

**AMENDED, RESTATED AND CONSOLIDATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
EMERALD FOREST**

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This AMENDED, RESTATED AND CONSOLIDATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF EMERALD FOREST (“**Declaration**”) is made effective as of the date of recording in the Official Public Record of Brazos County, Texas.

RECITALS

WHEREAS, that instrument entitled “Deed Restrictions” for Emerald Forest, Phase I, College Station, Texas, was recorded in Volume 413, Page 15, Deed Records, Brazos County, Texas, covering Emerald Forest Phase I, as described by plat recorded in Volume 412, Page 223, of the Deed Records of Brazos County, Texas (the “**Phase 1 Restrictions**”);

WHEREAS, that instrument entitled “Deed Restrictions” for Emerald Forest, Phase II, College Station, Texas, was recorded in Volume 456, Page 836, Deed Records, Brazos County, Texas, covering Emerald Forest Phase II, as described by plat recorded in Volume 453, Page 907, of the Deed Records of Brazos County, Texas (the “**Phase 2 Restrictions**”);

WHEREAS, that instrument entitled “Deed Restrictions” for Emerald Forest, Phase III, College Station, Texas, was recorded in Volume 485, Page 808, Deed Records, Brazos County, Texas, covering Emerald Forest Phase III, as described by plat recorded in Volume 484, Page 657, of the Deed Records of Brazos County, Texas, as amended by the restrictions applicable only to Lots 7-17, Block One (1) of Emerald Forest, Phase III, recorded in Volume 501, Page 738, of the Deed Records of Brazos County, Texas, and re-filed in Volume 1043, Page 616 of the Deed Records of Brazos County, Texas to add additional signatures (the “**Phase 3 Restrictions**”);

WHEREAS, that instrument entitled “Deed Restrictions” for Emerald Forest, Phase IV, College Station, Texas, was recorded in Volume 519, Page 14 of the Deed Records of Brazos County, Texas, as corrected by that instrument entitled “Corrected Deed Restrictions” for Emerald Forest, Phase VI, recorded in Volume 519, Page 485, Deed Records, Brazos County, Texas, covering Emerald Forest Phase IV, as described by plat recorded in Volume 519, Page 372, of the Deed Records of Brazos County, Texas (the “**Phase 4 Restrictions**”);

WHEREAS, that instrument entitled “Deed Restrictions” for Emerald Forest, Phase V, College Station, Texas, was recorded in Volume 519, Page 25, Deed Records of Brazos County, Texas and re-recorded in Volume 531, Page 568, Deed Records, Brazos County, Texas, covering Emerald Forest Phase V, as described by plat recorded in Volume 530, Page 663, of the Deed Records of Brazos County, Texas (the “**Phase 5 Restrictions**”);

WHEREAS, that instrument entitled “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 Restrictions**”);

WHEREAS, that instrument entitled “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 ___, Page ___, of the Deed Records of Brazos County, Texas (the “**Phase 7 Restrictions**”);

WHEREAS, that instrument entitled “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 Restrictions**”);

WHEREAS, that instrument entitled “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 Restrictions**”);

WHEREAS, that instrument entitled “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 Restrictions**”);

WHEREAS, that instrument entitled “Declaration of Covenants and Restrictions for Emerald Forest, Phase Eleven, College Station, Texas,” was recorded in Volume 4601, Page 83, under Document No. 00774542 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, as amended by that instrument entitled, “First Amendment to Restrictions of Emerald Forest, Phase Eleven, College Station, Texas,” recorded in Volume 4800, Page 104, under Document No. 00786482 of the Official Records of Brazos County, Texas, and as supplemented by that instrument entitled, “First Supplement to Restrictions of Emerald Forest, Phase Eleven, College Station, Texas (Phase 11-C),” recorded in Volume 5736, Page 209, under Document No. 008377794 of the Official Records of Brazos County, Texas, and further supplemented by that instrument entitled, “Second Supplement to Restrictions of Emerald Forest, Phase Eleven, College Station, Texas (Phase 11-B),” recorded in Volume 5762, Page 163, under Document No. 00839404 of the Official Records of Brazos County, Texas, (the “**Phase 11 Restrictions**”);

WHEREAS, the Phase 1 Restrictions, Phase 2 Restrictions, Phase 3 Restrictions, Phase 4 Restrictions, Phase 5 Restrictions, Phase 6 Restrictions, Phase 7 Restrictions, Phase 8 Restrictions, Phase 9 Restrictions, Phase 10 Restrictions, and Phase 11 Restrictions, along with any amendments or supplements thereto, shall be collectively referred to herein as the “**Restrictions**”;

WHEREAS, the property restricted by the Restrictions, including any additional plats,

amended plats, supplemental plats, or replats thereto, shall be collectively referred to herein as the “**Property**” or the “**Subdivision**”;

WHEREAS, the restrictions for each phase of the Property may be altered, rescinded, or modified in whole or in part by an instrument signed by a majority of the current Owners of the Lots in that respective phase of the Property, and recorded in Brazos County, Texas;

WHEREAS, the Owners desire to amend, restate and consolidate all Restrictions into one instrument by adopting this Amended, Restated and Consolidated Declaration of Covenants, Conditions and Restrictions of Emerald Forest;

WHEREAS the Owners further desire to continue and carry out the uniform plan for the improvement, development and sale of the Property that was established by the Restrictions for the benefit of the present and future Owners of the Property;

WHEREAS, when recorded, this Amended, Restated and Consolidated Declaration of Covenants, Conditions and Restrictions of Emerald Forest shall fully restate, replace, and supersede the prior Restrictions.

NOW, THEREFORE, a majority of the Owners in each respective phase of Emerald Forest, hereby approve and adopt this Declaration and declare all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, easements, restrictions, liens, and charges 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.

ARTICLE I 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 REVIEW COMMITTEE. “Architectural Review Committee” shall mean the committee created by the Board to review and approve plans for the exterior construction or modification of Improvements on the Property.

1.02. ARCHITECTURAL GUIDELINES. “Architectural Guidelines” shall mean the guidelines adopted by the Board of Directors, 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.

1.04. ASSESSMENT. “Assessment” or “Assessments” shall mean such annual and special 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 may do business under the assumed name Emerald Forest Homeowners Association.

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 PROPERTIES. "Common Properties" shall mean any land conveyed, leased, dedicated, or assigned to the Association, with the Association's consent, 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. DEDICATORY INSTRUMENTS. "Dedicatory Instruments" shall mean all Dedicatory Instruments as that term is defined in the Texas Property Code. It includes but is not limited to this Declaration, as the same may be amended from time to time, the Emerald Forest Rules, Architectural Guidelines, 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" or "Rules" shall mean the collective rules, regulations, and policies adopted by the Board as the same may be amended from time to time.

1.12. IMPROVEMENT. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to residences, 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.

1.13. 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.

1.14. MEMBER. "Member" or "Members" shall mean any person(s), entity, or entities holding membership rights to the Association. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to the Declaration shall automatically be a Member of the Association. Membership shall be appurtenant to and shall run with the land, and may not be severed from or in any way transferred, pledged, mortgaged, or alienated separately from a Lot.

1.15. 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.

1.16. MORTGAGEE. "Mortgagee" or "Mortgagees" shall mean the holder or holders of any Mortgage or Mortgages.

1.17. 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.

1.18. 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.

1.19. PROPERTY OR SUBDIVISION. "Property" or "Subdivision" shall mean the real property in Brazos County, Texas which comprises the residential subdivision known as Emerald Forest and additional lands that may be annexed into the Declaration.

ARTICLE II RESTRICTIONS

2.01. LAND USE AND BUILDING TYPE.

Lots shall be used exclusively for Single Family residential purposes. The term "Single Family" as used herein refers not only to the architectural design of the building and Improvements on a Lot but also the number of inhabitants, which shall be limited to one (1) Single Family.

(a) Single Family shall mean the use of and improvement to a Lot with no more than one primary building designed for and containing facilities for living, sleeping, cooking, and eating therein. In no case may a Lot contain more than one residence; provided, that, a garage apartment or approved living quarters shall not be considered a separate residence if it is occupied in the manner permitted by this Declaration. No multi-family residences may be constructed on any Lot. No building, outbuilding, or portion thereof shall be constructed for income property or such that occupants would occupy less than the entire Lot and homesite. Leasing of a Lot and residence is permitted in accordance with Section 2.02, below.

(b) No building shall be erected, altered, placed, or permitted to remain on any Lot other than one Single Family residence not to exceed two and one-half (2½) stories in height and a private garage for not more than three (3) cars and permitted accessory structures.

(c) With regard to inhabitants, "Single Family" shall mean persons who are related by blood, adoption, guardianship, or marriage, living with not more than one (1) person who is not so related as a single household unit, or no more than two (2) persons who are not so related living together as a single household unit.

(d) Trade, business, and commercial activities are prohibited except where (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (ii) the business activity conforms to all governmental requirements and other dedicatory instruments applicable to the Lot; (iii) 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 (iv) 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 permitted uses set out in this section 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. Without limitation, a day-care facility, home day-care facility, church, nursery, pre-school, beauty parlor or barber shop or other similar facility, vacation rental, boarding house, "Airbnb", or bed and breakfast are expressly prohibited and are not considered an Incidental Business Use.

2.02. LEASING. Residences 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, residence, or other Improvement may be leased separately. By way of example and not limitation, a garage apartment or bedroom may not be leased independently from the entire residence. All leases shall be in writing and shall be for a term of not less than six (6) months. Short-term leasing, which for the purpose of this Declaration means leasing for a term of less than six (6) months, is prohibited. Game day or weekend rentals are prohibited. Any lease that would obligate the owner or occupant to pay a "hotel tax" pursuant to Chapter 156 of the Texas Tax Code, or its successor statute, is prohibited, regardless of whether such tax is actually paid. Advertising a residence on websites such as Vacation Rental by Owner ("VRBO"), AirBNB, HomeAway, and the like is prohibited. No later than ten (10) days after the commencement of any lease, the Owner shall provide to the Association, in writing, the name, mailing address, phone number, and e-mail address of each person who will reside at the property under a lease, and the commencement date and term of the lease. 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.

2.03. OCCUPANCY. No Lot shall be occupied by more than one (1) Single Family as defined in Section 2.01, above. It is not the intent of this provision to exclude from a Lot any individual who is authorized to so remain by any state or federal law. If it is found that this provision is in violation of any law, then this provision will be interpreted to be as restrictive as

possible to preserve as much of the original provision as allowed by law.

2.04. ARCHITECTURAL REVIEW. 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 Review 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, as further provided in Article IV herein.

2.05. RESIDENCE SIZE. The livable, conditioned air area of the residence on every Lot, exclusive of open screened porches, open terraces, garages, or detached servant quarters, shall not be less than 2,000 square feet. If, however, on the date of recording of this Declaration, any residence is not compliant with this section, it will be grandfathered and continue to be allowed until such time as the residence is demolished or, as determined in the sole discretion of the Architectural Review Committee, extensively reconstructed. Notwithstanding the foregoing, an existing residence of 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 Review Committee.

2.06. LOCATION OF IMPROVEMENTS. No building or fence shall be located on any Lot nearer to the front Lot line or nearer to the side street Lot line than the minimum building setback lines shown on the recorded plat. In any event, no building shall be located on any Lot nearer than twenty-five (25) feet to the front Lot line, nor shall any residential building 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 (7) feet, six (6) inches to any side Lot line. Notwithstanding anything in this section to the contrary, an approved fence is permitted to be located on or immediately adjacent to the side and rear Lot lines.

For the purpose of this covenant, eaves, steps, and uncovered porches shall not be considered a part of the building. 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, as determined in the sole judgment of the Architectural Review Committee, extensively reconstructed.

Notwithstanding the foregoing, Lots 7-17, Block One (1) of Emerald Forest Phase 3 may have been constructed as patio homes and have zero lot lines with the adjoining Lots. In such case, a residence may exist on the lot line adjacent to the lower numbered Lot. Each such Lot owner therefore agrees the adjacent owner shall have an access easement four (4) feet wide and immediately adjacent to the property line to be utilized for repairs and maintenance; provided that, the Owner of said adjacent Lot shall be responsible for restoring or causing to be restored in an equivalent or better manner any landscaping damaged by said usage, said restoration to be accomplished not later than thirty (30) days after such damage occurs.

2.07. FACING OF GARAGES. 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. Garages on corner Lots may open to the front or may, at the Owner's option, open directly towards, and have driveway access from, the street at the side of the Lot, except

that no garage 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 Review Committee. If, on the date of recording of this Declaration, any garage is in violation of this section, it will be grandfathered and allowed to remain until such time as the garage is demolished or, as determined in the sole judgment of the Architectural Review Committee, extensively reconstructed.

2.08. FACING OF RESIDENCES. Residences on corner Lots shall face the street from which the greater building line setback is shown on the recorded plat.

2.09. BUILDING MATERIALS. The residence on a Lot shall have not less than fifty-one percent (51%) of the exterior wall areas constructed of brick or wood products that are approved by the Architectural Review Committee. The Architectural Review 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.

2.10. RESUBDIVISION OF LOTS. A Lot may not be further subdivided. Two or more adjacent Lots may be consolidated, provided that written approval of the Architectural Review 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.

2.11. NUISANCES. 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 neighborhood or the Subdivision.

2.12. TEMPORARY STRUCTURES AND STORAGE BUILDINGS. No storage building, shed, structures of a temporary character, trailer, recreational vehicle, motor home, basement, tent, shack, garage, barn, or other outbuildings shall be used on, built upon, or located upon any Lot at any time as a residence, either temporarily or permanently.

Storage buildings, sheds, workshops, and the like must be approved by the Architectural Review Committee in writing, must be constructed of acceptable brick or wood material, and the exterior finish surface style and color must match the residence. The roof must be of similar roofing material used on the residence. If, on the date of recording of this Declaration, any storage building or workshop is in violation of the foregoing provision, it will be grandfathered and allowed to remain until its removal. If a structure is determined to be in a state of disrepair, the Architectural Review Committee may require its removal, regardless of whether it is a grandfathered. The Architectural Review Committee has the sole discretion to determine if a structure is in a state of disrepair.

2.13. FENCES. All new and modified fences shall be approved by the Architectural Review 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.

(b) 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 top elevation of adjacent concrete footings;
- (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) no plant shall be allowed to grow on or connect to any part of the fence, walls, or columns for support;
- (vi) irrigation sprinkler systems must be positioned in a manner that will not cause water to hit the brick elements of Estate Fences;
- (vii) 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.

(c) 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, rot resistant posts, runners, and nails of adequate structural integrity, and be done in a manner so that such fencing or picket matches the original fencing.

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

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

(f) 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.

2.14. YARD APPEARANCE. All Lots shall be kept at all times in a sanitary, healthy, and attractive condition, and the Owner or occupant shall keep all weeds and grass thereon cut on a regular basis and shall in no event use any Lot for storage of material and equipment except for normal residential requirements, and as incidental to construction of Improvements thereon as herein permitted. No Owner or occupant of a Lot shall permit the accumulation of garbage, trash, or rubbish on such Lot. All clothes lines, yard equipment, wood piles or storage

piles shall be kept screened by a fenced service yard, drying yard or other similar facility as herein otherwise provided; so as to conceal them from a view of neighboring Lots, streets, or other property.

2.15. PARKING OF VEHICLES. Overnight parking of vehicles or trailers is prohibited on the streets within the Subdivision. Passenger vehicles owned by or under the control of residents in the Subdivision may only be parked or kept, at any time, on the paved driveway area of the Lot or in an enclosed garage. No vehicle deemed to be unsightly by the Board of Directors, 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. Inoperable vehicles and vehicles not currently registered with the Texas Department of Motor Vehicles (or a with a similar department of another state) shall only be kept on a Lot if in an approved, enclosed structure or otherwise screened from view. Parking on the front yard grass area of a Lot is not permitted. 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.

2.16. SIGNS. Except as provided herein, no signs of any kind shall be displayed to the public view on any Lot except (i) a sign of not more than six (6) square feet advertising the property for sale or rent, and (ii) 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. The Board of Directors may adopt or amend policies regulating political signs in accordance with Section 259.002 of the Texas Election Code or its successor statute.

2.17. OIL AND MINING OPERATIONS. No oil drilling, oil development, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavations or shafts be permitted upon, in, or within two hundred feet below, 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.

2.18. ANIMALS. Only four (4) (in the aggregate) generally recognized house or yard pets are permitted to be maintained on a Lot and then only if they are kept thereon solely as domestic pets and not for commercial purposes. Provided that, no waterfowl or poultry of any kind may be kept on a Lot. No exotic animal and no animal that is aggressive or vicious toward other animals or persons is permitted in the Subdivision. No unleashed dogs are permitted outside of a Lot in the Subdivision. No animal is permitted if it makes an unreasonable amount of noise or becomes a nuisance. The Board has the authority to determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, an exotic animal, or aggressive or vicious toward other animals or persons.

2.19. GARBAGE AND REFUSE DISPOSAL. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall not be kept except in sanitary containers which shall be regularly emptied as provided through the city's solid waste disposal. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition and shall be stored behind an approved screen, fence, or enclosure.

2.20. LAND NEAR PARKS AND WATER COURSES. No building shall be placed, nor shall any material or refuse be placed or stored on, any Lot within seven and one half (7 ½) feet of the property line on any parks or edge of any open water courses, except that clean fill may be placed nearer, provided that the natural water course is not altered or blocked by such fill.

2.21. SEWAGE DISPOSAL AND WATER SUPPLY. No water well, cesspool, septic tank, or other individual sewage system shall be constructed or used on any Lot. Each Lot Owner must use the water and sewer services provided by state, county, municipal (the city), or other government authorities.

2.22. DRAINAGE DITCHES. All drainage ditches on a Lot shall be maintained and mowed by the Lot Owner so as to remain unobstructed at all times. Any bridge or culvert constructed over property line ditches shall be constructed of concrete pipe a maximum of eighteen inches (18") in diameter, unless the depth of the ditch shall require a larger size for proper drainage.

2.23. MAINTENANCE OF LOTS. Each Owner shall maintain and keep in a good state of repair all buildings, structures, and other Improvements located on his or her Lot.

2.24. EASEMENTS. There are dedicated and reserved permanent and unobstructed easements as shown on the recorded plat of the Subdivision across certain designated portions of 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 Property, by whomsoever owned.

2.25. RESERVATIONS. Title conveyed to any Lot or parcel of land in the Subdivision by contract, deed, or other conveyance shall not in any event be held or construed to include the title to the water, gas, sewer, electric light, electric power, or telegraph or telephone lines, poles, or conduits, or any other utilities or appurtenances thereto constructed by the developer or any public utility companies through, along or upon any portion of the hereinabove mentioned streets, drives, lands, roads, easements, and reserve areas, and the right to maintain, repair, sell or lease such lines, utilities, and appurtenances was expressly reserved by the developer of the Subdivision.

ARTICLE III
EMERALD FOREST COMMUNITY IMPROVEMENT ASSOCIATION

3.01. MANAGEMENT OF ASSOCIATION. The affairs of the Subdivision will be administered by the Association. Pursuant to the Articles of Incorporation of the Association, the Association is managed by the Board of Directors. 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.

3.02. MEMBERSHIP. Every person or entity who is an Owner of any Lot which is subject to the Declaration shall automatically be a Member of the Association. Membership shall be appurtenant to and shall run with the land, and may not be severed from or in any way transferred, pledged, mortgaged, or alienated separately from a Lot.

3.03. VOTING RIGHTS. The Association shall have one (1) class of voting membership. 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 such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine; however, in no event shall more than one (1) vote be cast with respect to any such Lot.

3.04. MEMBERS MEETINGS. Annual and special meetings are determined by the Board of Directors and shall be held as provided for in the Bylaws of the Association.

3.05. BOARD OF DIRECTORS. The Board of Directors shall consist of at least three (3) persons and not more than seven (7) persons, and will be determined by Members voting at the annual or special meetings and as provided in the Bylaws. The Board of Directors is responsible for the affairs of the Association and shall adopt, and may amend from time to time, Bylaws and regulations necessary to carry out its functions. The Association cannot adopt Bylaws or regulations which are contrary to provisions as set out herein.

3.06. POWERS AND AUTHORITY OF 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, Guidelines, and Bylaws. To make, establish and promulgate, and in its discretion, to amend or repeal and re-enact, rules, guidelines, Bylaws, and policies, 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 VI of this Declaration.

(e) Right of Enforcement. To enforce this Declaration and the Dedicatory Instruments of the Association. If an Owner fails to bring a Lot and/or Improvements into compliance with the Declaration after written demand made in accordance with the requirements of the Texas Property Code, 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.

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

3.07. 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.

3.08. 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 Properties 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.

3.09. LANDSCAPE MAINTENANCE. The Association shall be authorized to landscape, maintain and repair easements, rights-of-way, Common Properties, 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.

3.10 REGULATION OF SUBDIVISION. The Association, acting through the Board, may regulate the use, maintenance, repair, replacement, modification and appearance of the Subdivision. This shall include, by way of example and not limitation, the authority to adopt and enforce policies for the regulation of rainwater harvesting systems, drought-resistance landscaping or water-conserving natural turf, energy-efficient shingles, flag display, and standby electric generators, in accordance with the limitations of Chapter 202 of the Texas Property Code or its successor statute.

3.11. INDEMNIFICATION. The Association must indemnify a director, officer, or committee member who was, is or is threatened to be named as a defendant or respondent in a claim or proceeding to the extent indemnification is consistent with the Texas Business Organizations Code, as it now exists or may hereafter be amended.

ARTICLE IV ARCHITECTURAL REVIEW

4.01 ARCHITECTURAL REVIEW REQUIRED. No building or other Improvement shall be erected, placed or altered on any Lot until the Plans and Specifications have been approved in writing by the Architectural Review 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, as further provided in this Article IV.

4.02. ARCHITECTURAL REVIEW COMMITTEE. The Board shall appoint an Architectural Review Committee which will consist of not fewer than three (3) nor more than five (5) members. No member of the Architectural Review Committee shall be entitled to any compensation for services performed pursuant to his or her service on the Architectural Review Committee. Each member of the Architectural Review Committee shall hold the position until such time as he or she has resigned, has been removed, or his successor has been appointed as provided herein. Unless otherwise provided by law, a current member of the Board shall not

also serve on the Architectural Review Committee.

4.03. ACTION BY ARCHITECTURAL REVIEW COMMITTEE. Plans and Specifications presented to the Architectural Review Committee shall be approved or disapproved based on a majority vote of the members of the Architectural Review Committee. The Architectural Review Committee may, when deemed necessary by a majority of the Architectural Review Committee members, retain the services of a third-party professional to assist with the review of Plans and Specifications. Such professionals may include, but are not limited to, a licensed architect or engineer. The Owner who submits the Plans and Specifications will be responsible for the payment of all fees charged by the third-party professional reviewer.

4.04. ADOPTION OF GUIDELINES. The Board of Directors may adopt and amend Architectural Guidelines from time to time. Architectural Guidelines may include procedural and substantive rules and guidelines not in conflict with this Declaration. The Architectural Guidelines are intended to supplement the Declaration on matters generally relating to architectural control and discretionary authority vested in the Architectural Review Committee. The Declaration and Architectural Guidelines will be reviewed in an effort to harmonize their provisions and avoid conflicts.

4.05. REVIEW OF PLANS AND SPECIFICATIONS. Whenever in this Declaration the approval of the Architectural Review Committee is required, the Architectural Review Committee shall have the right to consider all Plans and Specifications for the exterior Improvement, modification, or proposal in question and all other facts that, in its sole and absolute discretion, are relevant. The process for submission and review of Plans of Specifications will be set forth in the Architectural Guidelines. All reviews, notifications, and appeals related to such reviews shall comply with applicable state law.

4.06. NO WAIVER OF FUTURE APPROVALS. The approval or consent of the Architectural Review 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 Review 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.

4.07. INSPECTION. The Architectural Review Committee may at its option inspect all work in progress to ensure compliance with approved Plans and Specifications. If such inspection requires entry to a Lot, the inspection shall take place with the Owner in attendance at a mutually agreed time. The Owner may waive his right to attend such inspection.

4.08. NO LIABILITY FOR ARCHITECTURAL REVIEW. Neither the Board of Directors, the Architectural Review 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 Review Committee's duties under this Declaration unless due to the willful misconduct or bad faith of the Board of Directors, the Architectural Review Committee or its members, as the case may be. Neither the Board of Directors, the Architectural Review Committee, nor any member thereof

shall be liable to any Owner due to the construction or modification of any Improvements within the Property, or the creation thereby of any obstruction of the view from such Owner's Lot or Lots. The Architectural Review Committee's approval 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.

4.09. REQUIREMENT TO ACT. The Architectural Review Committee shall review and act upon Plans and Specifications within thirty (30) days after the complete submission of all information requested. The Architectural Review Committee shall approve, disapprove, or approve with conditions or modifications the Plans and Specifications submitted for review. The decision of the Architectural Review Committee shall be in writing. If the Architectural Review Committee does not respond to the submission of Plans and Specifications within the time period specified herein, the Plans and Specifications shall be deemed approved; provided, however, no Plans and Specifications that violate the requirements of this Declaration shall be deemed approved.

4.10. VARIANCES. Notwithstanding any other provision of this Declaration, a variance from any restriction set out in this Declaration, other than the requirements related to Single Family residential use, may be recommended by a majority of the Architectural Review Committee. The Architectural Review Committee may consider the unique characteristics or topography of a Lot, the overall community interest or benefit such variance may provide, and any other factor the Architectural Review Committee deems appropriate in determining whether to recommend such variance. If the Architectural Review Committee determines a variance is appropriate, it shall recommend approval of such variance to the Board of Directors and the Board of Directors shall consider the variance application. The Board of Directors has the sole discretion to determine whether a variance should be approved. Approval of a variance may only be granted in a written instrument that is duly acknowledged and recorded in the Official Public Records of Brazos County, Texas.

4.11. 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.

ARTICLE V

PROPERTY RIGHTS IN THE COMMON PROPERTIES

5.01. MEMBERS' EASEMENTS OF ENJOYMENT. Subject to the provisions of Section 5.03 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot.

5.02. TITLE TO COMMON PROPERTIES. Title to the Common Properties shall be held in the name of the Association.

5.03. EXTENT OF MEMBERS' EASEMENTS. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such Mortgage the lender shall have a right, after taking possession of such properties, to charge admission and other fees as a condition to continued employment of such properties to a wider public until the Mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored;

(b) The right of the Association to take such steps, as are reasonably necessary to protect the Common Properties against foreclosure;

(c) The right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any Member for any period during which any Assessment remains unpaid by such Member, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, provided that notice is given to such Member as required by law;

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, or determination as to the purposes or as to the conditions thereof shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

ARTICLE VI **COVENANT FOR MAINTENANCE ASSESSMENTS**

6.01. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay Assessments to the Association, including: (1) annual assessments or charges and (2) special assessments for capital improvements, such Assessments to be fixed, established, and collected from time to time as hereinafter provided. The Assessments, together with such interest thereon, cost of collection thereof as hereinafter provided, and reasonable attorney's fees are a charge on the land and a continuing lien upon the Lot or Lots.

6.02. ONE ASSESSMENT PER LOT. Assessments are owed on a per-Lot basis. If an Owner owns more than one Lot at the time this Declaration is recorded, the Owner must pay a full Assessment charge for each Lot owned.

6.03. PURPOSE OF ASSESSMENTS. Assessments levied by the Association shall be held, managed, invested, and expended by the Board, at its discretion, for the benefit of the Subdivision and the Owners of the Lots therein. The Board may, by way of illustration and not limitation, expend the Assessments for the administration, management, and operation of the Subdivision and Association, for the maintenance, repair and improvement of the Common Properties, for the maintenance of any easements granted to the Association, for the enforcement of the provisions of this Declaration by action at law or in equity, or otherwise, and for the payment of court costs as well as reasonable and necessary legal fees, and for all other purposes that are, in the discretion of the Board, desirable in order to maintain the character and value of the Subdivision and the Lots therein.

6.04. BASIS AND MAXIMUM ANNUAL ASSESSMENTS. The annual assessment shall be determined annually by the Board of Directors of the Association and is due on January 1st each year. The annual assessment due on January 1st immediately following the recording of this Declaration shall not exceed \$350.00. Thereafter, the rate of the annual assessment may be increased by the Board of Directors in its sole discretion in an amount of up to ten percent (10%) more than the previous year's annual assessment. Increases in annual assessments may not be cumulative. Any increase greater than ten percent (10%) more than the previous year's annual assessment amount must be approved by two-thirds (2/3) of the votes of Members voting in person or by proxy or absentee ballot at a meeting duly called for this purpose. Written notice of such meeting shall be sent to all Members as required by law.

The Board of Directors of the Association may, after consideration of current maintenance costs and further needs of the Association, fix the annual assessment for any period year at a lesser amount than the previous year.

6.05. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the Assessments authorized by Section 6.04 hereof, the Association may levy in any year a special assessment, applicable to that year only, for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of described capital improvements upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such special assessment must be approved by two-thirds (2/3) of the votes of Members voting in person or by proxy or absentee ballot at a meeting duly called for this purpose. Written notice of such meeting shall be sent to all Members as required by law.

6.06. QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 6.04 AND 6.05. The quorum required for any action authorized by Section 6.04 and 6.05 hereof, shall be as follows: At the meetings called, as provided in Section 6.04 and 6.05 hereof, the presence at the meeting of Members in person or by proxy or absentee ballot entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 6.04 and 6.05, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.07. DATE OF COMMENCEMENT OF SPECIAL ASSESSMENT. The due date of any special assessment shall be fixed in the resolution authorizing such special assessment.

6.08. ESTOPPEL CERTIFICATE. The Association shall upon demand at any time furnish to any Owner liable for Assessments a certificate in writing signed by an officer of the Association, setting forth whether said Assessments have been paid. Such certificate shall be conclusive evidence of payment of any Assessment herein stated to have been paid.

6.09. EFFECT OF NON-PAYMENT OF ASSESSMENT: THE PERSONAL OBLIGATION OF THE OWNER; THE LIEN; REMEDIES OF THE ASSOCIATION.

(a) If the Assessments are not paid on the date when due, then such Assessment shall become delinquent and shall, together with such interest thereon, cost of collection thereof as hereinafter provided, and reasonable attorney's fees thereupon, be secured by the continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner to pay such Assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

(b) If the Assessments are not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency date at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action. In the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided, costs of collection, and reasonable attorney's fees to be fixed by the Court together with the costs of the action.

6.10. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the Assessments provided for herein shall be subordinate to the lien of any Mortgage or Mortgages now or hereinafter placed upon the Properties and Lots subject to Assessment; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such property or Lots pursuant to a decree of foreclosure by a Mortgagee, or any other proceeding by a Mortgagee in lieu of foreclosure. Such sale or transfer shall not relieve such property and Lots from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

6.11. EXEMPT PROPERTY. The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein:

(a) All properties to the extent of any easement or other interest therein dedicated and accepted by the City, or other local public authority, and devoted to public use; and

(b) All Common Properties.

Notwithstanding any provisions herein, no Lot, land, or Improvements devoted to residence use shall be exempt from said Assessments, charges, and liens.

ARTICLE VII
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 Properties. 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 in whole or in part by recording in the Official Public Records of Brazos County, Texas 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.

7.04. **RIGHTS OF MORTGAGEE.** Any violation of any of these easements, agreements, restrictions, or covenants contained herein shall not have the effect of impairing or affecting the rights of any Mortgagee, guarantor, or trustee under any Mortgage or deed of trust outstanding against a Lot, at any times that the easements, agreements, restrictions, reservations or covenants are violated.

7.05. **ENFORCEMENT.**

(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, the Association may impose fines 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 VI of this Declaration.

7.06. 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) Guidelines, 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) Number and Gender. Pronouns, whenever used herein and of whatever gender, include natural persons and corporations, entities, and associations of every kind and character, and the singular includes the plural, and vice versa, whenever and as often as may be appropriate.

(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.

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CERTIFICATION

I, the undersigned, do hereby certify:

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

That this instrument constitutes the Amended, Restated and Consolidated Declaration of Covenants, Conditions and Restrictions for Emerald Forest Phases 1 through 11, and it was approved by Owners representing the votes of a majority of the owners in each respective phase, 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 _____, 2022.

Name: _____
Title: President

THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the __ day of _____, 2022, by _____, President of the Emerald Forest Community Improvement Association.

Notary Public, State of Texas