HomeAway, and the like is not permitted. No later than ten (10) days after the commencement of any lease, the Owner shall provide to the Association, in writing, the names and ages of all tenants living on the Lot. Every Owner shall cause all occupants of his or her Lot to comply with this Declaration, and any applicable amendments, and shall be responsible for all violations caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any such violation.
- 2.05 Occupancy. No residential dwelling shall be occupied by more than one (1) single family as defined in Article 1.
- 2.06 Nuisance. No noxious or offensive activity shall be permitted upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Subdivision.
- 2.07 Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that a cumulative total of not more than three (3) dogs, cats, or other household pets as determined by the Board may be kept, provided they are not kept, bred, or maintained for any commercial purposes.
- 2.08 Oil and Mining Operations. No oil drilling, oil development, oil refining, quarrying, or mining operations of any kind shall be permitted upon, below or in any Lot, nor shall any wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structures designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Lot.
- 2.09 Sewage Disposal and Water Supply. No water well, cesspool, or individual sewage system shall be constructed or used on any Lot. Each Owner must use the water and sewer services provided by State, County, Municipal or other government authorities.
- 2.10 Signs. No sign of any kind may be erected or maintained on any Lot without the consent in writing of the Architectural Committee except the following permitted signs:

(a) not more than one (1) sign that extends not more than four (4) feet above the ground advertising the Lot is for sale or rent;

(b) ground mounted political signs less than four feet (4') by six feet (6'), not to exceed one (1) sign per candidate or ballot issue, and displayed only for the period from ninety (90) days prior to and ten (10) days after the election date;

(c) not more than one (1) sign advertising commercial services related to the repair or improvement of the property (construction or landscaping, for example), which may be displayed during a period beginning with the commencement of the service or project and ending upon the termination of the service or project;

(d) not more than two (2) security signs not to exceed one foot (1') by one foot (1').

Except as otherwise provided above, no permitted sign shall exceed six (6) square feet without the prior written approval of the Architectural Committee. The Architectural Committee shall have the right to enter and remove any unapproved sign, advertisement, billboard, or structure which is placed on any Lot in violation of this section or without the consent of the Architectural Committee if so required, and in so doing, shall not be liable and is expressly relieved from any liability for trespass or other sort in connection therewith, or arising from such removal.

- 2.11 Rain Barrels. Rain barrels must comply with the requirements of Section 202.007 of the Texas Property Code and any policy adopted by the Board of Directors.
- 2.12 Flags and Flag Poles. Flags and flag poles must comply with the requirements of Section 202.011 of the Texas Property Code and any policy adopted by the Board of Directors.
- 2.13 Building Materials. The main residential structure of a Lot shall have not less than fifty-one percent (51%) of the exterior wall areas constructed of brick or wood products approved by the Architectural Committee. The Architectural Committee may modify this requirement when the design and appearance as proposed, are deemed to be of such nature as to be equally attractive and permanent.
- 2.14 Solar Energy Devices. Solar energy devices must comply with the requirements of Section 202.010 of the Texas Property Code and any policy adopted by the Board of Directors.
- 2.15 Subdividing. A Lot may not be subdivided. Two or more adjacent Lots may be consolidated, provided that written approval of the Architectural Committee is obtained in advance. Lots that are consolidated will retain the number of votes and assessment obligations attributed to each Lot prior to the consolidation.

- 2.16 Parking of Vehicles. Overnight parking of vehicles or trailers of any kind is prohibited on the streets within the Property. No vehicle of any kind may be parked or kept, at any time, on the front or side yard areas of any Lot.
- 2.17 Unightly Vehicles. No vehicle deemed to be unsightly by the Architectural Committee, in its sole discretion, shall be parked or kept on any Lot so as to be visible from any adjoining Lot or any street within the Subdivision. Trailers, travel trailers, motorhomes, recreational vehicles, graders, trucks larger than a one (1) ton pickup, boats and other watercraft vehicles, tractors, semi-trailers, campers, wagons, buses, motorcycles, motor scooters, machinery, garden maintenance equipment, inoperable vehicles, and vehicles not properly registered with the Texas Department of Motor Vehicles shall be kept at all times, except when in actual use, in an enclosed structure or otherwise screened from view. No repair or maintenance work shall be done on any vehicle (other than minor emergency repairs) except in an enclosed garage or other enclosed structure.
- 2.18 Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently. Storage buildings or workshops, which are not part of the residential structure, must be approved by the Architectural Committee in writing, be constructed of acceptable brick or wood material, and be painted to match the main residential structure. The roof of such must be of similar roofing material used on the main residential structure. All Plans and Specifications must be submitted to the Architectural Committee for approval, prior to the commencement of any construction. If, on the date of recording of this Declaration, any storage building or workshop is in violation of this section, it will be grandfathered and allowed to remain until its removal. If a structure is determined, in the sole discretion of the Architectural Committee, to be in a state of disrepair, the Architectural Committee may require its removal, regardless of whether it is a grandfathered.
- 2.19 Yard Appearance. All yards and lawns shall be kept neat and well-maintained, and all grass and ground cover shall be mowed, edged, and trimmed at regular intervals. Flower beds shall be free of weeds. Dead trees, shrubs, vines, and plants shall be promptly removed. Lawns must be properly maintained and regularly mowed to a height suitable for the cultivar, but in no case should lawns be allowed to grow to a height greater than eight inches (8"). Building materials shall be kept in an enclosed structure, or otherwise screened from view. Any refuse and materials not immediately necessary for construction shall be promptly removed from each Lot. All yard equipment, miscellaneous storage piles and firewood shall be kept in an enclosed structure, or otherwise screened from view.
- 2.20 Fences. All fences shall be approved by the Architectural Committee and must be maintained in accordance with this section.

(a) The term "Estate Fences" when used in this section shall mean all fences located along Emerald Parkway, North Forest, and Appomattox Drive and being comprised entirely of brick or a combination of brick columns with brick or cement footings and wooden pickets. The Association shall be responsible for the maintenance and repair of the brick and concrete elements of all Estate Fences.

In order to preserve the integrity of the Estate Fences, or any portion thereof, Owners shall engage in the following yard and property maintenance practices:

- (i) adequate drainage shall be maintained to prevent water accumulation at the base of any brick walls, brick columns and concrete fence footings;
- (ii) soil shall be kept below all brick fence surfaces;
- (iii) lumber, firewood or any other materials shall not be placed, kept or stacked on Estate Fences;
- (iv) all plants located within three (3) feet of any brick walls and columns shall have non-invasive root systems, in order to prevent damage to any wall or fence;
- (v) irrigation sprinkler systems must be positioned in a manner that will not cause water to hit the brick elements of Estate Fences;
- (vi) any stain used to repair or maintain any wooden fence located along Emerald Parkway and Appomattox Drive shall match the stain already used on such fences.

If damage occurs to an Estate Fence due to failure of an Owner to follow the aforementioned practices, such Owner shall be responsible for repair.

(b) All wooden fences, along with the wooden picket elements of all Estate Fences, shall be maintained and repaired by the Owner on whose Lot such fence, or any portion thereof, is located or whose Lot is enclosed by (in whole or in part) or abuts such fence. All repairs and maintenance to wooden fencing or wooden pickets by any Owner must utilize cedar pickets and be done in a manner so that such fencing or picket matches the original.

(c) All fences located along Emerald Parkway and Appomattox Drive shall be six (6) feet tall.

(d) All other fences shall be no less than six (6) feet tall and no more than eight (8) feet tall.

(e) No chain link or wire fences shall be constructed on any Lot, except that

black, powder coated chain link or wrought metal fences may be constructed on Lots that back up to wildlife and creek bed areas.

- 2.21 Maintenance. Each Owner shall maintain and keep in a good state of repair all buildings, structures and other Improvements that are located on such Owner's Lot.
- 2.22 Drainage Ditches. All drainage ditches shall be maintained by the Owner and kept unobstructed at all times. Any bridge or culvert constructed over property line ditches shall be of concrete pipe and a minimum of 18 inches (18") in diameter, unless the depth of the ditch shall require a larger size for proper drainage.
- 2.23 Swimming Pool Water Discharge. No water from a swimming pool, spa, hot tub, fountain, pond, or water feature on any Lot may be backwashed, discharged, drained, or allowed to flow onto another Lot or Common Area. No Owner shall permit water from any such improvements to flow in a manner that creates a nuisance to another Owner. Each Owner must comply with all applicable laws, codes, and ordinances related to wastewater discharge.
- 2.24 Land near Parks and Water Courses. No building or Improvement shall be placed nor shall any material or refuse be placed or stored on any Lot within seven and one-half feet (7 ½') of the property line of any parks or edge of any open water courses, except that clean fill dirt may be placed nearer provided that the natural water course is not altered or blocked by such fill dirt.
- 2.25 Easements. There are dedicated and reserved permanent and unobstructed easements as shown on the recorded plats of the Property across various Lots therein, upon, under and through which to construct and maintain drainage easements, water, gas, telephone and electric light services and other public utilities, which said easements shall be a burden and charge against such Lots in the Subdivision, by whomsoever owned.
- 2.26 Compliance. Each Owner shall comply strictly with the provisions of the Declaration as the same may be amended from time to time. Failure to comply shall constitute a violation of this Declaration and shall give rise to a cause of action for injunctive relief, maintainable by the Board on behalf of the Association or by any aggrieved Owner. Additionally, the Association may pursue an action to recover sums due for fines and/or damages. The Association, for itself, its successor or assigns, reserves the right to enforce the provisions of this Declaration and all governing documents of the Association.
- 2.27 No Warranty of Enforceability. Any Owner acquiring a Lot shall assume all the risks of the validity and enforceability thereof of the Declaration.

### ARTICLE 3

## RESIDENTIAL RESTRICTIONS

- 3.01 Land Use and Building Type. All Lots shall be used solely for single-family residential purposes. The term "residential purposes" as used herein excludes hospitals, clinics, duplex houses, apartment houses, boarding houses, hotel and commercial uses, whether from homes, residences, or otherwise, and all such uses of the Lots are expressly prohibited. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling not to exceed two and one-half stories (2 ½) in height, a private garage for not more than three (3) cars, and permitted accessory structures.
- 3.02 Dwelling Size. The livable, conditioned air area of each main residential structure on every Lot, exclusive of open screened porches, open terraces, or garages shall not be less than 2,000 sq. ft. If, on the date of recording of this Declaration, any residential structure is not compliant with this section, it will be grandfathered and continue to be allowed until such time as the residential structure is demolished or, in the sole discretion of the Architectural Committee, extensively reconstructed. Notwithstanding the foregoing, an existing residential structure less than 2,000 sq. ft. that is demolished and rebuilt or extensively reconstructed may be rebuilt the same size as the original structure, provided that such Plans and Specifications are reviewed and approved by the Architectural Committee pursuant to Article 5, Section 5.05 herein.
- 3.03 Building Location. No structure or fence shall be located on any Lot nearer to the Lot lines than the building lines shown on the recorded plat.
- (a) In any event, no structure or fence shall be located on any Lot nearer than twenty-five (25) feet to the front lot line, nor shall any structure or fence be located nearer than fifteen (15) feet to any side street line, nor nearer than twenty (20) feet to the rear lot line or nearer than seven feet six inches (7 ft., 6 in.) to any side lot line that is not adjacent to a street.
- (b) For the purpose of this section, eaves, steps, and uncovered porches shall not be considered a part of any structure. If, on the date of recording of this Declaration, any residential structure is in violation of this section, it will be grandfathered and allowed to remain until such time as the residential structure is demolished or, in the sole discretion of the Architectural Committee, extensively reconstructed.
- (c) No fence, wall, stoop, hedge, or other detached structure shall be erected or maintained on any part of the Lot forward of the front or side building line of any corner lot on side facing street.
- 3.04 Facing of Garages.

(a) No garage (or carport) shall face and open to the street at less than a ninety (90) degree angle unless the door is located fifty (50) feet or more from the front lot line.

(b) Garages on corner lots may open to the front or, at the option of the Owner, may open directly towards, and have driveway access from, the streets at the sides of the Lots, except that no garage or carport shall face and open at less than a ninety (90) degree angle to the side street, unless the approval for same shall be given in writing by the Architectural Committee.

(c) If, on the date of recording of this Declaration, any garage exists in violation of this section, it will be grandfathered and allowed until such time as the residential structure is demolished or, in the sole discretion of the Architectural Committee, extensively reconstructed.

(d) The Architectural Committee may recommend a variance of the requirements of this section if, in its sole opinion, special circumstances or conditions warrant such variance, and approval is granted by the Board of Directors.

3.05 Facing of Residences. Residences on corner lots shall face the street from which the greater building line setback is shown on the recorded plat. The Architectural Committee may recommend a variance of the requirements of this section if, in its sole opinion, special circumstances or conditions warrant such variance. Approval must be granted by the Board of Directors.

#### ARTICLE 4

#### EMERALD FOREST COMMUNITY IMPROVEMENT ASSOCIATION

4.01 Management of Association. The affairs of the Subdivision will be administered by the Association. The Association has the right, power, and obligation to provide for the management, administration, and operation of the Subdivision as herein provided for and as provided for in the Articles of Incorporation, Bylaws, and Rules. The business and affairs of the Association will be managed by its Board of Directors. The Board may engage any entity to perform the day to day functions of the Association and to provide for the management, administration and operation of the Subdivision. The Association, acting through the Board, is entitled to enter into such contracts and agreements concerning the Subdivision as the Board deems reasonably necessary or appropriate, in the Board's sole discretion, to manage and operate the Subdivision in accordance with this Declaration, including without limitation, the right to enter into agreements relating to maintenance, repair, administration, patrol services, traffic, or other matters affecting the Subdivision.

4.02 Membership. Every Person who is a record Owner of a fee or undivided fee interest in

any Lot which is subject to this Declaration is a Member of the Association by virtue of such ownership. Any Person becoming an Owner shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest, and may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with title to the said property interest.

4.03 Voting Rights. Voting rights are as provided in the Articles of Incorporation. There shall be one (1) vote for each Lot. When more than one (1) person holds an interest in a Lot, all such Persons are Members of the Association and the vote for such Lot will be exercised as the co-owners determine among themselves. In no event shall more than one (1) vote be cast with respect to a single Lot.

4.04 Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, subject only to any limitations upon the exercise of its power as are expressly set forth in this Declaration and Texas law. Without in any way limiting the generality of the two preceding sentences, the Association, and the Board acting on behalf of the Association, shall have the following powers at all times:

(a) Rules and Bylaws. To make, establish and promulgate, and in its discretion, to amend or repeal and re-enact, such Rules and Bylaws, not in conflict with this Declaration, as it deems proper to address any and all aspects of its functions, including but not limited to enforcement of the provisions contained in this Declaration.

(b) Insurance. To obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out Association functions.

(c) Records. To keep books and records of the Association's affairs.

(d) Assessments. To levy and collect Assessments as provided in Article 6 below.

(e) Right of Entry and Enforcement. To enter a Lot at any time in an emergency, or in a non-emergency, after ten (10) days' written notice, without being liable to any Owner for trespass or otherwise, for the purpose of inspecting a Lot and the exterior of the Improvements thereof and determining whether or not the provisions of the Declaration are being complied with. If an Owner fails to bring the Lot and/or Improvements into compliance with the Declaration, the Board may, after written notice, enter upon the Lot and do every other thing necessary to secure compliance with this Declaration, and may charge the Owner of the Lot for the cost of such work. The expense incurred by the Association in connection with the entry upon any Lot and the work conducted thereon (i) shall be a personal obligation of the Owner of the Lot entered upon,

(ii) shall be a lien upon the Lot entered on and Improvements thereon, and (iii) shall be enforced in the same manner and to the same extent as provided in Article 6 hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the names of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Declaration. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the governing documents of the Association; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against the developer of the Property, its successors or assigns.

(f) Fines. To levy and collect fines against Owners for any violation of the Declaration which is not cured by the Owner within a reasonable time, provided that notice is given as required by law. Fines may be assessed repeatedly for continuing violations. Fines shall be uniform according to a fine policy established and amended from time to time by the Board.

(g) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper for the operation of the Association.

- 4.05 Meetings of the Members. Annual and special meetings of the Members of the Association may be held at such place and time and on such dates as specified in the Bylaws.
- 4.06 Professional Management. The Board has the authority to retain, hire, employ or contract with such professional management companies or personnel as the Board deems appropriate to perform the day to day functions of the Association and to provide for the administration and operation of the Subdivision as provided for herein and as provided for in the Bylaws.
- 4.07 Board Actions in Good Faith. Any action, inaction or omission by the Board made or taken in good faith will not subject the Board or any individual member of the Board to any liability to the Association, its Members or any other party.
- 4.08 Standard of Conduct. The Board of Directors, the officers of the Association, and the Association have the duty to represent the interests of the Owners in a fair and just manner. Any act or thing done by any Director, officer, or committee member taken in furtherance of the purposes of the Association, and accomplished in conformity with the Declaration, Articles of Incorporation, Bylaws and the laws of the State of Texas, will be reviewed under the standard of the Business Judgment Rule as established by the common law of Texas, and such act or thing will not be a breach of duty on the part of the

Director, officer or committee member if taken or done within the exercise of their discretion and judgment. The Business Judgment Rule means that a court may not substitute its judgment for that of the Director, officer or committee member. A court may not re-examine the decisions made by a Director, officer or committee member by determining the reasonableness of the decision as long as the decision is made in good faith and in what the Director, officer, or committee member believed to be in the best interest of the Association.

4.09 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the provisions of this Declaration or the Dedicatory Instruments, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board of Directors without a vote of the membership except where otherwise required by the Dedicatory Instruments or applicable law. The Board may institute, defend, settle or intervene on behalf of the Association in litigation, administrative proceedings, binding or non-binding arbitration or mediation in matters pertaining to (a) Common Areas or other areas in which the Association has or assumes responsibility pursuant to the provisions of this Declaration, (b) enforcement of this Declaration or any Dedicatory Instruments, or (c) any other civil claim or action. However, no provision in this Declaration or any Dedicatory Instruments will be construed to create any independent legal duty to institute litigation on behalf of or in the name of the Association.

4.10 Landscape and Maintenance. The Association shall be authorized to landscape, maintain and repair easements, rights-of-way, Common Areas, entryways, sidewalks, paths, trails, detention ponds, tennis courts, swimming pools, lakes, waterfall pumps, irrigation equipment, entrance buildings, perimeter fences and other areas of the Property, as deemed appropriate by the Board of Directors.

4.11 Common Areas.

(a) Without limiting the generality of this Article as it relates to the rights of the Association, the Association, acting through the Board, shall have the following duties with regard to the Common Area:

- (i) To own, operate, and maintain all Common Areas, together with any Improvements of any kind or purpose located in said areas; and to maintain in good repair and condition all lands, Improvements, and other Association property owned by or leased to the Association.
- (ii) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and

assessments are not levied directly upon individual Members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

- (iii) To execute mortgages, both construction and permanent, for construction of Improvements on property owned by or leased to the Association, and to accept lands in Common Areas, whether or not improved, from Declarant subject to such mortgages or by assuming such mortgages, including without limitation, tennis courts, a swimming pool or pools in Common Areas. Financing may be effected through conventional mortgages or deeds of trust, the issuance and sale of development or other bonds, or in any other form or manner deemed appropriate by the Board of Directors of the Association. The mortgage or other security interest given to secure repayment of any debt may consist of a first, second or other junior lien, as deemed appropriate by the Association, on the Improvements to be constructed, together with such underlying and surrounding lands as the borrower deems appropriate. The debt secured by such mortgage or other security instrument may be retired from and secured by the revenues generated by dues, use fees, assessment of Members, or otherwise, or any combination thereof, as may be deemed appropriate by the Association, as the case may be, but subject to the limitations imposed by this Declaration.

(b) In addition, the Association, acting through the Board, shall have the power and authority:

- (i) To grant and convey portions of Association property, including fee title, leasehold estates, easements, rights-of-way, and/or mortgages, to any person or entity for the purpose of constructing, erecting, operating, or maintaining improvements;
- (ii) To pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities, services, and maintenance for the property of the Association; or parkways, entrance ways, or street rights-of-way which the Association desires to maintain or pay for; or to power wash or stain fences that face Common Areas or that face the outside of the Subdivision; and to contract for any other service or maintenance the Board finds is in the best interest of the Association and the aesthetic appearance of the Subdivision as a whole.
- (iii) To enter into contracts with such terms and provisions as the Board

shall determine, to operate and maintain any of the Common Areas or to provide any service or perform any function on behalf of the Association in connection with the purposes of the Association.

- (iv) To acquire and own and to dispose of all manner of real and personal property, whether by purchase, grant, lease, gift or otherwise.

(c) Every Member shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with title to every Lot.

- 4.12 Indemnification. The Association shall indemnify any director, officer, or member of a committee duly appointed pursuant to the Articles or Bylaws who by reason of the fact that such person is or was a director, officer, or member of such a committee of the Association was, is, or is threatened to be made, a named defendant or respondent in (i) any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative, or investigative; (ii) any appeal in such an action, suit, or proceeding; and (iii) any inquiry or investigation that could lead to such an action, suit, or proceeding (hereinafter a "Proceeding"), and against all judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with any such Proceeding to the fullest extent permitted by the Texas Business Organizations Code, as amended and in effect from time to time. Such authorization of indemnification shall be deemed to be mandatory and deemed to constitute authorization of indemnification and advancement of expenses to the fullest extent permitted by the Texas Business Organizations Code, as amended and in effect from time to time.

## ARTICLE 5 ARCHITECTURAL COMMITTEE

- 5.01 Membership of Architectural Committee. The Board may appoint an Architectural Committee which will consist of not less than three (3) nor more than five (5) members. One member of this Committee shall be a Board Member. No member of the Architectural Committee shall be entitled to any compensation for services performed pursuant to his or her service on the Architectural Committee. If a Committee is not appointed, the Board will fulfill the duties of the Architectural Committee.
- 5.02 Action by Architectural Committee. Items presented to the Architectural Committee shall be decided by a majority vote of the members of the Architectural Committee.
- 5.03 Term. Each member of the Architectural Committee shall hold office until such time as he or she has resigned, has been removed, or his or her successor has been appointed as

provided herein.

- 5.04 Adoption of Rules. The Architectural Committee may adopt, subject to Board approval, such procedural and substantive rules, not in conflict with this Declaration, as it deems necessary or proper for the performance of its duties.
- 5.05 Review of Improvements. Whenever in this Declaration the approval of the Architectural Committee is required, the Architectural Committee shall have the right to consider all Plans and Specifications for the exterior Improvement or proposal in question and all other facts that, in its sole and absolute discretion, are relevant.

(a) Submission of Plans and Specifications. Except as otherwise specifically provided herein, prior to the commencement of any construction, modification, or alteration of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction, modification, or alteration thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. Plans and Specifications must be in writing and may be submitted to the Architectural Committee by personal delivery, email, or telecopy with confirmation of receipt, or by commercial overnight courier (such as Federal Express, for example).

(b) Postponement of Review. Until receipt by the Architectural Committee of all information and documents deemed necessary by the Architectural Committee, an Owner's submission is considered incomplete and the Architectural Committee may postpone review of any Plans and Specifications. Upon receipt of all necessary information, the Architectural Committee shall consider and act upon the Plans and Specifications submitted for its approval. The Architectural Committee may, at its option, inspect construction in progress to assure conformance with approved Plans and Specifications. The Architectural Committee shall have the express authority to perform fact-finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable of more than one interpretation.

(c) Obstruction of View and Compatibility of Design. The Architectural Committee, in its review of Plans and Specifications and such other information as it deems proper, may consider whether any proposed Improvement upon a Lot would unreasonably obstruct the view from other portions of the Property. The Architectural Committee may, but shall not be required to, disapprove any Improvement upon any Lot that would unreasonably obstruct the view from any other portion of the Property. No Improvement shall be allowed on any Lot which is of such size or architectural design or involves the use of such landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with residential development within the Property

and the surrounding area.

(d) **No Warranty.** The Architectural Committee's approval of any Plans and Specifications will not be deemed an endorsement, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes not of its authorship.

- 5.06 **Board Review of Disapproval by Architectural Committee.** Any disapproval or withholding of consent by the Architectural Committee of any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the approval or consent of the Architectural Committee, may be appealed to the Board upon request by the Owner. Such request must (i) be in writing, (ii) set forth the reasons why the Owner believes the decision of the Architectural Committee was not proper, (iii) include copies of all documents submitted by the Owner to the Architectural Committee, and (iv) be received by the Board within fifteen (15) days after the decision of the Architectural Committee. The Board shall review the request and all documents pertaining thereto and may meet with the Architectural Committee or the Owner if more information is necessary to render a decision. A majority decision of the Board is required to overturn a decision of the Architectural Committee. The Board shall render a decision within forty-five (45) days of its receipt of the request.
- 5.07 **No Waiver of Future Approvals.** The approval or consent of the Architectural Committee of any Plans and Specifications for any work done or proposed, or in connection with any other matter requiring the approval or consent of the Architectural Committee, shall *not* be deemed to constitute a waiver of any right to withhold approval or consent as to any other Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.
- 5.08 **Work in Progress.** The Architectural Committee may at its option inspect all work in progress to ensure compliance with approved Plans and Specifications.
- 5.09 **No Liability for Architectural Committee Members.** Neither the Architectural Committee nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its members, as the case may be. Neither the Architectural Committee nor any member thereof shall be liable to any Owner due to the construction of any Improvements within the Property, or the creation thereby of any obstruction of the view from such Owner's Lot or Lots.
- 5.10 **Address.** Plans and Specifications shall be submitted to the Architectural Committee in the care of the Association's management company identified in the Association's most

recently filed Management Certificate. The Management Certificate and management company address will be publicly displayed on the Association's website.

- 5.11 Requirement to Act. The Architectural Committee shall review and act upon Plans and Specifications within forty-five (45) days after the complete submission of all information requested. The Architectural Committee shall approve, disapprove, or approve with conditions or modifications the Plans and Specifications submitted for review. The decision of the Architectural Committee shall be in writing.
- 5.12 Variances. Notwithstanding any other provision of this Declaration, in order to prevent undue hardship upon the Owner or Owners of any Lot or Lots upon the Property, a variance from any restrictions set out in this Declaration other than the requirements related to single family residential use may be recommended by a majority of the Architectural Committee. Approval of a variance must be granted by the Board of Directors in a written instrument that is duly acknowledged and recorded in the Official Public Records of Brazos County, Texas.
- 5.13 Governmental Agency Approval. Nothing in this Declaration shall be construed to relieve any Owner from securing approvals, certificates, and/or permits as may be required by law in connection with the construction of any Improvements on any Lot.
- 5.14 Relationship with Association. The Architectural Committee may perform certain functions specified herein relating to the review and approval of Plans and Specifications for Improvements that are constructed, modified, or altered on the Property. The Architectural Committee shall function as a committee of the Board.

## **ARTICLE 6 FUNDS AND ASSESSMENTS**

- 6.01 Assessments.
- (a) The Association may levy Assessments against each Lot whether or not such Lot is improved. Except for Damage Assessments as defined herein, the level of Assessments shall be equal and uniform between all Lots.
- (b) Each unpaid Assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Lot against which the Assessment falls due, and shall be a lien against each such Lot and all Improvements hereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Article.
- 6.02 Annual Assessments. The Annual Assessment per Lot shall be determined annually by

the Board based on the anticipated budgeted expenses for the upcoming fiscal year. The maximum Annual Assessment for the year 2020 will not exceed \$400.00. The Board may increase the Annual Assessment each year in an amount not to exceed ten percent (10%) of the prior year's Assessment. Any increase that exceeds ten percent (10%) of the prior year's Assessment must be approved by a majority of Owners present in person or by proxy at a regular or special meeting of the members of the Association. All Annual Assessments shall be due and payable to the Association in the time and manner directed by the Board at its sole discretion. Should the Board fail to determine the Annual Assessment for an upcoming year, the amount of the Annual Assessment will remain at the rate set for the previous year.

- 6.03 Special Assessments. In addition to the regular Annual Assessments provided for above, the Board may levy a Special Assessment when, in the Board's opinion, a Special Assessment is necessary to enable the Board to carry out the functions of the Association under this Declaration. Each Special Assessment must be approved by a majority of Owners present in person or by proxy at a regular or special meeting of the members of the Association.
- 6.04 Damage Assessments. The Board may impose Damage Assessments against an Owner for costs related to repair or maintenance of damages, loss to Common Areas, or property for which the Association incurred a repair obligation that was caused by the negligence or intentional acts of any Owner or occupants of a Lot.
- 6.05 Owner's Personal Obligation for Payment of Assessments. The Regular, Special, and Damage Assessments provided for herein shall be the personal and individual obligation of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot shall be obligated to pay interest at the rate of ten percent (10%) per annum, together with all costs and expenses of collection, including but not limited to late fees and reasonable attorney's fees.
- 6.06 Enforcement of Assessments and Subordination of Lien.

(a) The Annual Assessment charged against each Lot is due on the first (1st) day of each January, unless otherwise determined by the Board pursuant to Section 6.02, above. Any Assessment, or portion thereof, which is not paid and received by the Association within thirty (30) days of the due date will be deemed to be delinquent, and, without notice, will bear interest at the rate of ten percent (10%) per annum or the maximum, non-usurious rate, whichever is less, from the date originally due until paid. Further, the Board of Directors of the Association has the authority to impose a monthly late charge on any delinquent Assessment. The monthly late charge, if imposed, is in addition to interest. To secure the payment of the amounts levied and any other sums due

hereunder (including, without limitation, interest, late fees, costs, attorney's fees or delinquency charges), a separate and valid and subsisting lien was created and fixed upon and against each Lot and all Improvements thereon for the benefit of the Association pursuant to the original Deed Restrictions that are amended and restated by this Declaration, and superior title to each Lot continues to be reserved in and to the Association.

(b) The lien described in this Section and the superior title herein reserved is subordinate to any Mortgage for the purchase of a Lot and any renewal, extension, rearrangement or refinancing thereof. Notice of the lien may, but is not required to, be given by recording in the Official Public Records of Brazos County, Texas an affidavit, duly executed and acknowledged by an authorized representative of the Association, setting forth the amount owed, the name of the Owner or Owners of the affected Lot according to the records of the Association, and the legal description of such Lot. Each Owner, by acceptance of a deed to his Lot, hereby expressly recognizes the existence of such lien as being prior to his Ownership of such Lot and hereby vests in the Association the right and power to bring all actions against such Owner or Owners personally for the collection of such unpaid Annual Assessments, Special Assessments, Damage Assessments, and other sums due hereunder as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including both judicial and non-judicial foreclosure; in addition to and in connection therewith, by acceptance of the deed to his Lot, each Owner expressly grants, bargains, sells and conveys to the President of the Association from time to time serving, as trustee (and to any substitute or successor trustee as hereinafter provided for) such Owner's Lot, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid Annual Assessments, Special Assessments, Damage Assessments, and other sums due hereunder remaining unpaid hereunder by such Owner from time to time and grants to such trustee a power of sale.

(c) The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and filed in the Official Public Records of Brazos County, Texas.

(d) At any foreclosure, the Association is entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure the occupants of such Lot are required to pay a reasonable rent for the use of such Lot and such occupancy will constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale is entitled to the appointment of a receiver to collect such rents and, further, is entitled to sue for recovery of possession of such Lot by forcible detainer without further notice, except as may otherwise be provided by law. The collection of such Annual Assessment, Special Assessment, Damage Assessment, and other sums due hereunder may also be enforced by suit for a money judgment and in the

event of such suit, the expense incurred in collecting such delinquent amounts, including interest, late charges, costs and attorney's fees will be chargeable to and be a personal obligation of the defaulting Owner.

## ARTICLE 7 MISCELLANEOUS

- 7.01 Term. This Declaration will remain in full force and effect until January 1, 2040, and will be extended automatically for successive ten (10) year periods; provided, however, that the provisions of this Declaration may be terminated on January 1, 2040, or on the commencement of any successive ten (10) year period by filing for record in the Official Public Records of Brazos County, Texas, an instrument in writing signed by Owners representing not less than ninety percent (90%) of the Lots. In addition, termination of this Declaration requires written consent of the holders of first Mortgages representing not less than a majority of Lots on which first Mortgages exist as of the date of recordation of the termination document.
- 7.02 Dissolution. Upon termination of this Declaration, the Association shall be dissolved. In the event of any such dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to any appropriate public agency to be used for purposes similar to those of the Association with respect to the Common Areas. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.
- 7.03 Amendment. This Declaration may be amended by the recording in the Official Public Records of Brazos County, Texas of an instrument executed and acknowledged by the President and Secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Owners entitled to cast a majority of the total outstanding votes in the Association as determined in Section 4.03 of this Declaration.
- 7.04 Enforcement and Nonwaiver.
- (a) Right of Enforcement. Except as otherwise provided herein, any Owner at his own expense, or the Association acting through the Board of Directors shall have the right to enforce any and all of the provisions of the Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision. Notwithstanding the foregoing, an Owner may not enforce Assessments or liens in favor of the Association.
- (b) Nonwaiver. The failure to enforce any provision of the Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or

any other provision of said restrictions.

(c) Fines. Provided that notice and an opportunity to be heard are provided in accordance with the requirements of the Texas Property Code and any policies of the Association, fines may be imposed against an Owner for violations of this Declaration and the Dedicatory Instruments of the Association. Fines will be the personal obligation of the Owner and will be secured by the Assessment lien, and collectible in the same manner as the lien for Assessments described in Article 6 of this Declaration.

7.05 Construction.

(a) Interpretation. The provisions of this Declaration shall be liberally construed to give effect to its purposes and intent. If this Declaration or any word, clause, sentence, paragraph, or other part thereof is susceptible to more than one conflicting interpretation, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration and the general plan of development established by this Declaration will govern.

(b) Conflicts. In the event of a conflict in the Dedicatory Instruments that cannot reasonably be reconciled, this Declaration controls over any other Dedicatory Instruments, and other Dedicatory Instruments control in the following order of priority: (i) Articles of Incorporation; (ii) Bylaws; (iii) Policies and Rules; and (iv) all others.

(c) Severability. The provisions of the Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

(d) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine, and neuter.

(e) Articles and Sections. All article and section headings used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles.

(f) Choice of Law. This Declaration shall be construed in accordance with the laws of the State of Texas.

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the President of Emerald Forest Community Improvement Association, a Texas non-profit corporation;

That this instrument constitutes the First Amended and Restated Declaration of Covenants, Conditions and Restrictions for Emerald Forest Phases 1 through 11, and it was approved by Owners representing a majority of the Owners of lots in each phase of Phases 1 through 11 in Emerald Forest Subdivision, as evidenced by the Ballots attached hereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this the \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
JOHN WOODS, President  
Emerald Forest Community Improvement  
Association, a Texas nonprofit corporation

THE STATE OF TEXAS           §  
                                                  §  
COUNTY OF BRAZOS           §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2019, by JOHN WOODS, President of the Emerald Forest Community Improvement Association.

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