

Johnson County
Becky Ivey
County Clerk
Cleburne 76033



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Instrument Number: 2017-26690

As

Recorded On: October 26, 2017

Restrictions

Parties:

Billable Pages: 78

To

Number of Pages: 79

Comment:

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

Restrictions	334.00
Total Recording:	334.00

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Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

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510 WEST PEARL STREET
SUITE 100
GRANDBURY TX 76048



I hereby certify that this instrument was filed on the date and time stamped hereon and was duly recorded in the Volume and Page of the named records in Johnson County, Texas.

Any provision herein which restricts the sale, rental or use of the described Real Estate because of color race is invalid and unenforceable under Federal law.

BECKY IVEY, COUNTY CLERK
JOHNSON COUNTY, TEXAS

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
HIGHLAND OAKS**

**A Single Family Detached Residential Subdivision
an Addition to Johnson County, Texas**

aka the
PROTECTIVE COVENANTS
including provisions relating to

**HIGHLAND OAKS AT EGAN
HOMEOWNERS ASSOCIATION, INC.**
(A Texas Non-Profit Corporation)

Property Affected

The affected Property is that real property, being Phase 1, Lots 1 – 6, Block 1, Lots 1 – 7, Block 2, and Open Space Reserve #1, Block 2, Phase 2, Lots 7 – 10, Block 1, and Open Space Reserve #3, Block 1, Lots 8 – 18, Block 2, and Open Space Reserve #2, Block 2, and an 18.51 acre tract of land not platted into residential Lots as of April 1, 2016, designated as Lot 1, Phase 3, Lot 1, Block 3 in the Highland Oaks Addition, Johnson County, Texas, all being a 62.997 acre tract of land in the W.E. Jones Survey, Abstract No. 450, Johnson County, Texas in the Highland Oaks at Egan Addition (aka "Highland Oaks") in Johnson County, Texas, according to the Plat recorded on ^{15th day of June, 2017} 2017-0000009, ^{11th day of July, 2017} 2017-00000112 in the Plat Records of Johnson County, Texas, as more particularly described in Exhibit A, attached hereto and incorporated by reference herein, plus any "Additional Land" hereafter added to the subdivision and platted of record in Johnson County, Texas, and made subject to the jurisdiction of the Association.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
aka "PROTECTIVE COVENANTS"**

**for the
HIGHLAND OAKS AT EGAN SUBDIVISION
(aka "HIGHLAND OAKS")
AN ADDITION TO JOHNSON COUNTY, TEXAS**

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF JOHNSON §

This Declaration of Covenants, Conditions and Restrictions (alternatively the "Declaration" or the "Protective Covenants") for Highland Oaks At Egan Addition, aka "Highland Oaks" a single family, detached residential subdivision of Johnson County, Texas, is made on the day this Declaration is executed by DAP Companies, LLC, a Texas Limited Liability Company ("Declarant"), the owner of the single family, detached residential Lots and Common Areas (the "Property") within the subdivision, being Phase 1, Lots 1 – 6, Block 1, Lots 1 – 7, Block 2, and Open Space Reserve #1, Block 2, Phase 2, Lots 7 – 10, Block 1, and Open Space Reserve #3, Block 1, Lots 8 – 18, Block 2, and Open Space Reserve #2, Block 2, and an 18.51 acre tract of land not platted into residential Lots as of April 1, 2016, designated as Lot 1, Phase 3, Lot 1, Block 3 in the Highland Oaks Addition, Johnson County, Texas, all being a 62.997 acre tract of land in the W.E. Jones Survey, Abstract No. 450, Johnson County, Texas in the Highland Oaks at Egan Addition (aka "Highland Oaks") in Johnson County, Texas, according to the Plat recorded on ~~June 15, 2017~~ ^{July 11, 2017}, 2017 in Instrument No. ~~2017-00000091~~ ²⁰¹⁷⁻⁰⁰⁰⁰⁰⁰¹² in the Plat Records of Johnson County, Texas, as more particularly described in Exhibit A, attached hereto and incorporated by reference herein, plus any "Additional Land" added hereafter to the subdivision and platted of record in Johnson County, Texas, and further according to the Highland Oaks At Egan Homeowners Association, Inc. (aka "Highland Oaks HOA" or alternatively referred to herein as the "Association"), the intended owners of the Common Areas within the subdivision, who shall obtain legal title to ownership of such Common Areas as provided herein. This Declaration shall be effective on the day this Declaration is recorded in the Johnson County, Texas Real Property Records by DAP Companies, LLC ("Declarant").

WITNESSETH:

WHEREAS, the Declarant has devised a general plan for the entire Subdivision as a whole, with specific provisions for particular lots and parcels of the Subdivision. The general plan provides a common scheme of development designed to protect and safeguard the Property over a long period of time; and

WHEREAS, this general plan will benefit the Subdivision in general, the lots and parcels that constitute the Subdivision, the Declarant and each successive owner of an interest in the Subdivision; and

WHEREAS, in accordance with both the doctrines of restrictive covenant and implied equitable servitude, the Declarant desires to restrict the Subdivision according to these covenants, conditions and restrictions in furtherance of this general development plan and also intends to provide herein for certain obligations and restrictions with respect to the operation, use, maintenance, and appearance of the Subdivision. Such covenants, conditions and restrictions are intended for the benefit of and shall bind the Declarant and Declarant's respective successors in ownership of lots within the Subdivision from time to time, and shall constitute covenants running with the land; and

WHEREAS, Declarant further desires to provide for the preservation, administration, and maintenance of portions of Highland Oaks, and to protect the value, desirability, and attractiveness of Highland Oaks; and, as an integral part of the development plan, Declarant deems it advisable to create a property Homeowners Association to perform these functions and activities, more fully described in the Documents described below; and

WHEREAS, Declarant declares that the Property described herein, and as more particularly described in Exhibit A attached hereto and incorporated by reference herein will be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, stipulations, reservations, and easements of this Declaration, which run with the real property and bind all parties having or acquiring any right, title, or interest in any part of the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of any part of the Property. Declarant also declares that the Highland Oaks Subdivision shall be subject to the jurisdiction of the "Association" (as hereinafter defined).

NOW, THEREFORE, it is declared that all of the Subdivision shall be held, sold, and conveyed subject to the covenants, conditions and restrictions set forth herein.

ARTICLE 1 **DEFINITIONS AND TERMS**

The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

- 1.1. "**Applicable Law**" means the statutes and public laws and ordinances in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of any provision in any Document. Statutes and ordinances specifically referenced in the Documents are "Applicable Law" on the date of the Document, and are not intended to apply to the Property or to the Subdivision if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.
- 1.2. "**Architectural Control Committee**" means the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the Architectural

Control Committee is Declarant, Declarant's designee, or Declarant's designee. Thereafter, the board-appointed Architectural Control Committee is the Architectural Control Committee.

1.3. "**Assessment**" means any charge levied against a Lot or Owner by the Association, pursuant to the Documents or State law, including but not limited to Regular Assessments, Special Assessments, Individual Assessments, and Deficiency Assessments, as defined in Article 9 of these Protective Covenants, including, but not limited to:

A. Regular and Special Assessments for:

1. All sums lawfully assessed for maintenance and improvement of the Common Area, as such term is defined herein;
2. All expenses of administration and management, maintenance, operation, repair or replacement and improvements to the Common Area;
3. Expenses agreed upon as Common Maintenance Items by the Board of Directors; and
4. Expenses declared to be either Common Expenses or Common Maintenance Items by this Declaration or by the Bylaws of the Association.

B. Individual Assessments assessed by the Association for reasons and purposes set out in the Bylaws of the Association.

1.4. "**Association**" means the association of Owners of all Lots in the Highland Oaks Subdivision, or their successors or assigns, initially organized as "Highland Oaks At Egan Homeowners Association, Inc." a Texas nonprofit corporation, and serving as the "Property Owners' Association" or simply the "Association" defined in Section 202.001(2) of the Texas Property Code, the Bylaws of which shall govern the administration of this Townhome Property and the membership of which shall be composed of all the Owners of the Lots according to such Bylaws. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration and the Bylaws of the Association.

1.5. "**Board**" means the Board of Directors of the Association.

1.6. "**Builders**" means and refers to persons or entities that purchase Lots and build speculative or custom homes thereon for third party purchasers.

1.7. "**City**" means the City of Burleson, Texas, in whose Extra Territorial Jurisdiction the Property is located.

1.8. "**Common Area**" means all real property, improvements thereon, and personal

property within the Subdivision that are owned and/or maintained by the Association for the common use and enjoyment of the Owners, as described in Article 4 below and as referenced in Appendix I of this Declaration. Any conveyance of Common Area to the Association pursuant to this Article 1.8 shall be effective only upon acceptance in writing by the Association, and free and clear of any liens or similar encumbrances.

1.9. "**Common Expenses**" means and includes:

- A. All sums lawfully assessed for maintenance and improvement of the Common Area, as such term is defined herein;
- B. All expenses of administration and management, maintenance, operation, repair or replacement and improvements to the Common Area;
- C. Expenses agreed upon as Common Maintenance Items by the Board of Directors; and
- D. Expenses declared to be either Common Expenses or Common Maintenance Items by this Declaration or by the Bylaws of the Association.

1.10. "**Common Maintenance Items**" means and includes those common maintenance expenses that the Board finds and determines are necessary in order to provide for the improvement of the overall appearance of the property within the Subdivision and such other maintenance issues for which the Board of Directors, in its sole discretion, determines are in the best interest of the Association Members.

1.11. "**Contractor**" means and refers to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's Lot.

1.12. "**County**" means the County of Johnson, State of Texas, in which the property is located.

1.13. "**Declarant**" means DAP Companies, LLC, a Texas limited liability company, which is developing the Property, or its respective successors and assigns, which acquire any portion of the Property for the purpose of development and which are designated a Successor Declarant by DAP Companies, LLC in a recorded document.

1.14. "**Declarant Control Period**" and "**Development Period**" (herein referred to as the "Declarant Control Period") are interchangeable terms meaning the period beginning the date this Declaration is recorded and terminating on December 31, 2027 if not terminated earlier as set forth in Appendix I of this Declaration, during which Declarant has certain rights pursuant to Appendix I, including rights relating to development, construction, expansion, and marketing of the Property, and rights relating to Declarant's control of the operation and management of the Association. The Declarant Control Period does not require that Declarant own land described herein. Declarant may terminate the Declarant Control Period at any time by recording a notice of termination. **During the Declarant Control Period, Appendix I has**

priority over the main body of this Declaration.

1.15. "**Developer**" means and refers to DAP Companies, LLC, a Texas Limited Liability Company, and its successors and assigns.

1.16. "**Documents**" means, singly or collectively as the case may be, this Declaration, the Plat, the Association's Articles of Incorporation and Bylaws and the Rules, Regulations and Policies of the Association, as any of these may be approved by the Association and amended from time to time, and recorded in the Official Records of Johnson County, Texas. An Appendix, Exhibit, Schedule, or Certification accompanying a Document is a part of that Document.

1.17. "**Dwelling**" means a single family, detached residential building constructed on a separate Lot, each dwelling having accommodations for and occupied by not more than one family (as hereinafter defined), and titled in individual ownership for each such dwelling.

1.18. "**Front Yard**" shall mean and refer to a space on a Lot facing a Street (as hereinafter defined) and extending across the front of the Lot between the Side Lines (as hereinafter defined) and being the horizontal distance between the Street Line (as hereinafter defined) and the dwelling or any projection thereof other than the projection of the usual steps and eave overhangs.

1.19. "**Garage**" shall mean and refer to a building detached from the Dwelling or a portion of a dwelling in which motor-driven vehicles are stored.

1.20. "**Height**" means the measurement from the average established grade at the Street Line abutting the Lot or, if higher, from the highest natural ground level of the two points where the Front Setback Line (as hereinafter defined) intersects the Side Lines of the Lot, to the highest point of the Improvement being measured.

1.21. "**Highland Oaks**" means all phases of the Highland Oaks Subdivision and the "Additional Land" hereafter made subject to the jurisdiction of the Association.

1.22. "**Lot**" means a portion of the Property intended for independent ownership, on which there is or will be constructed a single family, detached residential dwelling, as shown on the Plat. As a defined term, "Lot" does not refer to Common Areas, even if platted and numbered as a Lot. Where the context indicates or requires, "Lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the Lot. Unplatted tracts may be included in the meaning of "Lot" pursuant to Section A.3.1 of Appendix I of these Protective Covenants.

1.23. "**Majority**" means more than half. A reference to "a majority of Owners" in any Document or applicable law means "Owners of at least a majority of the Lots," unless a different meaning is specified. A reference to a "2/3rds Majority of Owners" in any Document or applicable law means "Owners of at least a two-thirds (2/3rds) majority of the Lots," unless a different meaning is specified.

1.24. "**Member**" means a Member of the Association, each Member being an Owner of a Lot, unless the context indicates that member means a member of the Board or a member of a committee of the Association. In the context of votes and decision-making, each Lot has only one Membership, although it may be shared by Co-Owners of a Lot.

1.25. "**Occupant**" means a person or persons in possession of a single family, detached residence, regardless of whether said person is a single family, detached residence owner.

1.26. "**Owner**" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, who is a holder of fee simple title to one (1) or more Lots in the Subdivision, recorded in the Deed Records of Johnson County, Texas, including contract sellers (a seller under a Contract-for-Deed). Declarant is the initial Owner of all Lots in the Highland Oaks Subdivision. Contract sellers and mortgagees, who acquire title to a Lot through a deed in lieu of foreclosure or through judicial or nonjudicial foreclosure, are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association. A reference in any Document or applicable law to a percentage or share of Owners or Members means Owners of at least that percentage or share of the Lots, unless a different meaning is specified. For example, "a Majority of Owners" means Owners of at least a majority of the Lots.

1.27. "**Party Fence**" shall mean and refer to the exterior fences separating two contiguous Lots. Any matters concerning Party Fences which are not covered by the terms of this Agreement shall be governed by the general rules of law concerning party fences.

1.28. "**Plat**" means the Final Plat and all plat amendments, singly and collectively, of the Highland Oaks At Egan Subdivision, an Addition to the Johnson County, Texas, recorded in the Real Property Records of Johnson County, Texas, and pertaining to the real property described in these Protective Covenants, including all dedications, limitations, restrictions, protective covenants, easements, conditions, liens, notes, and reservations shown on the Plat, as it may be amended from time to time. The Plat of the Highland Oaks At Egan Subdivision includes the property described herein and more particularly in Exhibit A attached hereto and incorporated by reference herein, in the Highland Oaks At Egan Addition, Johnson County, Texas, according to the Plat recorded on ^{June 15} ~~July~~ 11, 2017 in Instrument No. 2017-00000091
2017-00000012 in the Plat Records of Johnson County, Texas.

1.29. "**Private Street and Entry and Exit Driveways**" means those certain private entry and exit driveways common areas and interior streets and common areas situated within the Subdivision, which enter and exit off of County Road 707 and County Road 807, and which access each of the individual single family, detached residential Lots and Common Areas in the Subdivision as shown on the Plat.

1.30. "**Property**" means all the land subject to these Protective Covenants and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Highland Oaks. The Property is located on land described in these Protective Covenants, and

includes the twenty-eight (28) Lots, plus an 18.51 acre tract of land not platted into residential Lots as of April 1, 2016, and all Common Area thereon.

1.31. "**Rear Line**" means that boundary line of a Lot which is opposite the Street Line.

1.32. "**Rear Yard**" means and refers to a space extending across the rear of a Lot from one Side Line to the other Side Line and being the horizontal distance between the Rear Line and the Dwelling or any projection thereof other than the projection of the usual steps and eave overhangs.

1.33. "**Resident**" means an occupant of a single family, detached residential dwelling, regardless of whether the person owns the Lot.

1.34. "**Rules**" means rules and regulations, and any policies of the Association adopted in accordance with the Documents or applicable law. The initial Rules may be adopted by Declarant for the benefit of the Association.

1.35. "**Side Line**" means any boundary line of a Lot which is not a Street Line or a Rear Line.

1.36. "**Street Line**" means the boundary line of a Lot which is also the boundary line of a Street.

1.37. "**Structure**" means:

A. any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, manufactured home, garage, porch, shed, outbuilding, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, dock, fence, curbing, paving, wall, sign, signboard, temporary or permanent living quarters (including any house trailer_ or any other temporary or permanent improvement to such Lot;

B. any excavation, grading, fill, ditch, channel, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot; and

C. any change in the grade at any point on a Lot of more than six (6) inches, whether or not subsection B of this Section 1.37 applies to such change.

1.38. "**Subdivision**" means the real property described on the plat and subdivision map recorded in the Subdivision and Plat Records of Johnson County, Texas, according to the legal description as more fully described herein.

1.39. "**Underwriting Lender**" means Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/FHA), Federal National Mortgage

Association (Fannie Mae), or U.S. Department of Veterans Affairs (VA), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an Owner's financing options, nor as a representation that the Property is approved by any institution.

1.40. "**Verified Mail**" means any method of mailing for which evidence of mailing is provided by the United States Postal Service or a common carrier.

ARTICLE 2
PROPERTY SUBJECT TO DOCUMENTS,
ORDINANCES, EASEMENTS AND DEDICATIONS

2.1. **Subject Property.** The real property described herein as being Phase 1, Lots 1 – 6, Block 1, Lots 1 – 7, Block 2, and Open Space Reserve #1, Block 2, Phase 2, Lots 7 – 10, Block 1, and Open Space Reserve #3, Block 1, Lots 8 – 18, Block 2, and Open Space Reserve #2, Block 2, and an 18.51 acre tract of land not platted into residential Lots as of April 1, 2016, designated as Lot 1, Phase 3, Lot 1, Block 3 in the Highland Oaks Addition, Johnson County, Texas, all being a 62.997 acre tract of land in the W.E. Jones Survey, Abstract No. 450, Johnson County, Texas in the Highland Oaks at Egan Addition (aka "Highland Oaks") in Johnson County, Texas, according to to the Phase 1 Plat recorded on July 11, 2017 in Drawer H, Vol. 11, Pages 252 - 253 in the Plat Records of Johnson County, Texas, as more particularly described in Exhibit A, attached hereto and incorporated by reference herein, plus any "Additional Land" hereafter added to the subdivision and platted of record in Johnson County, Texas, and made subject to the jurisdiction of the Association, is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, reservations, liens, and easements of these Protective Covenants, including Declarant's representations and reservations in the attached Appendix I, which run with the Property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each Owner of the Property. **Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Declaration and the Documents referenced herein, and further agrees to maintain any easement that crosses his Lot and for which the Association does not have express responsibility.**

2.2 **Lot Subdivision, Combination, Replat and Composite Building Site.** One or more Lots may be subdivided and replatted with the approval of all Owners of the Lots directly affected by the replatting. The size of each Lot and the density of the Lots in the Highland Oaks Subdivision must comply with the requirements of the City of Burleson and Johnson County Subdivision Ordinances. Any Owner of one or more adjoining Lots (or portions thereof) may replat and consolidate such Lots or portions into one building site, with the privilege of placing or constructing improvements on such resulting site with the prior written approval of all Owners of the Lots directly affected, plus the prior written approval of the Association's Board of Directors and the Architectural Control Committee and Johnson County. In such case, the side set-back lines shall be measured from the resulting side property lines rather than from the Lot lines as indicated on the Plat. Combining Lots or portions thereof shall be in compliance with the Johnson County Subdivision Ordinance, and shall not result in any

remaining Lot or remaining portion of any Lot(s) being smaller in size than the smallest of any affected Lot prior to the proposed combination and replatting. The parties executing the replat will provide a copy of the recorded replat to the Association. Replatting of Lots will not alter the number of votes and assessments allocated to each of the Lots as originally platted. However, if replatting of Lots reduces the number of Lots as originally platted by combining Lots, the joined Lot will have one vote, and the joined Lot will thereafter have one assessment for the replatted, joined Lot. So by way of example, if two originally platted Lots are replatted into one joined Lot, the replatted, joined Lot will thereafter have one vote and one assessment, equal to all other single Lots.

2.3. **City of Burleson's Subdivision Ordinance - General.** The City of Burleson, Johnson County, Texas contains subdivision ordinances pertaining to property owners associations in the Extra Territorial Jurisdiction of the City of Burleson. No amendment of the Documents, nor any act or decision of the Association after the passage of an ordinance or an amendment to an ordinance, which is not in compliance with the ordinance during its period of effectiveness, may violate the requirements of the ordinance. The Association should stay informed about the city's ordinances and requirements.

2.4. **Johnson County Regulations.** Notwithstanding the fact that the development of property within the Extra Territorial Jurisdiction of the City of Burleson is subject to the subdivision ordinances of the City of Burleson, Declarant has and will continue to use its "best efforts" to comply with Johnson County Regulations, specifically to meet (a) the density requirements for a development served by the City of Bethany public water system within the Water Quality District; (b) the planned emergency accessibility, as well as the placement of fire hydrants, as shall be approved by the City of Burleson, and to meet the requirements of Johnson County; and (c) the Highland Oaks Subdivision's engineered drainage plan, along with density reports during roadway construction, meets the requirements of Johnson County. Notwithstanding the fact that the development of property within the Extra Territorial Jurisdiction of the City of Burleson is not regulated by Johnson County, Declarant and the Association shall continue to use their respective "best efforts" to remain in compliance with the Johnson County regulations as to current or future uses - actual or permitted - of any land in Johnson County that is adjacent to or near the Property.

2.5. **Plat Dedications, Easements & Restrictions.** In addition to the dedications, easements, restrictions and protective covenants contained in this Declaration, the Property is subject to the reservations, dedications, limitations, notes, easements, restrictions, and reservations shown or cited on the Plat, which is incorporated herein by reference. **All dedications, easements, restrictions, and reservations created herein or shown on the Plat, replats or amendments of the Plat of the Highland Oaks Subdivision recorded or hereafter recorded in the Plat records of Johnson County, Texas, shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of Declarant, and on or behalf of conveyances of Lots executed by Lot Owners, whether specifically referred to therein or not. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by the Plat, and further agrees to maintain any easement that crosses his Lot and for which the Association does not**

have express responsibility.

A. **Dedication of Utility Easements.** Declarant dedicates to the public, the non-exclusive, utility easements over, under and across areas, as described or shown on the Plat. Further, the Declarant dedicates for public use the easements shown on the Plat for the purpose of constructing, maintaining, repairing, removing and/or replacing a system or systems (including all utilities equipment and facilities) of water, sanitary sewer, drainage, electric lighting, electric power, telegraph and telephone line or lines, storm surface drainage, cable television, or any other utility the Declarant sees fit to install in, across and/or under the Property. All utility easements may be used for the construction of drainage swales in order to provide for improved surface drainage of Common Area and/or Lot(s). Any utility company serving the community shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Declarant nor any utility company, political subdivision, or other authorized entity, or any of their agents, employees, or servants using the easements herein referred to, shall be liable for any damages done to trees and lawns, fences, shrubbery, or to other property of the Owner on the property covered by said easements. No Improvement or Structure shall be constructed or placed on any such public easement without the express prior written consent of the Architectural Control Committee. Full rights of ingress and egress shall be had by the Declarant, the Association, and all utility and CATV companies serving the Highland Oaks Subdivision, and their respective successors and assigns, at all times over the subdivision for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction (excluding, however any driveway, fence or other Improvements or Structures which has been heretofore specifically approved by the Architectural Control Committee) that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility.

B. **Dedication of Visibility, Access and Maintenance Easements ("VAM").** Declarant gives, grants and dedicates to the County of Johnson, its successors and assigns, the area or areas as described or as shown on the Plat as "VAM" (Visibility, Access and Maintenance) as easement(s) to provide visibility, right of access, and maintenance upon and across said VAM Easement(s). The County shall have the right but not the obligation to maintain any and all landscaping within the VAM Easement(s). Should the County exercise this maintenance right, it shall be permitted to remove and dispose of any and all landscaping improvements, including without limitation, any trees, shrubs, flowers, ground cover and fixtures. The County may withdraw maintenance of the VAM Easement(s) at any time. The ultimate maintenance responsibility for the VAM Easement(s) shall rest with the Association. No structure, object or plant of any type may obstruct vision from a height of twenty-four (24) inches to a height of eleven (11) feet above the top of the curb, including but not limited to, buildings, fences, walks, signs, trees, shrubs, cars, trucks, etc., in the VAM Easement(s) as shown on the Plat. Johnson County shall also have the right, but not the obligation, to add any landscape improvements to the VAM Easement(s), to erect any traffic control devices or signs on the VAM Easement(s) and to remove any obstruction thereon. The County of Johnson, its

successors, assigns, or agents shall have the right and privilege at all times to enter upon the VAM Easement(s) or any part thereof for the purposes and with all rights and privileges set forth herein.

C. **Private Street within Property.** The subdivision's streets have not been dedicated to the public, for public access nor have they been accepted by the City of Burleson or Johnson County as public improvements. The platted street easement provides the City or County with the right of access for any purpose related to the exercise of a governmental service or function, including, but not limited to, fire and police protection, inspection, code enforcement and postal service. The easement permits the City or County to remove any vehicle or obstacle within the street that impairs emergency access. Neither the City of Burleson nor Johnson County shall be responsible for the design, construction, operation, maintenance, or use of any private streets, drainage facility or detention pond and associated easements, hereinafter referred to as "improvements" to be developed and constructed by developer or successors. Developer will indemnify, defend and hold harmless the City of Burleson and Johnson County, their officers, employees and agents from any direct or indirect loss, damage, liability or expense and attorney's fees for any negligence whatsoever, arising out of the design, construction, operation, maintenance condition or use of the improvements, including any nonperformance of the foregoing. Developer will require any successor in interest to accept full responsibility and liability for the improvements. All of the above shall be covenants running with the land. It is expressly contemplated that developer shall impose these covenants upon all Lots abutting, adjacent or served by the improvements the full obligation or responsibility of maintaining and operating said improvements. The private streets within the Property are those certain private entry and exit driveway common areas and the interior streets common areas situated within the Subdivision, including the entire interior streets Common Areas as depicted on the Subdivision Plat extending from the Property's two entry and exit accesses off of and onto County Road 707 and County Road 807. Direct access to residential Lots in Highland Oaks off of either County Road 707 and County Road 807 is not permitted. The interior private streets are part of the Common Area, which is governed by the Association. To the extent not prohibited by public law, the Association, acting through the Board of Directors (herein "Board"), is specifically authorized to adopt, amend, repeal, and enforce rules, regulations, and procedures for use of the private street, including but not limited to:

1. Identification of vehicles used by Owners and residents and their guests.
2. Owners' and residents' Golf Carts are specifically permitted access and operational use on the private streets; however, neither the Declarant nor the Association shall have any liability whatsoever for any personal bodily or emotional injury, death, property damage, or other claim occurring from the use of a golf cart anywhere on the private streets in or from the Highland Oaks Subdivision.
3. Speed limits, initially designated at 20 mph and 25 mph on sections of the private streets, and as otherwise designated in Rules adopted periodically by and in the sole discretion of the Board.

4. Limitations or prohibitions on curbside parking and no-parking areas.
5. Removal or prohibition of vehicles that violate the Association's applicable rules and regulations.
6. Fines for violations of the Association's applicable rules and regulations.

2.6. **Title Subject to Easements.** It is expressly agreed and understood that the title conveyed by Declarant to any of the Lots by contract, deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, electric lighting, electric power, natural gas, telegraph or telephone purposes, and subject to Party Fence agreements, and other easements hereafter granted affecting the Lots. The Owners of the respective Lots shall not be deemed to own pipes, wires, conduits or other service lines or equipment running through, or existing on, their Lots which are utilized for their Lots or service other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot.

ARTICLE 3

PROPERTY EASEMENTS, RIGHTS AND RESTRICTIONS

3.1. **General.** In addition to other easements and rights established by the Documents, the Property is subject to the easements and rights contained in this Article.

3.2. **Public Access Easement.** As noted and shown on the Plat of Highland Oaks, various Common Areas are burdened by specific public access easements that may be used by emergency personnel.

3.3. **Drainage Easements.** Certain Common Areas are burdened by "Drainage Easements." The Drainage Easements, including drainage maintenance and related matters thereon, shall be maintained by the Association as a Common Expense.

3.4. **Party Fence Easements.** A fence located on or near the dividing line between two Lots and intended to benefit both Lots constitutes a "Party Wall Fence" and, to the extent not inconsistent with the provisions of this Article, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions. A party fence shall be the shared exterior fence separating two Lots that are burdened by access and maintenance, repair and replacement easements specified in the Appendix II "Party Wall Agreement" attached hereto. Any matters concerning party fences on the common boundary of contiguous Lots, which are not covered by this Declaration's terms and Appendix II, shall be governed by the general rules of law concerning party fences.

3.5 **Easement for Screening Wall.** The Association is hereby granted a perpetual easement (the "**Screening Wall Easement**") over, on and along the boundaries of the Highland Oaks Subdivision Property. Whether a privacy screening wall or fence and/or a decorative fence are designed and installed as a Common Element on the various boundaries,

or any portion thereon, of the Property, they shall be maintained, in full compliance with any applicable Johnson County ordinance. The purpose of the Screening Wall Easement is to provide for the construction, existence, repair, maintenance, improvement, and replacement of the Property's Common Area Screening Wall (privacy screening wall or fence and/or a decorative fence), landscaping, signage relating to the Property on or as an integral part of the wall or fences, and other entry features, which shall be maintained by the Association as a Common Area. The Association shall be responsible for maintaining, repairing and replacing any Common Area Screening Wall (privacy screening wall or fence and/or a decorative fence).

In exercising this Common Area Screening Wall Easement, the Association may repair, maintain, improve, and replace improvements reasonably related to the Subdivision's County Road 707 and County Road 807 frontage fences, the VAMs, landscaping, street lamps and all fixtures relating to the Common Area Screening Wall and the Property. Any Owners of Lots burdened with the Common Area Screening Wall Easement will have the continual use and enjoyment of their Lots for any purpose that does not interfere with and prevent the Association's use of the Common Area Screening Wall Easement. In addition to the easement granted herein, the Declarant and the Association have the temporary right, from time to time, to use as much of the surface of any potentially burdened Lot as may be reasonably necessary for the Association to perform its contemplated work on the Common Area Screening Wall Easement. This easement is perpetual. The Common Area Screening Wall Easement will terminate when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. The Association may assign this easement, or any portion thereof, to a third party agreeing to accept such assignment.

3.6. **Owner's Easement of Enjoyment.** Every Owner is granted a right and easement of enjoyment over the Common Areas and to use of all improvements therein, subject to other rights and easements contained in the Documents. An Owner who does not occupy a Lot delegates this right of enjoyment to the residents of his Lot.

3.7. **Owner's Ingress/Egress Easements.** Every Owner is granted a perpetual easement over the Property's street, as may be reasonably required, for vehicular ingress to and egress from his Lot. Similarly, every Owner is granted a perpetual easement over the Property's sidewalks and all Common Areas, subject to abiding by the rules of the Association.

3.8. **Rights of City and County.** The City of Burleson and the County of Johnson, including their agents and employees, have the right of immediate access to the Common Areas at all times as necessary for the welfare and protection of the public, to enforce city and county ordinances, or for the preservation of public property. If the Association has the responsibility to maintain certain of the Common Areas and fails to maintain such Common Areas to a standard acceptable to the City or County, the City or County may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the City's or County's written demand (at least 90 days), the City or County may maintain such Common Areas at the expense of the Association after giving written notice of its intent to do so to the Association. To fund or reimburse the City's or County's cost of maintaining the Common Areas which are the responsibility of the Association to maintain at the Association's expense, the City or

County may levy an assessment against the Association's Common Area property in the same manner as if the Association levied a special assessment against the Lots. The City or County may give its notices and demands to any officer, director, or agent of the Association. The rights of the City and County under this Section are in addition to other rights and remedies provided by law.

3.9. **Association's Lot Access Easement.** The Association is granted an easement of access and entry to every Lot and Common Area to perform maintenance, to enforce architectural and use restrictions, to respond to emergencies, and to perform any other duties required by the Documents.

3.10. **Utility Easements.** The Association may grant permits, licenses, and easements over Common Areas for utilities, roads, and other purposes necessary for the proper operation of the Property and the Highland Oaks residential community. Any company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, removal or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the Board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television and/or internet, and security.

3.11. **Prohibition Against Water Wells.** The drilling of water wells on any Association Properties or Member Properties without the written consent of both the Association and the Bethany Special Utility District ("BSUD") is prohibited. Any fully operational water wells existing as of January 1, 2017 shall be permitted as "grandfathered" but shall be restricted to be used only for irrigation and lawn sprinkler systems, not for domestic consumption. This Section 3.11 may not be amended by the Association or the Members without the written approval of BSUD.

3.12. **Mineral Rights.** No commercial oil or gas drilling, oil or gas development operations or refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot. No derrick or other rigging or structures designed for the use of boring or drilling for oil or natural gas shall be erected, maintained or permitted upon any Lot. Nevertheless, some or all of the Property may be subject to a previous owner's acquisition, reservation, or conveyance of oil, gas, or mineral rights pursuant to one or more deeds recorded in the Real Property Records of Johnson County, Texas, including but not limited to rights to all oil, gas, or other minerals lying on, in, or under the Property and surface rights of ingress and egress. Because any deed reserving a mineral interest may have been recorded prior to these Protective Covenants, it would be a superior interest in the Property and is not affected by any provision to the contrary in these Protective Covenants. By accepting title to or interest in a Lot, every Owner acknowledges the existence of the mineral right or reservation referenced in this Section and its attendant rights in favor of the owner of the mineral interest.

3.13. **Notice of Limitation on Association Liability.** The development of the Property occurs during a period when many local governments are trying to be absolved of liability for flood damage to private property. As a condition of Plat approval, a governmental entity may

require a Plat note that not only disavows the entity's liability for flood damage, but affirmatively assigns the liability to the Association. Declarant does not intend or desire to impose such absolute liability on the nonprofit Association of Lot Owners. Notwithstanding Plat notes or public codes or ordinances now in existence or hereafter created, the Association cannot and should not be liable for acts of God or for property damage that is not the result of the Association's negligence or willful misconduct. On behalf of the Association, Declarant hereby gives notice that the Association does not accept liabilities imposed by any governmental entity for which the Association cannot obtain insurance at a reasonable cost, or for which its Members refuse to fund reserve accounts at levels sufficiently high to pay the damages for which the governmental entity may seek to make the Association liable. This notice is not intended to create a liability for any governmental entity. Further, this notice may not be construed to create a duty for the Association to obtain insurance or to fund reserve accounts for damage from rising or flooding waters.

3.14. **Security.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each Owner and resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each Owner and resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each Owner and resident further acknowledges that Declarant, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the Owner or resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each Owner and resident acknowledges and agrees that Declarant, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

3.15. **Risk.** Each resident uses the Highland Oaks Common Areas at his or her own risk. The Common Areas are unattended and unsupervised. Each resident is solely responsible for his own safety and that of his guests. The Association disclaims any and all liability or responsibility for injury or death occurring from use of the Common Areas.

3.16. **Enforcement.** If in the opinion of the Board or the Architectural Control Committee, any such Owner or Resident (including lessees) has failed to comply with any of the foregoing restrictions or has failed in any of the foregoing duties or responsibilities, then the Board or their designated Agent(s) shall deliver to such Owner or Resident (including lessees) written notice of such failure and such Owner or Resident (including lessees) must within thirty (30) days from and after delivery of such notice, comply with the restrictions and/or perform the care and maintenance required. In the event of any emergency safety or health related restriction violations, or repeated violations where thirty (30) days notice has previously been delivered, the required notice period may be less or unnecessary as permitted by the Texas Property Code, as amended. Should any such Owner or Resident (including lessees) fail to

fulfill this duty and responsibility within such period, then the Board or their designated Agent(s) are hereby authorized to enter onto the premises and correct such violations and perform such care and maintenance as necessary without any liability for damages for wrongful entry trespass or otherwise to any person. The Owner or Resident (including lessees) of any Lot on which such work is performed shall promptly reimburse the Association for such cost, plus interest on such cost at the rate of eighteen percent (18%) per annum and all costs of collection. If such Owner or Resident (including lessees) shall fail to reimburse the Association within thirty (30) days from and after delivery by the Association of an invoice setting forth the costs incurred by the Association for such work, then said indebtedness shall be a debt of the Owner or Resident (including lessees) jointly and severally, subject to a reasonable late payment fine, following proper notice of any such fine, and further subject to an Assessment Lien against the Owner's or Builder's Lot according to the provisions of Article 10 hereinbelow.

ARTICLE 4 **COMMON AREA**

4.1. **Ownership.** The designation of real property as a Common Area is determined by the Final Plat, as amended, and this Declaration, and not by the ownership of the Property. This Declaration contemplates that the Association will eventually hold title to every Common Area capable of independent ownership by the Association. The Declarant may install, construct, or authorize certain improvements on Common Areas in connection with the initial development of the Property, and the cost thereof may or may not be a common expense of the Association, at the discretion of the Declarant. Thereafter, all costs attributable to Common Areas, including general maintenance and road maintenance and repair, sidewalk maintenance and repair, landscaping and all landscaping features (including all related facilities and equipment) maintenance and repair, the maintenance of Common Area structures and improvements, improvements reasonably related to the entrance, the VAMs, street lamps and fixtures, screening of the residential subdivision, and all signage relating to the Property, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the Common Areas, unless this Declaration elsewhere provides for a different allocation for a specific Common Area.

4.2. **Acceptance.** By accepting an interest in or title to a Lot, each Owner is deemed (1) to accept the Common Area of the Property, and any improvement thereon; (2) to acknowledge the authority of the Association, acting through its Board of Directors, for all decisions pertaining to the Common Area; (3) to acknowledge that transfer of a Common Area's title to the Association by or through the Declarant is a ministerial task that does not require acceptance by the Association; and (4) to acknowledge the continuity of maintenance of the Common Area, regardless of changes in the Association's Board of Directors or management.

4.3. **Components.** The Common Area of the Property consists of the following components on or adjacent to the Property, even if located on a Lot or a public right-of-way:

- A. All of the Property, save and except the Lots, specifically including but not limited

to the community roadway, sidewalks, landscaping and all Common Area landscaping features (including all related facilities and equipment), fencing, Common Area structures and improvements, improvements reasonably related to the entrance, the VAMs, street lamps and fixtures, screening of the residential subdivision, and all signage relating to the Property, which may exist and/or be depicted on the Plat.

- B. The land described herein as Common Area and all improvements thereon.
- C. Any area shown on the Plat as Common Area or an area to be maintained by the Association.
- D. The grounds between County Road 707 and County Road 708 and any screening wall, fences, berms or landscaping, to the extent that the Association has a right or duty to maintain or regulate that portion of the County Roads' right-of-ways.
- E. Any property adjacent to the Highland Oaks subdivision if the maintenance of same is deemed to be in the best interests of the Association, and is not prohibited by the Owner or operator of said property.
- F. Any modification, replacement, or addition to any of the above-described areas and improvements.
- G. Personal property owned by the Association, such as books and records, office equipment, and supplies.

ARTICLE 5 **RESIDENTIAL LOTS**

5.1. **Purposes.** As a general rule, the Owner or Resident (including lessees) of a Lot has the sole and exclusive use of the Owner's Lot - from boundary to boundary and, except for the Association's maintenance responsibilities and rights defined herein, is solely responsible for the maintenance of all portions of such Lot and all of the improvements on the Lot from boundary to boundary.

5.2. **City and County Ordinances.** Ordinances of the City of Burleson and Johnson County affecting the Lots in the Highland Oaks Subdivision will be provided to Owners and will be complied with if the physical nature of the Property and each Lot permit.

5.3. **Encroachment Reservations and Easements.** Driveways and additional parking pads encroachment reservations and easements are created by this Declaration and are in addition to easements, if any, shown on a Plat or created by separate instrument. The concrete driveways and any additional parking pads are constructed as the initial improvements on the Property with respect for individual Lot lines. The Owner of the Lot that is served by the driveway or parking pad has exclusive use of those improvements and is solely responsible for the maintenance, repair, replacement, and reconstruction of same as if it were constructed entirely on the Owner's Lot.

5.4. **Damage to Property.** If a Lot Owner or Resident (including lessees) damages the adjoining Lot, or damages or destroys any improvement or personal property on the adjoining Lot, in exercising the easements and reservation created by this Article, the Owner is obligated to restore the damaged property to its original condition (just prior to the damage), at his or her or its expense, within a reasonable period of time.

ARTICLE 6

ARCHITECTURAL COVENANTS AND CONTROL

6.1. **Purpose.** Because the Lots are part of a single, unified community, this Declaration creates rights to regulate the design, use, and appearance of the Lots and the Common Areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements on a Lot, including but not limited to dwellings, other structures, fences, landscaping, retaining walls, yard art, sidewalks and driveways, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

6.2. **Declarant's Architectural Control During Development Period.** During the Development Period, neither the Association, the Association's Board of Directors, nor a committee appointed by the Association or the Board (no matter how the committee is named) may involve itself with the approval of the structural design or construction modification or exterior appearance of the homes and other improvements on the Lots. During the Development Period, the Architectural Control Committee for the approval of the structural design or construction modification or exterior appearance of the homes and the other improvements is the Declarant or its delegates, unless released in writing by Declarant to the Association, the Association's Board of Directors, or a committee appointed by the Association or the Board.

6.2.1. **Declarant's Rights Reserved.** Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market its property or the ability of Builders to sell homes in the Property. Accordingly, **each Owner agrees that during the Development Period, no improvements, demolition, or exterior alteration of improvements will be started or progressed on Owner's Lot without the prior written approval of Declarant**, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

6.2.2. **Delegation by Declarant.** During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (1) an Architectural Control Committee appointed by Declarant or by the Association's Board with Declarant's approval of all such Architectural Control Committee appointed members or to (2) a committee appointed by Declarant or by the Association's Board, with Declarant's approval of all members appointed to the committee, such committee being comprised of architects, engineers, or other qualified persons who may or may not be Members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

BEFORE MAKING ANY IMPROVEMENT OR ANY ALTERATION TO A LOT OR DWELLING, A BUILDER OR OWNER MUST APPLY TO THE DECLARANT OR TO THE ARCHITECTURAL CONTROL COMMITTEE FOR WRITTEN APPROVAL!

6.3. **Architectural Control by Association.** Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Architectural Control Committee, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the Architectural Control Committee, will assume jurisdiction over architectural control.

6.3.1. **Architectural Control Committee Membership.** The Architectural Control Committee will consist of three (3) persons appointed by the Board, pursuant to the ByLaws. Members of the Architectural Control Committee shall serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the Architectural Control Committee, in which case all references in the Documents to the Architectural Control Committee are construed to mean the Association's Board. Members of the Architectural Control Committee need not be Owners or residents, and may, but need not, include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Association's Board.

6.3.2. **Limits on Liability.** The Architectural Control Committee has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the Architectural Control Committee have no liability for the Architectural Control Committee's decisions made in good faith, and which are not arbitrary or capricious. The Architectural Control Committee is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the Architectural Control Committee, (2) supervising construction for the Owner's compliance with approved plans and specifications, or (3) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

6.4. **Prohibition of Construction, Alteration & Improvement.** Without the

Architectural Reviewer's prior written approval, a person may not construct a dwelling or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property, if it will be visible from a street, another Lot, or the Common Area. The Architectural Control Committee has the right, but not the duty, to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property.

6.5. **Architectural Approval.** To request architectural approval, an Owner must make written application to the Architectural Control Committee and submit two (2) identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, including two (2) sets of plot plans showing locations on the Lot of the work to be performed, and a foundation, storm drainage and landscaping plan. In support of the application, the Owner may, but is not required, to submit letters of support or non-opposition from Owners of Lots that may be affected by the proposed change. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Control Committee will return one set of plans and specifications to the applicant marked with the Architectural Control Committee's response, such as "Approved," "Denied," or "More Information Required." The Architectural Control Committee will retain the other set of plans and specifications, together with the application, for the Architectural Control Committee's files. **Verbal approval by the Declarant, an Association director or officer, the Association's manager, the Architectural Control Committee, or a member of the Architectural Control Committee, does not constitute architectural approval by the Declarant or the appropriate Architectural Control Committee, which must be in writing.**

6.5.1. **Deemed Approval.** Under the following limited conditions, the applicant may presume that his request has been approved by the Declarant or the Architectural Control Committee:

A. if the applicant or a person affiliated with the applicant has not received the Architectural Reviewer's written response approving, denying, or requesting additional information within thirty (30) days after delivering his complete application to the Architectural Control Committee; or

B. if the proposed improvement or modification strictly conforms to requirements and construction specifications contained in this Declaration and in any design guidelines for the Property in effect at the time of application.

C. If those conditions are satisfied, the Owner may then proceed with the improvement, provided he adheres to the plans and specifications which accompanied his application, and provided he initiates and completes the improvement in a timely manner. In exercising deemed approval, the burden is on the Owner to document the Board's actual receipt of the Owner's complete application. Under no circumstance may approval of the Declarant or the Architectural Control Committee be deemed, implied, or presumed for an improvement or modification that would require a variance from the requirements and construction specifications contained in this Declaration and in any design guidelines for the Property in effect at the time of application.

6.5.2. **No Approval Required.** No approval is required to repaint exteriors in accordance with the same color scheme previously approved by the Architectural Control Committee, or to rebuild a dwelling in accordance with any previously approved plans and specifications. Nor is approval required for an Owner to remodel or repaint the interior of a dwelling.

6.5.3. **Building Permit.** If the application is for work that requires a building permit from the City of Burleson or Johnson County, the Architectural Control Committee's approval is conditioned on the issuance of the appropriate permit. The Architectural Control Committee's approval of plans and specifications does not mean that they comply with the requirements of the City of Burleson or of Johnson County. Alternatively, the City of Burleson's or Johnson County's approval does not ensure Architectural Control Committee approval.

6.5.4. **Neighbor Input.** The Architectural Control Committee may solicit comments on the application, including from Owners or Residents of Lots that may be affected by the proposed change, or from which the proposed change may be visible. Whether to solicit comments, from whom to solicit comments, and whether to make the comments available to the applicant is solely at the discretion of the Architectural Control Committee. The Architectural Control Committee is not required to respond to the commentors in ruling on the application.

6.5.5. **Declarant Approved.** Notwithstanding anything to the contrary in this Declaration, any improvement to the Property made or approved by Declarant during the Development Period is deemed to have been approved by the Architectural Control Committee.

6.6. **Architectural Guidelines.** Declarant, during the Development Period, and the Association thereafter, may publish architectural restrictions, guidelines, and standards in the Association's Rules And Regulations, which may be revised from time to time by the Association's Board to reflect changes in circumstances in Highland Oaks, technology, style, and taste.

6.7. **Variance.** The use of the Property is subject to the restrictions contained In this Article, and subject to rules adopted pursuant to this Article. The Board or the Architectural Control Committee, as the case may be, may grant a variance or waiver of a restriction or rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. The Board or the Architectural Control Committee may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Declarant when circumstances such as topography, natural obstructions, Lot configuration, Lot size, hardship, aesthetic or environmental considerations may require a variance. The Declarant reserves the right to grant variances as to building set-back lines, minimum square footage of the residence and other items. To be effective, a variance must be in writing. The grant of a variance does not constitute a waiver or estoppel of the Association's right to deny a variance in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance. The granting of any variance shall not affect in any way

the Owner's obligation to comply with all governmental laws and City of Burleson or Johnson County ordinances or regulations affecting the property and the Plat.

ARTICLE 7
CONSTRUCTION SPECIFICATIONS AND USE RESTRICTIONS

7.1. **Improvements Compliance.** All improvements on a lot must (1) comply with any applicable City of Burleson and Johnson County ordinances and codes, (2) have a building permit issued by the City of Burleson or Johnson County if the type of improvement requires a permit from either, and (3) have the Architectural Control Committee's prior written approval. These three (3) requirements are independent; that is, one does not ensure or eliminate the need for another. The Lot Owner and/or Owner's Builder or Contractor must comply with all three (3) requirements.

7.2. **Single Family Detached Residential Construction.** The residential improvements on all Lots shall be site-constructed, single family detached residences, as such residences are defined, restricted and permitted by the City of Burleson and Johnson County Ordinances. No building shall be erected, altered, placed or permitted to remain on any Lot other than one "principal dwelling" unit per each Lot to be used for residential purposes, and if approved by the Declarant, the Board or the Architectural Control Committee, an additional detached dwelling, which shall be known hereinafter as the "guest dwelling" or "guest house." All principal dwellings and guest houses, detached garages, work shops, out buildings and other structures must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the Property. The term "dwelling" does not include single or double wide manufactured homes; and said manufactured homes are not permitted within the Highland Oaks Subdivision. Any building, structure or improvement commenced on any Lot shall be completed as to exterior finish and appearance within six (6) months from the commencement date. As used herein, the term "residential purposes" shall be construed to prohibit mobile homes or trailers being placed on said Lots, or the use of said Lots for duplex houses, townhomes, condominiums or apartment houses.

7.3. **Construction Restrictions.** The principal improvement on a Lot must be one detached single family dwelling, as further defined by the City of Burleson, to be known herein as the "principal dwelling." All principal dwellings will face the front yard of each Lot, which "front yard" of each Lot shall be determined and designated by the Architectural Control Committee. The principal dwelling size, setbacks, and exterior materials must comply with the City of Burleson and Johnson County Subdivision Ordinances and with any higher standards established by Board or by the Architectural Control Committee. Without the Architectural Control Committee's prior written approval for a variance, improvements constructed on every Lot must have the characteristics described in this Article 7, which may be treated as the minimum requirements for improving and using a Lot. The Architectural Control Committee and the Board may promulgate additional rules and restrictions, as well as interpretations, additions, and specifications of the restrictions contained in this Article. An Owner should review the Association's architectural restrictions, if any, before planning improvements, repairs, or replacements to his Lot and dwelling. In addition to the Association's Rules and Regulations, as amended from time to time by the Association's Board of Directors, all Lots

within the Subject Property shall be subject to the following restrictions:

A. Building Envelopes. Each house must be placed within the building envelope established by the Committee, which must also comply with the building setback lines established and shown per the plat of the subdivision for the Subject Property.

B. Building Lines. All residences or dwellings erected or placed on any Lot shall face the road or street adjacent to the Lot as shown on the recorded plat of the Subject Property. No portion of such dwelling or residence shall be nearer to the front property line of said Lot than fifty feet (50') as designated on the recorded plat of the Subject Property. No structure or improvement of any kind shall be nearer to the side property line of any Lot or the rear property line of any Lot than as designated on the recorded plat of the Subject Property.

C. Minimum Square Footage. All principal dwellings shall have the minimum square footage of air conditioned living area required hereinbelow. "Air Conditioned Living Area" as used herein, is defined as the area measured from outside exterior wall to outside exterior wall, computed in square footage, exclusive however of any square footage contained within the garage, covered porches, and walkways. Notwithstanding any variances hereafter granted by either Declarant or by the Architectural Control Committee, the principal dwelling on each Lot in Phase One of the Highland Oaks Subdivision shall have at least Three Thousand, Two Hundred (3,200) square feet of air conditioned living area. Any dwelling with more than one story shall have situated on the first floor at least Two Thousand (2,000) square feet of air conditioned living area.

7.4. Location and Height of the Improvements upon the Lot. The set-back requirements shall be as designated on the Plat, and shall be subject to the current Johnson County subdivision regulations Section IV.C.13. The maximum height of any improvement shall be two stories.

7.5. New Construction. A "principal dwelling" must be constructed on each Lot in Highland Oaks. A principal dwelling, or a "guest dwelling," or addition constructed elsewhere may not be moved onto a Lot. Factory-built homes are not permitted, even though assembled or finished on the Lot. The construction of a dwelling must be started within twelve (12) months from the date of purchase following Architectural Control Committee approval of the plans and specification. At the start of construction, but not before, building material to be used in the construction may be stored on the Lot or with the Declarant's approval, on a nearby Lot. Once started, the dwelling and all improvements on the Lot must be completed with due diligence within nine (9) months.

7.6. Occupancy. Other than the completed principal dwelling and a guest dwelling, if a guest dwelling is approved by the Architectural Control Committee to be constructed on a Lot, no thing or structure on a Lot may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage, mobile homes, recreational vehicles, campers, tents, and storage sheds.

7.7. **Exterior Dwelling Wall Materials.** The type, quality, and color of the principal dwelling exterior wall materials must be approved by the Declarant or the Architectural Control Committee. All improvements, including the principal dwelling, a detached guest dwelling and a detached garage, must be built with matching, new, exterior construction material, including masonry or a glass building material of the kind usually used for exterior wall construction. "Masonry" may consist of stone, brick, concrete barrier board (such as Hardiplank) siding or stucco. Wood, hardiboard, vinyl, or aluminum siding is not a permitted exterior wall material, the exceptions being "accessory structures defined in Section 7.14 below.

7.8. **Roofs.** The construction design and materials for roofs of residences and all other structures to be constructed on Lots in Highland Oaks must be submitted and approved by the Declarant, the Board or the Architectural Control Committee, and be in compliance in all respects with the applicable City of Burleson ordinance, prior to commencing any roof construction. All roof pitches shall be a minimum of six feet by twelve feet ("6/12") pitch. Roofs must be covered with material having a manufacturer's warranty of at least thirty (30) years. Wood shake shingles shall not be permitted. The use of asphalt tile and fiberglass shingles are permitted. Metal roof panels are permitted, but must be certified as at least 26 guage. The color of roofing material must be weatherwood or an equivalent earth tone color. The Architectural Control Committee may permit or require other weights, materials, and exterior colors.

7.9. **Garages & Driveways.** Each principal dwelling must have an attached or detached garage for at least three (3) full-size automobiles. Absent the issuance of a written waiver by the Declarant, the Architectural Control Committee or the Board, each garage shall be oriented on a Lot so that the garage door does not face the street or streets which abut the Lot. All driveways must be surfaced with concrete. Driveways that require culverts will be CMP culverts with safety end caps and concrete base. Vehicles shall not be parked on any non-paved portion of any Lot.

7.10. **Garages Restrictions.** Without the Association Board's prior written approval, the original garage area of a Lot may not be enclosed or used for any purpose that prohibits the parking of at least two standard-size operable vehicles therein. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

7.11. **Driveways Restrictions.** No direct Highland Oaks residential Lot access to County Road 707 or County Road 708 will be permitted. Driveway approach locations on corner Lots shall be located to approximately line up with the side of the house or garage that is farthest from the intersection. The first twenty feet (20') of each Lot's driveway approach must be constructed of Portland white concrete, while the remaining portion of the driveways must be constructed of paving materials and designs approved by the Architectural Control Committee or the Board; however neither gravel nor asphalt shall be permitted. The driveway portion of a Lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage. Without the Association's Board's prior approval, a driveway may not be used: (1) for storage purposes, including storage of boats, trailers, and inoperable vehicles; or (2) for repair or restoration of vehicles, boats, or trailers.

7.12. **Accessories**. Installation of all exterior items and surfaces, including address numbers, decorative hardware, external ornamentation, lights fixtures, and exterior paint and stain, is subject to the Architectural Control Committee's prior approval, including approval of design, color, materials, and location.

7.13. **Carports**. No carport may be installed, constructed, or maintained on any Lot or dwelling, without approval of the Architectural Control Committee.

7.14. **Accessory Structures, Spas and Swimming Pools**. Accessory structures, such as dog houses, gazebos, storage sheds, playhouses and greenhouses, and spas or swimming pools may not be located in front yards or in unfenced portions of side or rear yards. Below ground swimming pools may be installed only with the prior written approval of the Architectural Control Committee. Above-ground swimming pools are not permitted. Accessory structures shall not be permitted on any Lot if it is visible from any street and exceeds the height, length, width or the total square footage footprint, or is in violation of the design and construction specifications established by the Board in the Association's Rules And Regulations. If an accessory structure that is visible from a street or another Lot is installed on a Lot without the prior written approval of the Architectural Control Committee, the Architectural Control Committee reserves the right to determine that the accessory structure is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the Owner to relocate it, screen it, or remove it.

7.15. **Temporary Structures**. No temporary dwelling, shop, portable shed, tent, trailer, mobile home, camper or recreational vehicle of any kind, or any improvements of a temporary character, except as permitted in Section 7.14 above, shall be permitted on any Lot, further except that the Declarant, Builder or Contractor may have temporary improvements (such as a sales office and/or construction trailer and/or a portable toilet) on a given Lot during construction of the residences on that Lot. Dwellings under construction shall be required to have one portable toilet for up to three houses and one trash container (plywood box) per house, which must be onsite before foundation forms are set and continuously until the required final building inspection. No building materials of any kind or character shall be placed or stored upon the property until the Owner thereof is ready to commence construction of improvements, and then such materials shall be placed within the property lines of the Lot upon which the improvements are to be erected.

7.16. **Air Conditioners**. Air conditioning equipment may not be installed in the front yard of a dwelling. Window units are prohibited.

7.17. **Dwelling Addresses and Mailboxes**. All dwellings shall have their own address numbers, with a design and location established by the Architectural Control Committee, mounted on the exterior front wall of each such dwelling facing the street. And all dwellings shall have a mail box installed according to United States Postal Service guidelines at the front of the Lot facing the street. The Board or the Architectural Control Committee may require a uniform size, style, material and color of curbside mailbox or pedestal. If curbside boxes are required by the Architectural Control Committee to be constructed with masonry, the masonry shall match any masonry used to construct the dwelling.

7.18. **Fences & Walls.** All Highland Oaks Subdivision fencing along the common borders of County Road 707 and County Road 807 shall be constructed of six foot (6') tall, open tine wrought iron or aluminum materials. Owners of Lots shall, at their expense, shall build open wrought iron or aluminum fences enclosing their side and rear yards, according to the design, materials, and construction specifications set forth in this Section 7.18 and as set forth in the Association's Rules & Regulations. All fences and walls must be approved prior to construction by the Architectural Control Committee. Fences may not be constructed between a dwelling's front building line and the front street property line. Other fences must be made of Architectural Control Committee-approved materials, which subject to the approval of the Architectural Control Committee, may include heavy timber, board on board, wrought iron, stucco, and similar materials. The use of chain link, wire, unfinished concrete block, and similarly undesirable fencing materials, as determined in the sole discretion of the Architectural Control Committee, is prohibited. This Article is subject to the Architectural Control Committee's right to adopt additional or different specifications for construction or reconstruction of fences and walls. Retaining walls must be constructed entirely with Architectural Control Committee-approved design and materials; however, railroad ties may not be used for a retaining wall. A fence located on or near the dividing line between two Lots and intended to benefit both Lots constitutes a "Party Wall Fence" and, to the extent not inconsistent with the provisions of this Article, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions. Matters concerning party fences and party walls of adjoining Lots are governed by Section 3.4 of this Declaration and the Appendix II "Party Wall Agreement" and by the general rules of law concerning party walls and party fences.

7.19. **Colors & Color Changes.** The colors of buildings, window treatments visible from the street or from another dwelling, fences, walls, exterior decorative items, and all other improvements on a Lot are subject to regulation by the Architectural Control Committee. Because the relative merits of any color are subjective matters of taste and preference, the Architectural Control Committee determines the colors that are acceptable to the Association. Lot Owners cannot change or add colors that are visible from the street, a Common Area, or another Lot without the prior written approval of the Architectural Control Committee.

If wood fences are permitted by the Architectural Control Committee in any area in the Highland Oaks subdivision, they must be stained with a color approved by the Architectural Control Committee, which may require a uniform color of stain. Wood fences or walls may not be painted. The finished color of fences or walls constructed of either masonry, wrought iron, aluminum or any Architectural Control Committee-approved material other than wood must be approved by the Architectural Control Committee.

All window treatments within the dwelling that are visible from the street or another dwelling must be maintained in good condition and must not detract from the appearance of the Property. The Architectural Control Committee may require an Owner to change or remove a window treatment that the Architectural Control Committee determines to be inappropriate or unattractive. The Architectural Control Committee in their sole discretion may prohibit the use of certain colors, materials or inappropriate designs or graphics for window

treatments.

7.20. **Utilities.** Except for temporary water and sewage facilities and systems which may be installed and used by Declarant or by Builders (and which must comply with the requirements of the City of Burleson and Johnson County Subdivision Ordinances) prior to having access to city water provided by the Bethany Special Utility District ("BSUD") and prior to having access to a fully functional owner-installed and maintained private aerobic or other approvable sewer system approved by Johnson County, no dwelling may be occupied until such systems are available and functional for use by such dwellings in the Highland Oaks Subdivision. All temporary water and sewage systems must be removed within 60 days of certification by the Bethany Special Utility District that city water is available for use by each such dwelling, and within 60 days of certification by Johnson County that an approved and fully functional sewer system is available for use by each such dwelling in the Highland Oaks Subdivision. All dwellings must also be served with electricity. All utility lines and equipment, including propane tanks, must be located underground, except for: (1) elevated or surface lines or equipment required by a public utility or the city or county; (2) elevated or surface lines or equipment installed by Declarant as part of the development plan; and (3) surface equipment necessary to maintain, operate, or read underground facilities, such as meters, risers, service pedestals, and transformers. The Architectural Control Committee may require that utility meters, risers, pedestals, and transformers be visually screened from the street and neighboring lots.

7.21. **Annoyance.** No Lot or Common Area may be used in any way that: (1) may reasonably be considered to be annoying or a nuisance to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of residents of other Lots; (4) may result in the cancellation of insurance on the Property; or (5) violates any law. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

7.22. **Appearance.** Both the Lot and each dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring Lots. The Architectural Control Committee is the arbitrator of acceptable appearance standards.

7.23. **Garbage & Trash Disposal and Debris.** No Lot may be used or maintained as a dumping ground for rubbish. Trash, garbage, other waste or debris shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of frequently and regularly. All equipment for storage or disposal of such material shall be kept in a clean and sanitary condition, out-of-public-site location. Garbage and trash or other debris accumulated in the Highland Oaks Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any residence of the Highland Oaks Subdivision or to a neighbor of the Highland Oaks Subdivision is or may be created.

Materials incident to construction or repair of improvements on a Lot may be stored temporarily on the Lot during construction while work progresses and must be removed when construction or repair is complete. However, construction waste materials and debris shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of

frequently and regularly.

In the event of the failure of any Owner to comply with the above requirements after ten (10) days written notice thereof, the Association or their designated agents may, without liability to the Owner, Contractor or any occupants of the Lot in trespass or otherwise enter upon (and/or authorize one or more others to enter upon) said Lot, cause to be removed, such garbage, trash, construction waste materials, and any other rubbish and debris, or do any other thing necessary to secure compliance with these Protective Covenants. Payment for the charges by the offending Owner shall be payable on the first day of the next calendar month, and collection of such charges, plus interest and any penalties which may be assessed by the Association shall be subject to a lien which the Association may enforce against the Owner's Lot.

7.24. **Association's Right to Promulgate Rules.** The Association, acting through its Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules And Regulations, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. Members, Builders and all parties living in or working on properties in the Highland Oaks Subdivision are required to be aware of and comply with the Rules And Regulations adopted by the Board as part of the Governing Documents of the Association. In addition to the restrictions contained in this Article, each Lot is owned and occupied subject to the right of the Board to establish Rules And Regulations, and penalties for infractions thereof, governing such matters as the following:

- A. Use of Common Areas.
- B. Hazardous, illegal, or annoying materials, or nuisance or annoyance activities on the Property.
- C. The use of Property-wide services provided through the Association.
- D. The consumption of utilities billed to the Association.
- E. The use and consumption of propane, whether billed to Owners or the Association.
- F. The use, maintenance, and appearance of exteriors of dwellings and Lots, including for example such items as yard art, basketball goals, outdoor drying of clothes or clothes lines, outdoor cooking or grilling on any Lot visible from any street, and the coverings of windows that face the streets.
- G. Landscaping and maintenance of yards.
- H. The occupancy and leasing of dwellings.
- I. Animals.
- J. Vehicles.

K. Disposition of trash and control of vermin, termites, and pests.

L. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for residents.

7.25. **Animal Restrictions.** No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for any commercial purpose or for food. Customary domesticated household pets may be kept for personal companionship subject to rules adopted by the Board. The Board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the rules fail to establish animal occupancy quotas, no more than four (4) domesticated household pets may be maintained on each Lot. Pets must be kept in a manner that does not disturb the peaceful enjoyment of residents of other Lots. Pets must be maintained inside the dwelling, or may be kept in a fenced yard only if they do not disturb residents of other Lots. Any pets permitted by a resident to be outdoors in the Highland Oaks Subdivision must be strictly controlled by such resident, either on a leash, physically held by the resident or otherwise physically contained and controlled. Every resident is responsible for the removal of his or her pet's wastes from the Common Area or the Lot of another Owner. All dogs and cats must be properly vaccinated and tagged for health, safety and identification.

7.26 **Declarant Privileges.** In connection with the development and marketing of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other Owners and residents, as provided in Appendix I of this Declaration. Declarant's exercise of a Development Period right that appears to violate a rule or a use restriction of this Article does not constitute waiver or abandonment of the restriction by the Association.

7.27. **Drainage.** No person may impair or interfere with the natural established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the Association Board or the Architectural Control Committee and any applicable governmental authority. Driveway culverts must be installed and will be of sufficient size to afford proper drainage of ditches without backing water up into the ditch or diverting the flow. Drainage culvert installation is subject to the inspection and approval of Johnson County and must be installed prior to any construction on the Lot. All driveways must be constructed in accordance with standard detail adopted by the Architectural Control Committee.

7.28. **Landscaping and Yard Maintenance.** Prior to occupancy of any dwelling, each Lot on which a dwelling is constructed shall have landscaping and a front yard, underground sprinkler system installed and maintained in compliance with the requirements of Johnson County. Each residence's landscaping must at least include shrubs, ground cover and grass of a sufficient quality, quantity and design to be compatible with the Highland Oaks Subdivision, as approved by the Board or the Architectural Review Committee. Lot owners are obligated to mow, trim, fertilize and otherwise maintain such Owners' or Residents' (including lessees') yards, and are also responsible for irrigating and otherwise watering their lawns and

all plants and trees on their Lots, and for the prompt replacement of all dead or dying trees or plants on their Lot. During the Development Period described in Appendix I, all yard areas on every Lot owned by Declarant and all Common Area grounds shall be regularly mowed, trimmed, fertilized and otherwise maintained by Declarant or by the Association at the sole discretion of the Declarant. Following the Development Period, all yard areas on every Lot not occupied by an Owner or Residents (including lessees) shall be regularly mowed, trimmed, fertilized and otherwise maintained by the Association. Further subject to the provisions in Appendix I, Declarant and the Association shall have a blanket "Yard Power Easement" on and over the yard areas of all Lots in the entire Property. If in the opinion of the Association's Board an Owner or Resident either violates the landscaping or other maintenance rules of this Declaration, or the ByLaws, or other rules promulgated by the Association's Board, or in the sole opinion of the Board causes or allows damage to occur to his yard, plant beds, tree, other landscaping, or sprinkler system, the Association may perform such landscaping or other maintenance which the Association deems appropriate at the offending Owner's or Resident's expense, and such Owner or Resident shall be liable for the cost of any maintenance, repair or restoration which may be performed by Declarant or the Association. The Owner of a Lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the landscaping and yard maintenance requirements of this Article. No person may perform landscaping, planting, or gardening on the Common Area without the Board's prior written authorization.

7.29. **Leasing of Dwellings or Lots.** Leasing of Dwellings or Lots in the Highland Oaks subdivision is discouraged and shall not be permitted without the written approval of the Declarant or the Association Board. With the written approval of the Declarant or the Association Board, an Owner may lease a dwelling on his Lot or his Lot for terms of no less than six months and no more than twelve months total to any and all lessees. Declarant and any Builders approved to lease dwellings during the Development Period, prior to the sale of the Lot to a third party, shall be exempt from this restriction. Whether or not it is so stated in a lease, every lease is subject to the Documents. An Owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto. The Owner is also responsible to supply the Association with the names of tenants and all family members of tenants living in the dwelling, plus phone and e-mail contact information, and the beginning and ending dates of any such lease. Failure by the tenant or his family members or invitees to comply with the Documents, federal or state law, or local ordinance is deemed to be a default under the lease. When the Association notifies an Owner of his tenant's violation, the Owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the Owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. The Owner of a leased Lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his tenant. The Association is not liable to the Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of the Documents against the Owner's tenant.

7.30. **Use Restrictions against Home Business, Profession or Hobby.** The use of a

● Lot is limited exclusively to residential purposes or any other use permitted by this Declaration. No activity whether for profit or not, shall be conducted on any Lot which is not related to single family residential purposes, unless said activity meets the following criteria: No Owner, Resident or Member shall conduct, transmit, permit or allow any type or kind of home business or home profession or hobby on any Lot or within any residence which would:

A. attract automobile, vehicular or pedestrian traffic to the Lot;

B. involve lights, sounds, smells, visual effects, pollution and the like which would adversely affect the peace and tranquility of any one or more of the Residents within the Highland Oaks Subdivision. The use of outdoor mercury lighting is expressly prohibited, and a Lot's outdoor lighting must not allow a beam or bright light to be directed into the windows of another residence, nor may an outdoor lighting beam or bright light be allowed to be directed into any street in the Highland Oaks Subdivision. All residents must exercise reasonable care to avoid making or permitting noises to be loud, disturbing, or objectionable, and to avoid making or permitting noxious odors, that are likely to disturb or annoy residents of neighboring Lots. The Association's Rules may prohibit the use of loud, disturbing, or objectionable, noise-producing, security devices and wind chimes; or

C. require any signage. Any such advertising signs are prohibited. This restriction is waived in regard to the customary sales activities required to sell townhomes in the Highland Oaks Subdivision.

● This residential restriction does not, however, prohibit a resident from using a dwelling for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the dwelling as a residence; (2) the uses conform to applicable governmental ordinances; (3) there is no external evidence of the uses; (4) the uses do not entail visits to the Lot by employees or the public in quantities that materially increase the number of vehicles parked on the Street; and (5) the uses do not interfere with residents' use and enjoyment of neighboring Lots.

7.31. **Screening.** The Architectural Control Committee may require that the following items must be screened from the view of the public and neighboring Lots and dwellings, if any of these items exists on the Lot: (1) satellite reception equipment; (2) clotheslines, drying racks, and hanging clothes, linens, rugs, or textiles of any kind; (3) yard maintenance equipment; (4) wood piles and compost piles; (5) accessory structures that do not have prior approval of the Declarant, the Board or the Architectural Control Committee; (6) garbage cans and refuse containers; (7) anything determined by the Board to be unsightly or inappropriate for a residential subdivision. Screening may be achieved with fencing or with plant material, such as trees and bushes, or any combination of these. If plant material is used, a reasonable period of time is permitted for the plants to reach maturity as an effective screen. As used in this Section, "screened from view" refers to the view of a person in a passenger vehicle driving on a Street or alley, or the view of a person of average height standing in the middle of a yard of an adjoining Lot.

● 7.32. **Signs.** No sign of any kind shall be displayed to the public view on any Lot except

one (1) professional security system sign of not more than one (1) square foot, one political election sign per any contested political election displayed during an election of up to four (4) square feet in size and no more than three (3) feet in height above the ground, and one (1) sign conforming to the rules of the Association of not more than six (6) square feet advertising the Lot for sale or for rent, or signs used by a Builder or supplier to advertise the Lot during the construction and sales period. No other sign or unsightly object may be erected, placed, or permitted to remain on the Property or to be visible from windows in the dwelling without the Board's prior written approval. The Board's approval may specify the location, nature, appearance, dimensions, number, and time period of a sign or object. The Association may effect the removal of any sign or object that violates this Article or which the Board deems inconsistent with neighborhood standards without liability for trespass or any other liability connected with the removal.

7.33. **Television, Electronic Equipment, Etc.** Each resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a street or from another Lot are prohibited within the Property, except that (1) reception-only antennas or satellite dishes designed to receive television broadcast signals, (2) antennas or satellite dishes that are twenty-four inches (24") or less in diameter and designed to receive direct broadcast satellite service (DBS), or (3) antennas or satellite dishes that are twenty-four inches (24") or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services (MDS) (collectively, the "Antenna") are permitted if located (a) inside the structure (such as in an attic or garage) so as not to be visible from outside the structure, (b) in a fenced yard, or (c) attached to or mounted on the rear wall of a structure below the eaves. If an Owner determines that an Antenna cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, the Owner may install the Antenna in the least conspicuous location on or near the roof where an acceptable quality signal can be obtained. The Association may adopt reasonable rules modifying the size restrictions herein and for the location, appearance, camouflaging, installation, maintenance, and use of the Antennas to the extent permitted by public law.

7.34. **Vehicles.** All vehicles on the Property, whether owned or operated by the residents or their families and guests, are subject to this Section and Rules adopted by the Board. The Board may adopt, amend, and repeal rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. The Board may effect the removal of any vehicle in violation of this Declaration or the Rules without liability to the Owner or operator of the vehicle.

ARTICLE 8

ASSOCIATION AND MEMBERSHIP RIGHTS

8.1. **Governance.** The Association shall come into operating existence on the earlier of (1) the issuance of its corporate charter and full legal formation, or (2) the initial levy of assessments against the Lots and Owners. The Association will continue to exist at least as

long as this Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, safety and general benefit of its Members, subject only to the limitations on the exercise of such powers as stated in the Documents. The Association will be governed by a Board of Directors elected by the Members. Unless the Association's Bylaws or Articles of Incorporation provide otherwise, the Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the Bylaws and these Protective Covenants. Unless the Documents provide otherwise, any action requiring approval of the Members may be approved in writing by Owners of at least a majority of all Lots, or at a meeting by Owners of at least a majority of the Lots that are represented at the meeting.

8.2. **Board.** Unless the Documents expressly reserve a right, action, or decision to the Owners, Declarant, or another party, the Board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through its Board of Directors." The affairs of the Association shall be conducted by its Board of Directors (herein referred to as the "Board"). The Board shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association.

8.3. **Duties of the Association.** The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of the Highland Oaks at Egan Homeowners Association, Inc., a nonprofit corporation organized under the laws of the State of Texas. Among its duties, the Association levies and collects assessments, and maintains the Common Areas and Common Area grounds at the assessed expense of the Owners as set forth in Section 7.27 above, and pays the expenses of the Association, such as those described in Section 8.2 above. The Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance, on behalf of the Association, of services which the Board is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for any consideration as the Board may deem proper, advisable and in the best interest of the Association. The Board shall also have the following specified rights, powers and duties:

A. **Tax Assessment.** to execute all declarations of ownership for tax assessment purposes with regard to any of the Common Property;

B. **Agreements and Contracts.** to enter into agreements or contracts with insurance companies, taxing authorities and the holders of first mortgage liens on the individual Lots with respect to:

1. taxes on the Common Property;
2. insurance coverage (if any) on Common Property; and

3. utility installation, consumption and service matters;

C. **Association Borrowing.** on behalf of and for the benefit of the Association, to borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit or secured by such other assets of the Association as are deemed appropriate by the lender and the Association;

D. **Contracts and Banking.** to enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

E. **Common Property Protection.** to protect or defend the Common Property from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;

F. **Rules and Regulations.** to make reasonable rules and regulations for the operation of the Common Property and the Lots and to amend them from time to time;

G. **Annual Report to Owners.** to make available to each owner within ninety days (90) days after the end of each year an Annual Report;

H. **Members Assessments.** to assess the Members and adjust the assessment amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency;

I. **Enforcement of Governing Documents.** to enforce the provisions of the Association's Governing Documents, including this Declaration, the Bylaws and all Rules and Regulations established by the Board of Directors, and to fine, enjoin and/or seek damages from any Owner for violation of such provisions or rules.

8.4. **Association Membership.** Each Owner is a Member of the Association, ownership of a Lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the Lot. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association. If a Lot is owned by more than one person or entity, each Co-Owner is a Member of the Association and may exercise the membership rights appurtenant to the Lot. A Member who sells his Lot under a Contract for Deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, regardless of the existence of the contract, seller remains liable for all assessments attributable to his Lot until fee title to the Lot is transferred.

8.5. **Voting.** One vote is appurtenant to each Lot. The total number of votes equals the total number of Lots in the Property. Each vote is uniform and equal to the vote appurtenant to every other Lot, except during the Declarant Control Period as permitted in

Appendix I. Cumulative voting is not allowed. Votes may be cast by written proxy, according to the requirements of the Association's Bylaws.

8.6. **Voting by Co-Owners**. The one vote appurtenant to a Lot is not divisible. If only one of the multiple Co-Owners of a Lot is present at a meeting of the Association, that person may cast the vote allocated to the Lot. If more than one of the Co-Owners is present, the Lot's one vote may be cast with the Co-Owners' unanimous agreement. Co-owners are in unanimous agreement if one of the Co-Owners casts the vote and no other Co-Owner makes prompt protest to the person presiding over the meeting. Any Co-Owner of a Lot may vote by ballot or proxy, and may register protest to the casting of a vote by ballot or proxy by the other Co-Owners. If the person presiding over the meeting or balloting receives evidence that the Co-Owners disagree on how the one appurtenant vote will be cast, the vote will not be counted.

8.7. **Books & Records**. The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to Article 1396-2.23.B. of the Texas Nonprofit Corporation Act.

8.8. **Indemnification**. The Association indemnifies every officer, director, committee chair, and committee member (for purposes of this Section, "Leaders") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. The Association may maintain general liability and directors' and officers' liability insurance to fund this obligation. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

8.9. **Obligations of Owners**. Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

8.9.1. **Owners' Information**. Within thirty (30) days after acquiring an interest in a Lot, and within thirty (30) days after the Owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an Owner will provide the Association with the following information: (1) a copy of the recorded deed by which Owner has title to the Lot; (2) the Owner's address, phone number, and e-mail address, and driver's license number, if any; (3) any mortgagee's name, address, and loan number; (4) initial and annual proof of casualty insurance on Owner's dwelling; (5) the name and phone number of any resident other than the Owner; (6) the name, address, and phone number of Owner's managing agent, if any.

8.9.2. **Pay Assessments.** Each Owner will pay assessments properly levied by the Association against the Owner and his Lot, and will pay Regular assessments in advance as set forth in Section 9.4.1. below, without demand by the Association.

8.9.3. **Comply.** Each Owner will comply with the Documents as amended from time to time.

8.9.4. **Reimburse for Damage.** Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a resident of the Owner's Lot, or the Owner or resident's family, guests, employees, contractors, agents, or invitees.

8.9.5. **Liability.** Each Owner is liable to the Association for violations of the Documents by the Owner, a resident of the Owner's Lot, or the Owner's or resident's family, lessees, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

8.10. **One-Time Lot Initiation Fee.** A One Thousand and No/100 Dollars (\$1,000.00) one-time per Lot Initiation Fee shall be assessed and collected at the first transfer of title of each Lot in the Highland Oaks subdivision sold from Declarant to a first-time Builder Buyer or Homeowner Buyer.

8.11. **Transfer-Related Fees.** A number of independent fees may be charged in relation to the transfer of title to a Lot, including but not limited to fees for resale certificates, estoppel certificates, copies of Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace. As of the effective date of this Declaration, a Five Hundred Dollar (\$500.00) Transfer Fee shall be charged to the Buyer of any Lot from the first-time Builder Buyer or Homeowner Buyer of each Lot in the Highland Oaks subdivision. The \$500.00 Transfer Fee shall be collected from the Buyer purchasing a Lot from the first-time Builder Buyer or Homeowner Buyer who paid the \$1,000.00 Lot Initiation Fee described in Section 8.10 above. The \$500.00 Transfer Fee shall be collected from each Buyer purchasing a Lot thereafter. Each \$500.00 Transfer Fee shall be collected by and for the benefit of the Association at the closing of each such transfer of title of any such Lot thereafter. The Association Board of Directors is hereby granted the power and authority to modify and establish a higher or lower Transfer Fee in its sole discretion at any time hereafter. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (1) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (2) transfer to, from, or by the Association; (3) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent. Transfer-related fees may be charged by the Association, provided there is no duplication of fees. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (1) foreclosure of a deed of trust lien, tax lien, or the

Association's assessment lien; (2) transfer to, from, or by the Association; (3) voluntary transfer by an Owner to one or more Co-Owners, or to the Owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association or Declarant. This Article does not obligate the Board or the manager to levy transfer-related fees.

ARTICLE 9

COVENANT FOR ASSESSMENTS

9.1. **Purpose of Assessments.** The Association will use assessments for the purpose of maintaining the Property values and promoting the health, safety and welfare of the Owners of the Subdivision Property and Additional Property, which hereafter may become subject to the jurisdiction of the Association, and for the general purposes of preserving and enhancing the Property, and for the common benefit of Owners and residents, including but not limited to maintenance, repair or replacement of real and personal Common Area property, drainage easements management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of assessments is final.

9.2. **Personal Obligation.** An Owner is obligated to pay assessments levied by the Board against the Owner or his Lot. An Owner makes payment to the Association at its principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of his Lot. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

9.3. **Control for Assessment Increases.** This Article of this Declaration may not be amended without the approval of Owners of at least two-thirds (2/3rds) of the Lots. In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's budget:

9.3.1. **Veto Increased Dues.** At least thirty (30) days prior to the effective date of an increase in Regular Assessments, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless Owners of at least two-thirds (2/3rds) of the Lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

9.3.2. **Veto Special Assessment.** At least thirty (30) days prior to the effective date of a Special Assessment, the board will notify an Owner of each Lot of the amount of, the

Special Assessment, the board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the Special Assessment. The Special Assessment will automatically become effective unless Owners of at least a two-thirds (2/3^{rds}) majority of the Lots disapprove the Special Assessment by petition or at a meeting of the Association.

9.4. **Types of Assessments.** There are four (4) types of assessments: Regular, Special, Individual, and Deficiency.

9.4.1, **Regular Assessments.** Regular assessments are based on the annual budget established annually in amounts sufficient to meet the reasonable operation expenses and reserve requirements of the Association to allow the Association to carry out its duties. Each Lot is liable for its equal share of the annual budget. Regular Assessments are due quarterly in advance for the period of the assessment. The initial Regular Assessment shall be established by the Association, whose Board shall be charged with the responsibility of assessing the Members at least the amount necessary to pay the maintenance and operational expenses of the Association. If the Board does not approve an annual budget or fails to determine new Regular Assessments for any year following the Board's approval of the initial and subsequent annual budgets for the Association, or delays in doing so, Owners will continue to pay the Regular Assessment as last determined. If during the course of a year the Board determines that Regular Assessments are insufficient to cover the estimated Common Expenses for the remainder of the year, the Board may increase Regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Regular Assessments are used for Common Expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- A. maintenance, repair, and replacement, as necessary, and as appropriate, administrative expenses of the Association and operating expenses of the Common Area, specifically including but not limited to all roadways, street lamps and fixtures, and all visibility, access and maintenance easements, screening fences, the Highland Oaks Subdivision entrances and traffic signage, and all other common areas and common facilities and amenities defined in this Declaration.
- B. utilities billed to the Association.
- C. services billed to the Association and serving all Lots.
- D. taxes on property owned by the Association and the Association's income taxes.
- E. management, legal, accounting, auditing, and professional fees for services to the Association.
- F. costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- G. premiums and deductibles on insurance policies and bonds deemed by the Board to

bonds and directors' and officers' liability insurance.

H. contributions to the reserve funds.

I. all costs of the Association's performance of its Property (including but not limited to all Lots) landscaping and maintenance obligations.

J. any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

9.4.2. **Special Assessments.** In addition to Regular Assessments, and subject to the Owners' control for assessment increases, the Board may levy one or more Special Assessments against all Lots for the purposes of funding Common Expenses not anticipated by the annual budget or reserve funds. Special Assessments shall be prorated equally among all Lots, and do not require the approval of the Owners. All Special Assessments will automatically become effective unless Owners of at least two-thirds (2/3^{rds}) of the Lots disapprove the Special Assessment by petition or at a meeting of the Association as provided in Section 9.3.1 above. However, the above provisions in Section 9.4.1, notwithstanding, Special Assessments for the following purposes, must be approved by Owners of at least a majority of the Lots:

A. Acquisition of real property, other than the purchase of a Lot at the sale foreclosing the Association's lien against the Lot.

B. Construction of additional improvements within the Property, but not replacement of original improvements.

C. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

9.4.3. **Individual Assessments.** In addition to Regular and Special Assessments, the Board may levy an Individual Assessment against a Lot and its Owner. Individual Assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an Owner or his Lot into compliance with the Documents; fines for violations of the Documents; insurance deductibles; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-Lot basis; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefits received.

9.4.4. **Deficiency Assessments.** The Board may levy a Deficiency Assessment against all Lots for the purpose of defraying, in whole or in part, the cost of repair or restoration of the

Property if insurance proceeds or condemnation awards prove insufficient.

9.5. **Basis & Rate of Assessments.** The share of liability for Common Expenses allocated to each Lot is uniform for all Lots, regardless of a Lot's location or the value and size of the Lot or dwelling; subject, however, to the exemption for Declarant provided below and in Appendix I.

9.6. **Declarant Obligation.** Declarant's obligation for and exemption from assessments is described in Appendix I. Unless Appendix I creates an affirmative assessment obligation for Declarant, a Lot that is owned by Declarant during the Development Period is exempt from mandatory assessment by the Association. Declarant has a right to reimbursement for any assessment paid to the Association by Declarant during the Development Period. This provision may not be construed to prevent Declarant from making a loan or voluntary monetary donation to the Association, provided it is so characterized.

9.7. **Annual Budget.** The Board will prepare and approve an estimated Annual Budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an Owner of each Lot, although failure to receive a budget or summary does not affect an Owner's liability for assessments. The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

9.8. **Due Date.** The Board may levy regular assessments on any periodic basis, such as annually, semi-annually, quarterly, or monthly. Regular Assessments are due on the first day of the period for which levied. Special and Individual and Road Fund Assessments are due on the date stated in the Notice of Assessment or, if no date is stated, within ten (10) days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

9.9. **Reserve Funds.** The Board will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Board must budget for reserves and may fund reserves out of Regular Assessments. Reserve funds will be maintained and accounted for separately from other funds maintained for annual operating expenses, and the Board will establish separate, bank trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and not net income to the Association.

9.9.1. **Operations Reserves.** The Association will endeavor to maintain Operations Reserves at a level determined by the Board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, such as the full amount of deductibles on insurance policies maintained by the Association.

9.9.2. **Replacement, Repair and Maintenance Reserves.** The Association will endeavor to maintain replacement, repair and maintenance reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Areas.

9.10. **Association's Right to Borrow Money**. The Association is granted the right to borrow money, subject to the consent of Owners of at least a majority of lots and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the Owners hereunder.

9.11. **Limitations of Interest**. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid Regular and Special Assessments, or reimbursed to the Owner if those assessments are paid in full.

ARTICLE 10 **ASSESSMENT LIEN**

10.1. **Assessment Lien**. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association, and hereby grants to the Association a contractual lien on such Lot, which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. Each assessment is a charge on the Lot and is secured by a continuing lien on the Lot. Each Owner, and each prospective Owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his Lot.

10.2. **Superiority of Assessment Lien**. The Assessment Lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before these Protective Covenants, (3) a recorded deed of trust lien securing a loan for construction of the original dwelling, and (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the Delinquent Assessment became due. The Assessment Lien is subordinate and inferior to a recorded deed of trust lien that secures a first or senior purchase money mortgage, an FHA-insured mortgage, or a VA-guaranteed mortgage.

10.3. **Effect of Mortgagee's Foreclosure**. Foreclosure of a superior lien extinguishes the Association's claim against the Lot for unpaid assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser

at the foreclosure sale of a superior lien is liable for assessments coming due from and after the date of the sale.

10.4. **Notice and Release of Notice.** The Association's Assessment Lien for assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Johnson County's Deed Records. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing Owner.

10.5. **Power of Sale.** By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of nonjudicial sale in connection with the Association's Assessment Lien. The Board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Associations Assessment Lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

10.6. **Foreclosure of Lien.** The Assessment Lien may be enforced by judicial or nonjudicial foreclosure. A foreclosure must comply with the requirements of applicable law, such as Chapter 209 of the Texas Property Code. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the Owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the Bylaws and applicable law, such as Chapter 209 of the Texas Property Code. The Association has the power to bid on the Lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same. The Association may not foreclose the Assessment Lien if the debt consists solely of fines and/or a claim for reimbursement of attorney's fees incurred by the Association.

ARTICLE 11

EFFECT OF NONPAYMENT OF ASSESSMENTS

An assessment is delinquent if the Association does not receive payment in full by the assessment's due date. The Association, acting through the Board, is responsible for taking action to collect delinquent assessments. The Association's exercise of its remedies is subject to applicable laws, such as Chapter 209 of the Texas Property Code, and pertinent provisions of the Bylaws. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the Board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an assessment. The following remedies are in addition to and not in substitution for all other rights and remedies available to the Association.

11.1. **Interest.** Delinquent assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) or the maximum permitted by law. If the Board fails to establish a rate,

the rate is eighteen percent (18%) per annum, compounded annually.

11.2. **Late Fees.** Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time.

11.3. **Costs of Collection.** The Owner of a Lot against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorney's fees and processing fees charged by the manager.

11.4. **Acceleration.** If an Owner defaults in paying an assessment that is payable in installments, the Association may accelerate the remaining installments with (10) days' written notice to the defaulting Owner. The entire unpaid balance of the assessment becomes due on the date stated in the notice.

11.5. **Suspension of Use.** If an Owner's account has been delinquent for at least thirty (30) days, the Association may suspend the right of Owners and residents to use Common Areas and Common Services during the period of delinquency. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay assessments.

11.6. **Money Judgment.** The Association may file suit seeking a money judgment against an Owner delinquent in the payment of assessments, without foreclosing or waiving the Association's Lien for assessments.

11.7. **Notice to Mortgagee.** The Association may notify and communicate with the holder of any lien against a Lot regarding the Owner's default in payment of assessments.

11.8. **Foreclosure of Assessment Lien.** As provided by this Declaration, the Association may foreclose its Assessment Lien against the Lot by judicial or nonjudicial means.

11.9. **Application of Payments.** The Board may adopt and amend policies regarding the application of payments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Lot's account.

ARTICLE 12 **ENFORCING THE DOCUMENTS**

12.1. **Notice and Hearing.** Before the Association may exercise any of its remedies for a violation of the Documents or damage to the Property, the Association must give an Owner written notice and an opportunity for a hearing, according to the requirements and procedures in the Bylaws and in applicable law, such as Chapter 209 of the Texas Property Code. Notices

are also required before an Owner is liable to the Association for certain charges, including reimbursement of attorneys' fees incurred by the Association.

12.2. **Remedies.** The remedies provided in this Article for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law, the Association has the following right to enforce the Documents, subject to applicable notice and hearing requirements:

12.2.1. **Nuisance.** The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

12.2.2. **Violations.** The Association may levy reasonable charges, as an Individual Assessment, against an Owner and his Lot if the Owner or resident (including lessees), or the Owner or resident's family, lessees, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the Owner's obligations under the Documents.

12.2.3. **Suspension.** The Association may suspend the right of Owners and residents to use Common Areas for any period during which the Owner or resident, or the Owner's or resident's family, lessees, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

12.2.4. **Self-Help.** The Association has the right to enter any part of the Property, including Lots, to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an Individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner ten (10) days' notice of its intent to exercise self-help.

12.2.5. **Legal Proceedings.** Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

12.3. **Board Discretion.** The Board may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the Board may determine that under the particular circumstances (1) the Association's position is not sufficiently strong to justify taking any or further action; (2) the provision being enforced is or may be construed as inconsistent with applicable law; (3) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (4) that enforcement is not in the Association's best interests,

based on hardship, expense, or other reasonable criteria.

12.4. **No Waiver.** The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Documents at any future time. No officer, director, or Member of the Association is liable to any Owner for the failure to enforce any other Documents at any time.

12.5. **Recovery of Costs.** The costs of curing or abating a violation are at the expense of the Owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the non-prevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

ARTICLE 13 **ADMINISTRATION OF COMMON PROPERTY**

13.1. **Common Property Policy.** The Common Property, including Common Areas and Common Amenities, shall be administered for the benefit of the Owners of Lots.

13.2. **Management.** All decisions relating to the Common Property shall be vested in the Association. The Association shall have all powers and duties necessary for the administration, management, maintenance, operation, and regulation of Common Property, including but not limited to the following:

- A. **Delegation.** to delegate the exercise of some or all of its powers and duties, from time to time, to one or more agents;
- B. **Budgets.** to prepare, adopt, and amend budgets for revenues, expenditures, and reserves relating to Common Property;
- C. **Reserves.** to maintain adequate reserves for periodic repair or replacement of Common Property elements, based on age, remaining useful life, quantity, and replacement cost;
- D. **Common Property Assessments.** to levy and collect Common Property assessments;
- E. **Hiring, Contracts and Liabilities.** to hire and terminate agents, employees, and contractors, and to make contracts and incur liabilities;
- F. **Common Area Rules.** to adopt, amend, and enforce reasonable rules regulating the use, maintenance, repair, replacement, modification, improvement, and appearance

of Common Property;

G. **Common Area Improvements.** to cause to be designed, constructed, repaired, improved, replaced and maintained improvements on the Common Property, as authorized and constructed in accordance with Section 4.1 hereinabove.

H. **Common Property Grants.** to grant easements, leases, licenses, and concessions through or over Private Streets and any other portion of the Common Property;

I. **Common Property Violation Fines.** if legal notice and an opportunity to be heard are given, to impose reasonable fines for violations of rules regulating the use of Common Property;

J. **Assessments Collection.** to adopt, enforce, and amend rules regulating the collection of delinquent assessments and the application of payments, and to impose interest and late charges for late payment of assessments, and to levy returned check charges;

K. **Insurance and Bonds.** to purchase insurance and bonds it considers appropriate or necessary;

L. **Common Property Visibility and Safety Protection.** to remove anything that, in the opinion of the Association, reduces visibility on Private Streets, interferes with the use or maintenance of Common Property, or distracts from the appearance of Common Property;

M. **Removal of Improperly Parked Vehicles.** to tow or cause the removal of vehicles improperly parked on the Private Streets;

N. **Reasonable Exercise of Powers.** to do anything necessary or desirable, and reasonably related to the functions, powers, and duties of the Association under this Article; and

O. **Common Property Acceptance.** to accept a conveyance of fee title in and to the Common Property, if and when a Lot Owner wishes to make such a conveyance.

ARTICLE 14 **MAINTENANCE AND REPAIR OBLIGATIONS**

14.1. **Association's Duty of Maintenance.** The Association's maintenance obligations will be discharged when and how the Board deems appropriate. The Association maintains, repairs, and replaces, as a Common Expense, funded by the Members of the Association, subject to any insurance then in effect, the portions of the Property listed below, regardless of whether the portions are on Lots or Common Areas.

A. All Common Area improvements and grounds, and all common facilities or amenities

thereon, in a well-maintained, safe, clean and attractive condition at all times, including without limitation all landscaping, walls or fences, and other improvements situated on the Common Property. The Association will perform the routine yard maintenance on all the Common Areas as well as on all the yards on every Lot owned by Declarant, at the Association's expense.

B. Any real and personal property owned by the Association but which is not a Common Area, such as a Lot owned by Declarant or the Association.

C. All private drives (as identified by recorded plat or otherwise) and not reserved for the exclusive use of each individual Owner, including, without limitation, all grass, trees, shrubbery or other plantings, sidewalks, fences, walls, street lights, benches, trash receptacles, sprinkler systems, informational and directional street signage installed by Declarant, security gates, and any other landscaping or improvements located along or within such private drives, and any other property Declarant designates as a maintenance obligation of the Association by an amendment to this Declaration.

D. Any property adjacent to the Highland Oaks Subdivision Property, if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property.

E. Any area, item, easement, or service, the maintenance of which is assigned to the Association by these Protective Covenants or by the Plat.

F. In addition, to the extent permitted by the applicable governmental authority, the Association may maintain or replace all grass, trees, shrubbery or other plantings, sidewalks, fences, walls, street lights, benches, trash receptacles, sprinkler systems, information and directional signage, security gates, traffic signals and any other landscaping or improvements located along or in dedicated rights of way, which were installed by Declarant. Further, the Association shall bear the responsibility for all utility charges incurred because of street lights, security gates, and sprinkler systems which are installed on or about the Common Property, and shall pay all insurance premiums attributable to or connected with any portion of the Common Property.

14.2 Lot Owner's Duty of Maintenance. Every Owner has the following joint and several responsibilities and obligations, at their sole cost and expense, to keep their Lots, yards, and homes in a well-maintained, safe, clean and attractive condition at all times, and to maintain, repair, and replace the property, subject to the architectural control requirements of Article 6, and the use restrictions of Article 7. "Yards" means all parts of the Lot other than the dwelling, including fenced and unfenced portions of the Lot. Such maintenance includes, but is not limited to the following:

A. Mow to prevent grass in the lawns and weeds in the plant beds from exceeding eight (8') inches in height, edge, weed-eat, trim and otherwise maintain all yards of Owner's Lots at regular intervals, blow grass and weed cuttings off the street, sidewalks and driveways, and away from flower and shrubbery beds and porches and patios; and prune

and maintain an attractive appearance for all trees, shrubs, flowers, other plant material, and all landscaping features and artifacts that are visible from a street, and maintain plant beds and yard sprinkler systems on Owner's Lots at such Owner's cost at a level, to a standard, and with an appearance that is commensurate with the neighborhood.

B. Replace plant material, as needed, to maintain the minimum landscaping requirements prescribed by the Association.

C. Screen plant vegetable gardens from being visible from a street.

D. Regularly water sufficiently to keep grass and plant material alive;

E. Support the Association's maintenance of an attractive ground cover or lawn on all Common Areas and all yards on Declarant-owned Lots visible from a street. Owners are encouraged to take pride in the Highland Oaks community by avoiding littering at all times and assisting in the removal of litter and trash in all these areas, and promptly removing from the exterior of Owner's Lot and from sight all litter, trash, debris, refuse and wastes.

F. Support the Association's edging and trimming of the Common Areas and on all the Declarant-owned Lots along the street curbs, and front and back yard perimeter edges at regular intervals.

G. Support the Association's mowing of the Common Areas and all the yards and lawns on all the Declarant-owned Lots at regular intervals.

H. Keep Owner's exterior lighting and mechanical facilities in working order;

I. Keep Owner's driveways in good repair;

J. Promptly repair damage to Owner's improvements visible to the public;

K. Comply with all government health and policy requirements.

14.3. **Avoid Damage**. An Owner may not do any work or fail to do any work which, in the reasonable opinion of the Board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

14.4. **Responsible for Damage**. An Owner is responsible for his own willful or negligent acts and those of his or the resident's family, lessees, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the Common Areas or the property of another Owner.

14.5. **Owner's Default in Maintenance**. If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent

to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an Individual Assessment against the Owner and his Lot. However, in case of an emergency, or where the health or safety of residents or guests in the subdivision are endangered, or in cases where the Association has given at least one previous written notice of a repeated or continuing violation of the Declaration restrictions or of the Rules & Regulations promulgated pursuant to this Declaration, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property or to enforce the Declaration restrictions or the Rules & Regulations, the cost of the action being at the Owner's expense.

14.6. **Party Wall Fence Encroachments & Easement.** If the Party Wall Fence is on one Lot or another due to an error in construction, the fence is nevertheless deemed to be on the dividing line for purposes of this Article. Each Lot sharing a Party Wall Fence is subject to an easement for the existence and continuance of any encroachment by the fence as a result of construction, repair, shifting, settlement, or movement in any portion of the fence, so that the encroachment may remain undisturbed as long as the fence stands. Each Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall Fence.

14.7. **Right to Repair Party Wall Fence.** If the Party Wall Fence is damaged or destroyed from any cause, the Owner of either Lot may repair or rebuild the fence to its previous condition, and the Owners of both Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt fence.

14.8. **Shared Party Wall Fence Costs.** The Owners of adjoining Lots shall share equally the costs of repair, reconstruction, or replacement of the Party Wall Fence, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the fence, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall Fence, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Johnson County's Deed Records, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to contribution from another Owner under this Article is appurtenant to the land and passes to the Owner's successors in title.

14.9. **Party Wall Fence Alterations.** The Owner of a Lot sharing a Party Wall Fence may not cut openings in the fence or alter or change the fence in any manner that affects the use, condition, or appearance of the fence to the adjoining Lot. Unless both Owners reach a mutual decision to the contrary, the Party Wall Fence will always remain in the same location as where initially erected.

ARTICLE 15 **INSURANCE**

15.1. **General Provisions.** All insurance affecting the Property is governed by the provisions of this Article, with which the Board will make every reasonable effort to comply. The cost of insurance coverages and bonds maintained by the Association is an expense of the Association. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. Additionally:

15.1.1. **Notice of Cancellation or Modification.** Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least ten (10) days prior written notice to the Board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.

15.1.2. **Deductibles.** An insurance policy obtained by the Association may contain a reasonable deductible amount, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an Owner or resident or their invitees, the Owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

15.2. **Property.** To the extent it is reasonably available, the Association will obtain blanket all-risk insurance for insurable Common Area improvements. If blanket all-risk insurance is not reasonably available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the improvements on any Lot owned by the Association.

15.3. **General Liability.** The Association will maintain a commercial general liability insurance policy over the Common Areas, expressly excluding the liability of each Owner and resident within his lot, for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners.

15.4. **Directors & Officers Liability.** To the extent it is reasonably available, the Association will maintain directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

15.5. **Other Coverages.** The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any

insurance and bond requested and required by an Underwriting Lender for planned unit developments as long as an Underwriting Lender is a mortgagee or an Owner.

15.6. **Owner's Responsibility for Insurance.** Each Owner will obtain and maintain fire and extended coverage on all the dwellings and other improvements on his Lot, in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each Owner will obtain and maintain general liability insurance on his Lot. Each Owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. The Board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by Owners if the insurance is deemed necessary or desirable by the Board to reduce potential risks to the Association or other Owners. Each Owner, lessee and resident is solely responsible for insuring his personal property in his dwelling and on the Lot, including furnishings, vehicles, and stored items. This Article may not be construed to require the Association to continually monitor the Owners' insurance coverages.

ARTICLE 16 **MORTGAGEE PROTECTION**

16.1. **Introduction.** This Article establishes certain standards for the benefit of Mortgagees, as defined below. If a Mortgagee requests from the Association compliance with the guidelines of an Underwriting Lender, the Board, without approval of Owners or mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls. As used in this Article, a "Mortgagee" is a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a Lot. Some Sections of this Article apply to all "Known Mortgagees." Other Sections apply to "Eligible Mortgagees," as defined below.

16.1.1. **Known Mortgagees.** An Owner who mortgages his Lot will notify the Association, giving the complete name and address of his mortgagee and the loan number. An Owner will also provide that information on request by the Association from time to time. The Association's obligations to mortgagees under the Documents extend only to those mortgagees known to the Association. All actions and approvals required by mortgagees will be conclusively satisfied by the mortgagees known to the Association, without regard to other holders of liens on Lots. The Association may rely on the information provided by Owners and mortgagees.

16.1.2. **Eligible Mortgagees.** "Eligible Mortgagee" means a mortgagee that submits to the Association a written notice containing its name and address, the loan number, the identifying number and street address of the mortgaged Lot, and the types of actions for which the Eligible Mortgagee requests timely notice. A single notice per Lot will be valid so long as the Eligible Mortgagee holds a mortgage on the Lot. The Board will maintain this information. A representative of an Eligible Mortgagee may attend and address any meeting which an

Owner may attend.

16.2. **Mortgagee Rights.**

16.2.1. **Termination.** An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by at least fifty-one percent (51%) of Eligible Mortgagees, in addition to the required consents of Owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least two-thirds (2/3rds) of the Owners and the Eligible Mortgagees. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within thirty (30) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

16.2.2. **Inspection of Books.** Mortgagees may inspect the Association's books and records, including the Documents, by appointment, during normal business hours.

16.2.3. **Financial Statements.** If a Mortgagee so requests, the Association will give the Mortgagee any existing previously audited statement for the preceding fiscal year within one hundred and twenty (120) days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

16.2.4. **Right of First Refusal.** Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a Lot does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

16.3. **Insurance Policies.** If an Underwriting Lender is a Mortgagee, or if an Owner, at the request of the Underwriting Lender requests, the Association will comply with the Underwriting Lender's insurance requirements to the extent the requirements are reasonable and available, and do not conflict with other insurance requirements of these Protective Covenants.

ARTICLE 17
AMENDMENTS

17.1. **Consents Required.** As permitted by these Protective Covenants, certain amendments of these Protective Covenants may be executed by Declarant alone, or by the Board alone. Otherwise, amendments to these Protective Covenants must be approved by Owners of at least two-thirds (2/3rds) of the Lots.

17.2. **Method of Amendment.** For an amendment that requires the approval of Owners, these Protective Covenants may be amended by any method selected by the Board from time to time, pursuant to the Bylaws, provided the method gives an Owner of each Lot the substance, if not exact wording, of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

17.3. **Effective.** To be effective, an amendment approved by the Owners or by the Board must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of Owners or directors and, if required, Eligible Mortgagees; and (3) recorded in the Deed Records of Johnson County, except as modified by the following Section.

17.4. **Declarant Provisions.** Declarant has an exclusive right to unilaterally amend this Declaration for the purposes stated in Appendix I. An amendment that may be executed by Declarant alone is not required to name the Association or to be signed by an officer of the Association. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent.

17.5. **Ordinance Compliance.** When amending the Documents, the Association must consider the validity and enforceability of the amendment in light of current public law, including without limitation any City of Burleson or Johnson County Subdivision Ordinance promulgated and in effect.

17.6. **Merger.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by at least two-thirds (2/3rds) of the Owners of the Lots. Upon a merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property, together with the covenants and restrictions established upon any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

17.7. **Termination.** Termination of the terms of this Declaration and the status of the Property as a planned unit development are according to the following provisions. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by Owners of at least two-thirds of the Lots. In the event of public condemnation of the entire Property, an amendment to terminate may be executed by the Board without a vote of Owners. In all other circumstances, an amendment to terminate must be approved by Owners of one hundred percent (100%) of the Lots.

17.8. **Condemnation.** In any proceeding, negotiation, settlement, or agreement concerning condemnation of the Common Area, the Association will be the exclusive representative of the Owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the Common Area, real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve funds.

ARTICLE 18
DISPUTE RESOLUTION

18.1. **Introduction & Definitions**. The Association, the Owners, Declarant, all persons subject to these Protective Covenants, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

18.1.1. **"Claim"** means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

- A. Claims arising out of or relating to the interpretation, application, or enforcement of the Documents.
- B. Claims relating to the rights and/or duties of Declarant as Declarant under the Documents.
- C. Claims relating to the design, construction, or maintenance of the Property.

18.1.2. **"Claimant"** means any Party having a Claim against any other Party.

18.1.3. **"Exempt Claims"** means the following claims or actions, which are exempt from this Article:

- A. The Association's claim for assessments, and any action by the Association to collect assessments.
- B. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the Court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
- C. Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration.
- D. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

18.1.4. **"Respondent"** means the Party against whom the Claimant has a Claim.

18.2. **Mandatory Procedures**. Claimant may not file suit in any court or initiate any

proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

18.3. **Notice.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

18.4. **Negotiation.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

18.5. **Mediation.** If the parties negotiate but do not resolve the Claim through negotiation within one hundred, twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

18.6. **Termination of Mediation.** If the parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

18.7. **Allocation of Costs.** Except as otherwise provided in this Section, each party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

18.8. **Enforcement of Resolution.** Settlement of the Claim through negotiation or mediation will be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of the agreement, then the other party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the

procedures set forth in this Article. In that event, the party taking action to enforce the agreement is entitled to recover from the non-complying party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

18.9. **Release Exemptions.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. A party having an Exempt Claim may submit it according to the procedures of this Article.

18.10. **Litigation Approval & Settlement.** In addition to and notwithstanding the above alternate dispute resolution procedures, the Association may not initiate any judicial or administrative proceeding without the prior approval of Owners of at least a majority of the lots, except that no such approval is required (1) to enforce provisions of this Declaration, including collection of assessments; (2) to challenge condemnation proceedings; (3) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (4) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (5) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of Owners in order to preserve the status quo. The Board, on behalf of the Association and without the consent of Owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims. This Section may not be amended without the approval of Owners of at least seventy-five (75) percent of the Lots.

ARTICLE 19 **GENERAL PROVISIONS**

19.1. **Compliance.** The Owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

19.2. **Higher Authority.** The Documents are subordinate to federal and state law, and local ordinances. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

19.3. **City Ordinances.** Ordinances which modify or materially affect the covenants, conditions or restrictions of this Declaration, which may be adopted by the City of Burleson or by Johnson County, will be provided to Owners and will be complied with if the physical nature of the Property and each Lot permit.

19.4. **Notice.** All demands or other notices required to be sent to an Owner or resident by the terms of this Declaration may be sent by ordinary or verified mail, postage prepaid, to the party's last known address as it appears on the records of the Association at the time of mailing. If an Owner fails to give the Association an address for mailing notices, all notices may be sent to the Owner's lot, and the Owner is deemed to have been given notice whether

or not he actually receives it.

19.5. **Liberal Construction.** The terms and provision of each Document are to be generally construed to give effect to the purposes and intent of the Document. All doubts regarding a provision, including restrictions on the use or alienability of property, will be resolved in favor of the operation of the Association and its enforcement of the Documents, regardless which party seeks enforcement.

19.6. **Severability.** Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

19.7. **Captions.** In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Some boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

19.8. **Appendices.** The Following appendices are attached to these Protective Covenants and incorporated herein by reference:

- Appendix I – Declarant Representations & Reservations
- Appendix II – Shared Common Structures

19.9. **Interpretation.** Whenever used in the Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

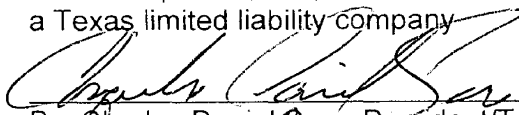
19.10. **Run with the Property.** Unless terminated or amended by Owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

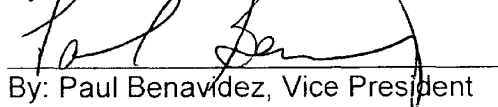
19.11. **Preparer.** This Declaration was prepared by DAP Companies, Inc., a Texas limited liability company, Declarant herein.

SIGNED AND ACKNOWLEDGED on this 30th day of January, 2017.

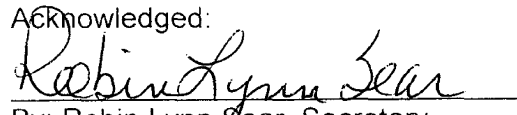
DECLARANT:

DAP Companies, Inc.,
a Texas limited liability company


By: Charles Daniel Sear, President/Treasurer


By: Paul Benavidez, Vice President

Acknowledged:

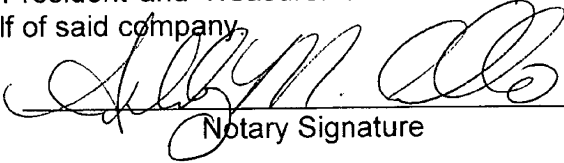

By: Robin Lynn Sear, Secretary

STATE OF TEXAS

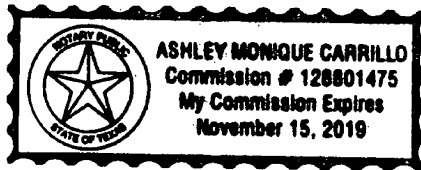
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COUNTY OF JOHNSON

This instrument was acknowledged before me on this 30th day of January, 2017 by Charles Daniel Sear, President, and Robin Lynn Sear, Secretary and Paul Anthony Benavidez, Vice President and Treasurer of DAP Companies, Inc., a Texas limited liability company, on behalf of said company.



Notary Signature



**APPENDIX I
TO
DECLARATION OF TERMS, CONDITIONS, EASEMENTS, RESTRICTIONS AND
PROTECTIVE COVENANTS FOR LA CHARDONAY TOWNHOMES SUBDIVISION**

DECLARANT REPRESENTATIONS & RESERVATIONS

A.I. General Provisions.

A.1.1. **Introduction.** Declarant intends this Highland Oaks Subdivision Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of this Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant-related provisions in this Appendix.

A.1.2. **General Reservation & Construction.** Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Appendix I, which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Appendix and any other Document, this Appendix controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

A.1.3. **Purpose of Development and Declarant Control Periods.** This Appendix I gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly build-out and sellout of the Property, which is ultimately for the benefit and protection of owners and mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with ninety (90) days' notice.

A.1.4. **Definitions.** As used in this Appendix I and elsewhere in the Documents, the following words and phrases, when capitalized, have the following specified meanings:

1. **"Builder"** means a person or entity which purchases, or contracts to purchase, a Lot from Declarant or from a Builder for the purpose of constructing a dwelling for resale or under contract to an Owner other than Declarant. As used in this Declaration, Builder does not refer to Declarant or to any home building or home marketing company that is an affiliate of Declarant.
2. **"Declarant Control Period"** also known as **"Development Period,"** means that period of time during which Declarant controls the operation of the Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of:

a. January 1, 2028; or

b. Four (4) months after title to ninety-five percent (95%) of the Lots that may be created in the Property has been conveyed to Owners other than Builders.

A.1.5. **Builders.** Declarant, in its own name or through its affiliates, intends to construct dwellings on the Lots in connection with the sale of the Lots. However, Declarant may, without notice, sell some or all of the Lots to one or more Builders to improve the Lots with dwellings to be sold and occupied.

A.2. **Declarant Control Period Reservations.** Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

A.2.1. **Officers & Directors.** During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, including the Architectural Control Committee, none of whom need be Members or Owners, and each of whom is indemnified by the Association as a "Leader."

A.2.2. **Weighted Votes.** During the Declarant Control Period, the vote appurtenant to each Lot owned by Declarant is weighted three (3) times that of the vote appurtenant to a Lot owned by another Owner. In other words, during the Declarant Control Period, Declarant may cast the equivalent of three (3) votes for each Lot owned by Declarant on any issue before the Association. On termination of the Declarant Control Period and thereafter, the vote appurtenant to Declarant's Lots is weighted uniformly with all other votes.

A.2.3. **Budget Funding.** During the Declarant Control Period only, Declarant is responsible for the difference between the Association's operating expenses and the Regular Assessments received from Owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On termination of the Declarant Control Period, Declarant will cease being responsible for the difference between the Association's operating expenses and the assessments received from Owners other than Declarant.

A.2.4. **Funding of Lots and Common Area Improvements.** Dap Companies, LLC's allocated cost of improvements to Lots and Common Areas (which costs are not included in the price of the Lot at the time of purchase by an Owner) may at Declarant's discretion be assessed to the Owners as a Special Assessment under Section 9.4.2 in the Highland Oaks Subdivision Protective Covenants.

A.2.5. **Declarant Assessments.** During the Declarant Control Period, any real property owned by Declarant is not subject to assessment by the Association.

A.2.6. **Builder Obligations.** During the Declarant Control Period only, Declarant has the right but not the duty (1) to reduce or waive the assessment obligation of a Builder, and (2) to exempt a Builder from any or all liabilities for transfer-related fees charged by the Association

or its manager, provided the agreement is in writing. Absent such an exemption, any Builder who owns a Lot is liable for all assessments and other fees charged by the Association in the same manner as any Owner.

A.2.7. **Commencement of Assessments.** During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of Regular Assessments until the earlier to occur of the sale of a number of the residential Lots (which number of Lots and timing of this determination is solely in Declarant's discretion) or January 1, 2018. During the Declarant Control Period, Declarant will determine if and when the Association first levies Regular Assessments against the Lots prior to January 1, 2018. Prior to the first levy, Declarant will be responsible for all maintenance and operating expenses of the Association.

A.2.8. **Expenses of Declarant.** Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association except as provided in Section A.2.4 above.

A.2.9. **Budget Control.** During the Declarant Control Period, the right of Owners to veto assessment increases or special assessments is not effective and may not be exercised.

A.2.10. **Organizational Meeting.** Within sixty (60) days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call an organizational meeting of the Members of the Association for the purpose of electing, by vote of the Owners, directors to the Board. Written notice of the organizational meeting must be given to an Owner of each Lot at least ten (10) days before the meeting. For the organizational meeting, Owners of ten (10) percent of the Lots constitute a quorum. The directors elected at the organizational meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors, at which time the staggering of terms will begin.

A.3. **Development Period Reservations.** Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

A.3.1. **Platting.** If the Property includes unplatted parcels, they may be platted in whole or in part, and in phases. The right to plat belongs to the owner of the unplatted parcel, provided, however, that a plat that creates Common Areas or obligations for the Association must also be approved by Declarant. Declarant's right to have the Property platted, or to approve such plats, is for a term of years and does not require that Declarant own land described herein at the time or times Declarant exercises its right of platting. Any unplatted parcel in the Property constitutes a "Lot" as defined in Article 1 of this Declaration. For any act or decision that requires a count of Lots or a vote of Lot Owners, each unplatted parcel is counted as one Lot per acre of gross area, rounding down to the nearest acre. The Owner of an unplatted parcel has one vote for the first acre of gross area and an additional vote for each additional full acre of gross area (the equivalent of one vote per acre of gross area), which must be cast as a block and may not be divided for purposes of voting.

A.3.2. **Expansion.** The Property is subject to expansion. During the Development Period, Declarant may, but is not required to, annex any real property: (1) any portion of which is contiguous with, adjacent to, or within one thousand (1,000) feet of any real property that is subject to this Declaration, (2) in any addition or subdivision platted by Johnson County, Texas as a phase or section of the Highland Oaks Subdivision, or (3) located in a planned development district created by Johnson County for the property subject to this Declaration. Declarant annexes real property by subjecting it to this Declaration and the jurisdiction of the Association by recording a supplement or an amendment of this Declaration, executed by Declarant, in Johnson County's Real Property Records. The supplement or amendment of annexation must include a description of the additional real property or a reference to the recorded plat that describes the additional real property. Declarant's right to annex land is for a term of years and does not require that Declarant own land described herein at the time or times Declarant exercises its right of annexation.

A.3.3. **Withdrawal.** During the Development Period, Declarant may withdraw from the Property any portion of the real property (1) that is not platted with single family, detached residential Lots or (2) that is platted as a phase of the Highland Oaks Subdivision, provided that no Lot in the phase to be withdrawn has been conveyed to an Owner other than Declarant or a Builder.

A.3.4. **Changes in Development Plan.** Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) Johnson County, and/or as applicable the City of Burleson, and (2) the owner of the land or Lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of Lots and streets; (b) change the minimum dwelling size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

A.3.5. **Builder Limitations.** Declarant may require its approval (which may not be unreasonably withheld) of all documents and materials used by a Builder in connection with the development and sale of Lots, including without limitation promotional materials; deed restrictions; forms for deeds, Lot sales, and Lot closings. Without Declarant's prior written approval, a Builder may not use a sales office or model in the Property to market houses, Lots, or other products located outside the Property.

A.3.6. **Architectural Control.** During the Development Period, Declarant has the absolute right to serve as the Architectural Control Committee pursuant to Article 6 of these Protective Covenants. Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under Article 6 and this Appendix to (1) an Architectural Control Committee appointed by the Board, or (2) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for

any reason. Declarant also has the unilateral right to exercise architectural control over vacant Lots in the Property. Neither the Association, the Board of Directors, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of new homes and related improvements on vacant Lots.

A.3.7. **Amendment.** During the Development Period, Declarant may amend these Protective Covenants and the other Documents, without consent of other Owners or any mortgagee, for the following limited purposes:

- A. To add real property and improvements to the Property.
- B. To withdraw real property from the Property.
- C. To create Lots, Easements, and Common Areas, Common Facilities and Common Amenities within the Property.
- D. To subdivide, combine, or reconfigure Lots.
- E. To convert Lots into Common Areas.
- F. To convey or dedicate portions of the Property to the Association or to the City of Burleson or to Johnson County.
- G. To modify the construction and use restrictions of Article 7 of these Protective Covenants.
- H. To modify the construction specifications of this Declaration.
- I. To merge the Association with another property owners association.
- J. To comply with requirements of an underwriting lender.
- K. To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- L. To enable any reputable title insurance company to issue title insurance coverage on the Lots.
- M. To enable an institutional or governmental lender to make or purchase mortgage loans on the Lots.
- N. To change the name or entity of Declarant.
- O. To change the name of the addition in which the Property is located.
- P. To change the name of the Association.

Q. For any other purpose, provided the amendment has no material adverse effect on any right of any Owner.

A.3.8. **Completion.** During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the Plat; (2) the right to sell or lease any Lot owned by Declarant; and (3) an Easement and right to erect, construct, and maintain on and in the Common Area and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

A.3.9. **Easement to Inspect & Right to Correct.** During the Development Period, Declarant reserves for itself the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a Screening Wall may be warranted by a change of circumstance, imprecise sitting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association.

A.3.10. **Promotion.** During the Development Period, Declarant reserves for itself an Easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other Owners and residents, for purposes of promoting, identifying, and marketing the Property and/or Declarant's houses, Lots, developments, or other products located outside the Property. Declarant reserves an Easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves the right to sponsor marketing events, such as open houses, MLS tours, and brokers' parties, at the Property to promote the sale of Lots. During the Development Period, Declarant also reserves (1) the right to permit Builders to place signs and promotional materials on the Property and (2) the right to exempt Builders from the sign restriction in this Declaration.

A.3.11. **Offices.** During the Development Period, Declarant reserves for itself the right to use dwellings owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or Declarant's developments or other products located outside the Property. Also, Declarant reserves for itself the easement and right to make structural changes and alterations on and to Lots and dwellings used by Declarant as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

A.3.12. **Access.** During the Development Period, Declarant has an Easement and right

of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the home-buying public through any existing or future gate that restricts vehicular access to the Property or to the Additional Land in connection with the active marketing of Lots and homes by Declarant or Builders, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

A.3.13. **Utility Easements**. During the Development Period, Declarant may grant permits, licenses, and Easements over, in, on, under, and through the Property for drainage, utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the Easements on any Lot, as shown on the Plat, to more efficiently or economically install drainage features, utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, propane, telephone, television, cable, internet service, and security. To exercise this right as to land that is not a Common Area of the Property or not owned by Declarant, Declarant must have the prior written consent of the land owner.

A.3.14. **Assessments**. For the duration of the Development Period, any Lot owned by Declarant is not subject to mandatory assessment by the Association until the date Declarant transfers title to an Owner other than Declarant. If Declarant owns a Lot on the expiration or termination of the Development Period, from that day forward Declarant is liable for assessments on each Lot owned by Declarant in the same manner as any Owner.

A.3.15. **Land Transfers**. During the Development Period, any transfer of an interest in the Property to or from Declarant is not subject to any transfer-related provision in the Documents, including without limitation an obligation for transfer or resale certificate fees, and the transfer-related provisions of Article 8 of this Declaration. The application of this provision includes without limitation Declarant's Lot take-downs, Declarant's sale of Lots to Builders, and Declarant's sale of Lots to homebuyers.

A.4. **Common Areas**. Declarant will convey title to the Common Areas to the Association by one or more deeds, with or without warranty. Any initial Common Area improvements will be installed, constructed, or authorized by Declarant. At the time of conveyance to the Association, the Common Areas will be free of encumbrance except for the property taxes accruing for the year of conveyance. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the Owners. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of Common Areas requiring inspection, evaluation, acceptance, or approval of Common Area improvements by the Owners.

A.5. **Declarant's and/or the Association's Yard Power**. Although the Association is interested in the condition and appearance of all Lots in the Property, Declarant may be particularly concerned, from time to time, about the appearance of the unfenced front and side yards because of their heightened visibility to potential purchasers of the Property. Therefore,

on recording this Declaration, Declarant creates the Yard Power Easement defined below, which attaches to and burdens all of the Lots in the Property for the duration of the Development Period. The purpose of this easement is to permit, but not require, the Association, during the Development Period, to control the condition and attractiveness of yards that are visible to the home buying public.

A.5.1. **Definitions.** As used in this Section, the following terms have specified meanings:

A. **“Yard Area”** means that portion of the Lot surface that is (1) exterior to the dwelling, (2) not within a fenced yard, and (3) visible from a Street.

B. **“Yard Improvements”** means all items, materials, and plants in the Yard Area, including but not limited to fences, retaining walls, planter boxes, plant beds, mailboxes, yard lamps, decorative yard items, trees, shrubs, flowers, ground covers, lawns, other plant material, and yard irrigation systems. All Yard Improvements are owned by the Lot Owner.

C. **“Yard Power Easement”** means an easement of maintenance, access, and entry over the Yard Areas of all Lots in the Property to ensure the attractiveness of the Yard Areas from streets in and around the Property. Declarant hereby reserves a right and easement of access and entry to the front, side and back Yard Areas of each Lot to exercise the discretionary rights created by this easement. Nothing in this Section may be construed to obligate Declarant to install any improvement on any Lot in the Property.

A.5.2. **Neighborhood Standards.** For purposes of this Section, the Architectural Control Committee shall be the arbiter of the standards of maintenance and appearance for the Yard Areas. The Architectural Control Committee may have higher standards for Yard Areas in certain parts of the Property at different times during the marketing of homes.

A.5.3. **Duration of Easement.** This easement for Declarant terminates automatically at the end of the Development Period, but may continue in effect if adopted by the Association. Declarant may terminate this easement earlier by recording a notice of termination in the Real Property Records of Johnson County, Texas.

A.6. **Working Capital Fund.** Declarant may (but is not required to) establish a working capital fund for the Association by requiring purchasers of Lots to make a one-time contribution to this fund, subject to the following conditions:

A. The amount of the contribution will be not less than one-half of the Lot's annual assessment nor more than \$1,000.00 and will be collected on the closing of the sale of the Lot to an Owner other than Declarant, a Successor Declarant, or a Declarant affiliate.

B. A Builder who buys Lots from Declarant is not exempt from the purchaser's obligation. If the Builder's contribution is not collected at time of closing on the Lot purchased from Declarant, for any reason or no reason, the Builder guarantees that the contribution will be paid when Builder closes the sale of the Lot to another Owner.

C. Subject to the foregoing Builder provision, if a Lot's contribution is not collected from the Owner at closing either by payment in cash or by Owner's execution of a Regular Assessment or Special Assessment Promissory Note payable to the Declarant or to the Association, neither Declarant nor the Owner of the Lot is thereafter liable for the contribution. Declarant acknowledges that this condition may create an inequity among the Owners, but deems it a necessary response to the diversification of marketing and closing Lot sales.

D. Contributions to the fund are not advance payments of regular assessments and are not refundable to the contributor by the Association or by Declarant. This may not be construed to prevent a selling Owner from negotiating reimbursement of the contribution from a purchaser.

E. Declarant will transfer the balance of the working capital fund to the Association on or before termination of the Declarant Control Period. Declarant may not use the fund to defray Declarant's expenses or construction costs.

A.7. **Successor Declarant.** Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Real Property Records of Tarrant County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

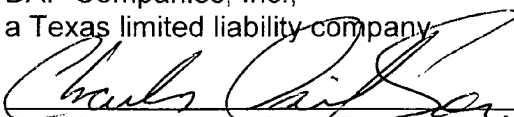
CERTIFICATION & ACKNOWLEDGMENT

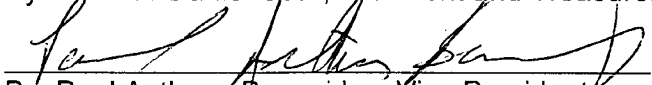
As the Declarant of the Highland Oaks Subdivision and the initial and sole Members of the Highland Oaks at Egan Homeowners Association, Inc., we certify that the foregoing Declaration of Highland Oaks at Egan Homeowners Association, Inc. were adopted by the Board of Directors of Highland Oaks at Egan Homeowners Association, Inc. for the benefit of the Association and its Members.

SIGNED AND ACKNOWLEDGED on this 30th day of January, 2017 by:

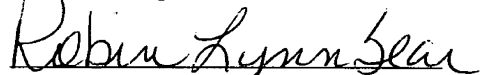
DECLARANT:

DAP Companies, Inc.,
a Texas limited liability company


By: Charles Daniel Sear, President and Treasurer


By: Paul Anthony Benavidez, Vice President

Acknowledged:

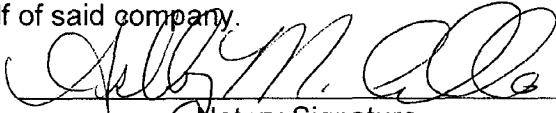

By: Robin Lynn Sear, Secretary

STATE OF TEXAS

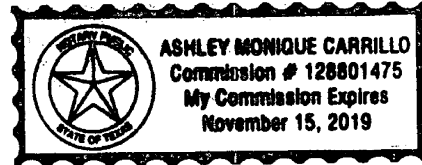
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COUNTY OF JOHNSON

This instrument was acknowledged before me on this 30th day of January, 2017 by Charles Daniel Sear, President and Treasurer, Paul Anthony Benavidez, Vice President and Robin Lynn Sear, Secretary of DAP Companies, Inc., a Texas limited liability company, on behalf of said company.



Notary Signature



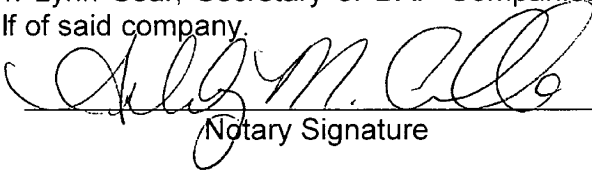
John A. Hall, President
GRAN COUNTRY, LLC
Designated Agent for
DAP Companies, Inc.
510 W. Pearl Street, Suite 100
Granbury, Texas 76048

STATE OF TEXAS

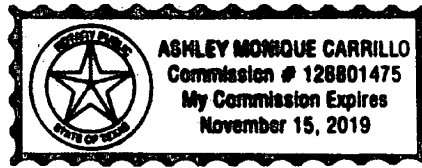
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COUNTY OF JOHNSON

This instrument was acknowledged before me on this 30th day of January, 2017 by Charles Daniel Sear, President and Treasurer, Paul Anthony Benavidez, Vice President and Robyn Lynn Sear, Secretary of DAP Companies, Inc., a Texas limited liability company, on behalf of said company.



Notary Signature



John A. Hall, President
GRAN COUNTRY, LLC
Designated Agent for
DAP Companies, Inc.
510 W. Pearl Street, Suite 100
Granbury, Texas 76048

APPENDIX II
SHARED COMMON STRUCTURES
to
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
for
HIGHLAND OAKS HOMEOWNERS ASSOCIATION, INC.

A.I. General Provisions.

A.1.1. Introduction. Declarant intends this Highland Oaks Subdivision Declaration to be perpetual and understands that provisions pertaining to the initial construction, use, access and maintenance of the single family, detached residential homes' Shared Common Structures may need to be specified in the provisions in this Appendix II.

Common Structures

In order to maintain a high quality, private residence while insuring a consistent, harmonious character to such properties and the preservation of their residential suitability to each owner, it is deemed desirable to place certain restraints on the property described herein by adopting and prescribing the following covenants and restrictions which are hereby impressed upon and shall henceforth run with the land, to wit:

A.2. "Party Wall" shall mean and refer to the dividing wall between each adjoining dwelling unit. Any matters concerning a Party Wall which are not covered by the terms of this Agreement shall be governed by the general rules of law regarding party walls.

A.3. "Party Fence" shall mean and refer to the exterior fences separating two Lots. Any matters concerning Party Fences which are not covered by the terms of this Agreement shall be governed by the general rules of law concerning party fences.

A.4. "Party Wall and Party Fence Shared Expense" The cost of maintaining each Party Wall and each Party Fence shall be borne equally by the owners of the Lots on either side of said Party Wall or Party Fence.

A.5. "Common Structure" shall mean and refer to any Party Wall, Party Fence, shared slab, or shared roof if the roofline is joined ("Common Structure" herein).

A.6. "Common Structure Shared Expense" In the event of damage or destruction to any Party Wall, Party Fence, shared slab, or shared roof if the roofline is joined ("Common Structure" herein) from any cause, other than the negligence of either party hereto, the owners of the lots on either side of said Common Structure shall repair or

rebuild said Common Structure. The cost of such repair or rebuilding shall be borne equally by the owners whose lots adjoin said Common Structure. Each such owner shall have the right to the full use of said Common Structure so repaired or rebuilt. If either owner's negligence shall cause damage to or destruction of said Common Structure, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his share, or all of such costs in case of negligence, the other party may have such Common Structure repaired or restored and shall be entitled to have a mechanic's lien on the lot and dwelling unit of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement costs together with interest at the maximum rate allowable. The party having such Common Structure repaired shall, in addition to the mechanic's lien, be entitled to recover attorney's fees and shall be entitled to all other remedies provided herein or by law. The mechanic's lien granted herein is effective only if filed in the Real Property Records of the County where the Property is located, by affidavit declaring under oath the claim of the mechanic's lien.

A.7. "Prohibition to Alter or Change." Neither owner shall alter or change a Common Structure in any manner, non-structural interior decoration excepted, and such Common Structures shall remain in the same location as when originally erected.

A.8. "Maintenance and Repair Easement." Each adjoining owner to said Common Structure shall have a perpetual easement in that part of the premises of the other on which said Common Structure is located, for the purposes of such Common Structure and any other additional area necessary to repair, replace, and maintain same.

A.9. "Exterior Walls Maintenance and Repair." Each owner shall keep all exterior walls of his dwelling unit in good condition and repair at his sole cost and expense. No owner shall do or permit to be done any act or thing that would tend to depreciate the value of the building (i.e. variance in design, colors, roofing etc.).

A.10. "Roof Maintenance and Repair." Each owner shall maintain the roof over his dwelling unit in good condition and in such manner so as not to damage other portion of the building. Each owner shall share equally in the costs to repair or maintain the roof over the Party Wall or Party Fence due to normal wear or physical damage. If a roofline is joined and both roofs must be replaced, replacement will be coordinated between the owners.

A.11. "One Owner's Sole Liability." An owner who, by his negligence, disinterest or willful act causes a Party Wall or roof to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements and shall pay all damages resulting from such exposure. The cost of normal and timely weatherproofing and maintenance of the roof shall be shared by the adjoining owners.

A.12. "Foundation Slab Repairs." If any slab repairs are required, and a civil engineer determines that the entire foundation must be involved in the repair process, the owners of the affected properties must cooperate regarding repairs to the slab. Each party shall share equally in any necessary repair.

A.12. "Foundation Slab Repairs." If any slab repairs are required, and a civil engineer determines that the entire foundation must be involved in the repair process, the owners of the affected properties must cooperate regarding repairs to the slab. Each party shall share equally in any necessary repair.

A.13. "Attorney's Fees and Court Costs." In the event it shall be necessary for any owner to retain an attorney for the enforcement of any of such owner's rights hereunder or for the recovery of any monies due to such owner hereunder, and if it is necessary to bring suit for the enforcement of such rights or such recovery, the prevailing party in such suit shall recover from the losing party all costs of court and reasonable attorney's fees, as determined by the court, in addition to any other relief or recovery awarded by the Court.

A.14. "Covenants Run With the Land." These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded.

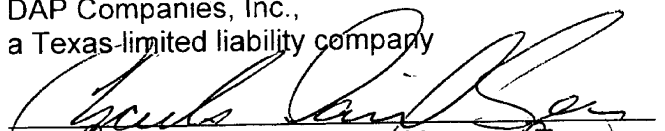
A.15. "Enforcement." Enforcement of these covenants shall be by proceeding at law or in equity against any person or persons violating or attempting to violate the same seeking either to restrain violation or to recover damages or both.

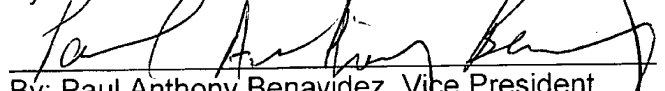
A.16. "Validity of Provisions." Invalidation of any one of these covenants by judgment or court order shall in no wise effect any of the other provisions which remain in full force and effect.

SIGNED AND ACKNOWLEDGED on this 30th day of January, 2017 by:

DECLARANT:

DAP Companies, Inc.,
a Texas-limited liability company


By: Charles Daniel Sear, President and Treasurer


By: Paul Anthony Benavidez, Vice President

Acknowledged:


By: Robin Lynn Sear, Secretary

STATE OF TEXAS

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COUNTY OF JOHNSON

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This instrument was acknowledged before me on this 30th day of January, 2017 by Charles Daniel Sear, President and Treasurer, Paul Anthony Benavidez, Vice President and Robin Lynn Sear, Secretary of DAP Companies, Inc., a Texas limited liability company, on

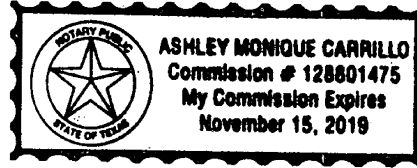
Declaration of Covenants, Conditions and Restrictions for Highland Oaks At Egan, aka "Highland Oaks," a Single Family, Detached Residential Addition to Johnson County, Texas

Page 72 of 73 Pages

behalf of said company,

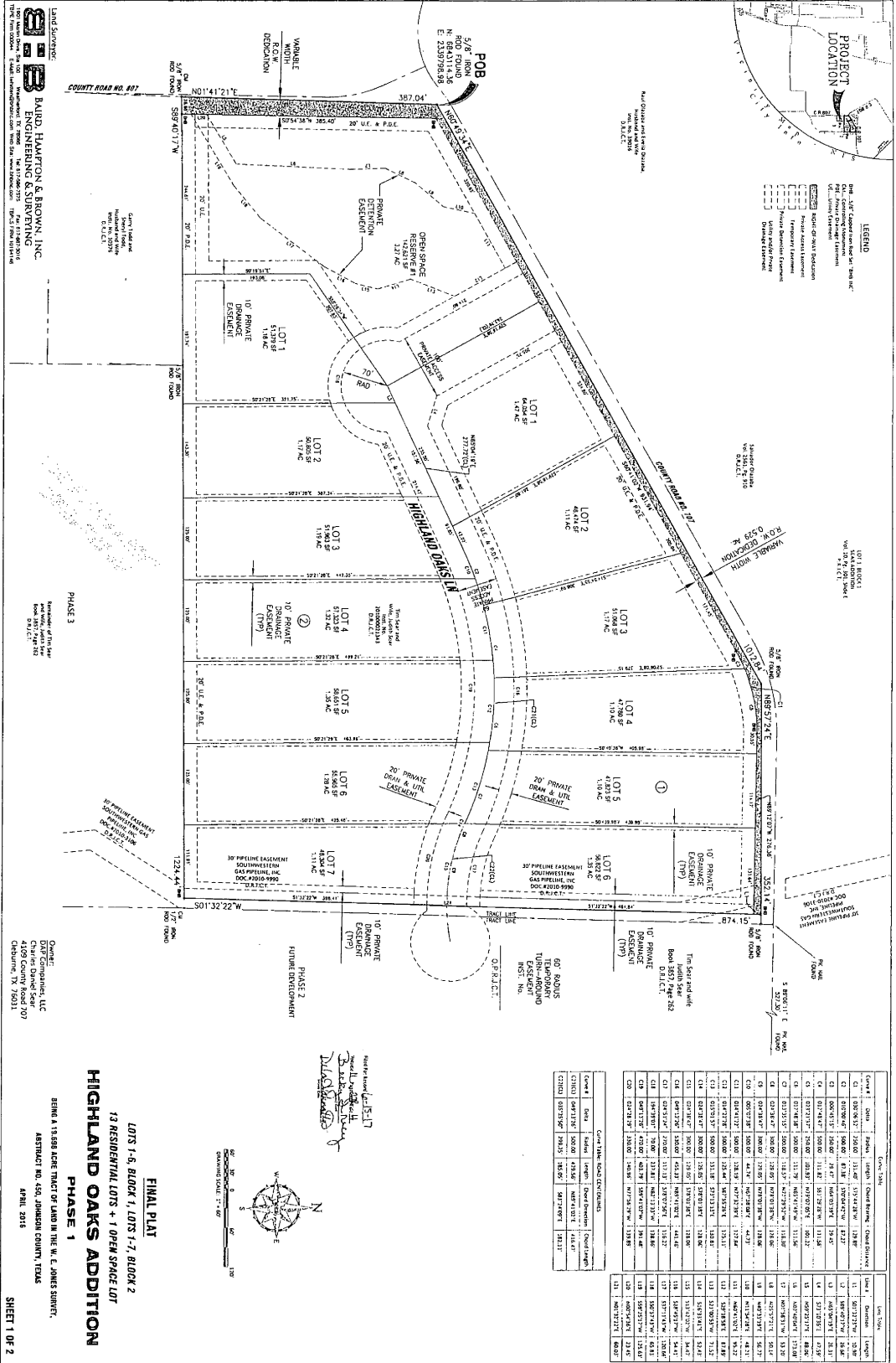


Notary Signature



After recording, please return to:

~~John A. Hall, President
Gran Country, LLC,
Designated Agent for
DAP Companies, Inc.
510 W. Pearl Street, Suite 100
Granbury, Texas 76048~~



GENERAL NOTES

1. The plat is subject to all laws and ordinances of the City of Houston, Texas.
2. The City of Houston reserves the right to require additional information to be submitted to the City of Houston, Texas, in order to complete the platting process.
3. The City of Houston reserves the right to require additional information to be submitted to the City of Houston, Texas, in order to complete the platting process.
4. The platting process is subject to the City of Houston, Texas, rules and regulations.
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STREET NAME	SHEET NUMBER	PRIVATE ACCESS EASEMENT
HIGHLAND OAKS	1	1375

APPROVED BY THE DEVELOPERS REPRESENTATIVE COMMITTEE

DATE: 7/11/2017

BY: [Signature]

APPROVED BY THE CITY OF HOUSTON

DATE: 7/11/2017

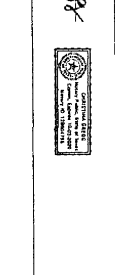
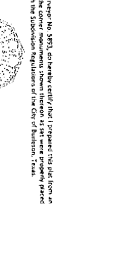
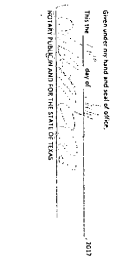
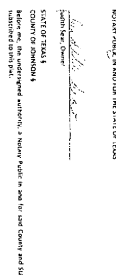
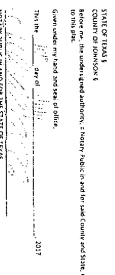
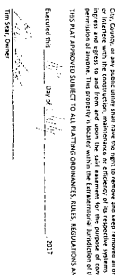
BY: [Signature]

CONVEYANCE

THE CITY OF HOUSTON, TEXAS, HAS REVIEWED THE PLAT AND HAS DETERMINED THAT THE PLAT IS IN ACCORDANCE WITH THE CITY OF HOUSTON, TEXAS, RULES AND REGULATIONS. THE CITY OF HOUSTON, TEXAS, HEREBY GRANTS THE NECESSARY EASEMENTS TO THE DEVELOPERS REPRESENTATIVE COMMITTEE FOR THE PURPOSES OF THE PLAT.

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AMENING PLAT

LOTS 1-6, BLOCK 1, LOTS 7-7, BLOCK 2

13 RESIDENTIAL LOTS - 1 OPEN SPACE LOT

HIGHLAND OAKS ADDITION

PHASE 1

VOLUME 17, PAGE 275, SUBD. H.

PLAT RECORD, JOHNSON COUNTY, TEXAS

JUNE 2017

BARB HAMPTON & BROWN, INC.

ENGINEERING & SURVEYING

1807 LACE LANE, SUITE 100, WILLOWBARK, TX 75086

TEL: 281.486.7372 FAX: 281.486.7373

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Owner:

Time and Month Set

4136 County Road 707

Odessa, TX 79631