

**Declaration of Restrictive Covenants of the  
Magnolia Creek Ranch  
Subdivision, Phases Four, Five and Six, in Polk County, Texas**

These private land use restrictions for Property situated in Phase Four, Phase Five, and Phase Six, all of the Magnolia Creek Ranch Subdivision in Polk County, Texas (the "Restrictions") are executed effective as of the Date hereafter defined by Owner (as hereafter defined), and in accordance with the definitions, terms, provisions, and other matters hereafter set forth.

**Basic Information**

**Date:** \_\_\_\_\_, 2023

**Declarant:** MCR – Phase Four, a series of Magnolia Creek Ranch, L.L.C., a Texas series limited liability company

MCR – Phase Five, a series of Magnolia Creek Ranch, L.L.C., a Texas series limited liability company

MCR – Phase Six, a series of Magnolia Creek Ranch, L.L.C., a Texas series limited liability company

**Declarant's Address:**

P.O. Box 1599  
Livingston, Texas 77351

**Property Owners Association:**

Magnolia Creek Ranch Property Owners Association, Phases 4-6, Inc., a Texas nonprofit corporation

**Property Owners Association's Address:**

Magnolia Creek Ranch Property Owners Association, Phases 4-6, Inc.  
P.O. Box 1599  
Livingston, Texas 77351

**Subdivision:** (1) Magnolia Creek Ranch Subdivision, Phase Four, in Polk County, Texas, according to the map or plat thereof recorded in the office of the County Clerk of Polk County, Texas, on \_\_\_\_\_, 2023, and thereafter filed in the Plat Cabinet in Sleeve \_\_\_\_\_, Pages \_\_\_\_\_ in the Real Property Records of Polk County, Texas to which map or plat and its recording reference is hereby made for all intents and purposes.

(2) Magnolia Creek Ranch Subdivision, Phase Five, in Polk County, Texas, according to the map or plat thereof recorded in the office of the County Clerk of Polk County, Texas, on \_\_\_\_\_, 2023, and thereafter filed in the Plat Cabinet in Sleeve \_\_\_\_\_, Pages \_\_\_\_\_ in the Real Property Records of Polk County, Texas to which map or plat and its recording reference is hereby made for all intents and purposes.

(3) Magnolia Creek Ranch Subdivision, Phase Six, in Polk County, Texas, according to the map or plat thereof recorded in the office of the County Clerk of Polk County, Texas, on \_\_\_\_\_, 2023, and thereafter filed in the Plat Cabinet in Sleeve \_\_\_\_\_, Pages \_\_\_\_\_ in the Real Property Records of Polk County, Texas to which map or plat and its recording reference is hereby made for all intents and purposes.

**Recitals**

First. Declarant owns the fee simple title to the land in the Subdivision.

Second. Declarant desires to carry out and have maintained a uniform plan for the use and

improvement of the Subdivision, and Declarant has therefore created the covenants, conditions and restrictions, whether mandatory, prohibitive, permissive, or administrative (collectively called the "Restrictions") to run with the land making up the Subdivision and to regulate the structural integrity, appearance and use of the lots owned by Declarant and depicted upon the plats of the Subdivision and the improvements to be placed on such lots.

Third. Declarant has no knowledge of the availability of any public or private water, sewer or other utility provider that serves or will serve the Subdivision.

Each Owner of a Lot is responsible for, at each Owner's sole cost and expense, acquiring from third parties any water, sewer, or other utility service that an Owner desires.

The installation of any water, sewer or other type of utility system must be done in a good and workmanlike manner approved by the ACC and comply with all local, state, and federal regulations and laws.

Fourth. The Restrictions are entitled to run with the land comprising the Subdivision because: (i) the Restrictions touch and concern such land by, among other things, benefitting and controlling the use of such land; (ii) privity of estate exists among all of the land in the Subdivision by reason of the Declarant holding legal and equitable title to the land out of which the land shall be conveyed subject to the Restrictions; (iii) notice is given of the Restrictions contained herein when this instrument is filed in the Real Property Records in Polk County, Texas, being the county in which the Subdivision is situated; and (iv) the Restrictions are reasonable in light of their purpose, being for the common benefit of all of the land owners in the Subdivision, in order to reduce uncertainty in living conditions and to encourage investment in the Subdivision.

Fifth. The Restrictions shall run with the land owned by Declarant in the Subdivision and shall be binding upon and inure to the benefit of the Declarant, as well as the Declarant's successors and assigns; further, each person or entity, by acceptance of title, legal or equitable, to any portion of the Subdivision, shall abide by and perform the Restrictions and the other terms hereof. In the event of the failure of any contract and/or deed to any portion of such land out of the Subdivision to refer to this instrument, the Restrictions and other terms of this instrument shall nevertheless be considered a part thereof, and any conveyance of such land shall be construed to be subject to the Restrictions and other terms hereof. It is understood and agreed that these Restrictions relate to and affect only the Subdivision as described above and no other land owned by Declarant adjacent thereto and/or in the vicinity thereof, and that the only Restrictions are those expressed in this instrument, and no other restrictive covenants are to be implied.

Furthermore, the Restrictions shall apply solely to the Lots and nothing contained herein shall imply that the Restrictions apply to any areas shown upon the Plat and designated as a "Reserve". Furthermore, no other lands of Declarant shall be subject to the Restrictions applicable to the Subdivision, and no restrictions, covenants or conditions shall be created hereby with respect to any such Reserve areas, and any other lands owned by Declarant, whether by negative implication or otherwise. In addition to the provisions above, Declarant specifically reserves and retains the right to cut merchantable timber on any lands owned by Declarant adjacent to and/or within the vicinity of the Subdivision, as well as use such other lands as Declarant or the successors or assigns of Declarant may deem appropriate, even if such usage differs from the terms permitted by these Restrictions.

### **Definitions**

"ACC" means the Architectural Control Committee for the Subdivision as established in this Declaration.

"Assessment" means any amount due to the Property Owners Association by an Owner or levied against an Owner by the Property Owners Association under this Declaration.

“Association” means the Magnolia Creek Ranch Property Owners Association Phases 4-6, Inc., a Texas non-profit corporation, its successors and assigns, as provided for herein, which has the power, duty and responsibility of maintaining and administering the Common Area and administering and enforcing the restrictive covenants contained in these Restrictions and any amended or supplemental Restrictions. The Association is a "property owners association" as that term is defined in Texas Property Code §202.001(2).

"Board" means the Board of Directors of the Magnolia Creek Ranch Property Owners Association Phases 4-6, Inc., the election and procedures of which shall be set forth in the Certificate of Formation and By-Laws of the Association. The Board of Directors shall be the elected body having its normal meaning under the Texas non-profit corporation law.

"Bylaws" means the Bylaws of the Property Owners Association adopted by the Board.

"Common Area" means all real and personal property leased, owned or maintained by the Association for the common use and benefit of the Members of the Association. The initial Common Area to be owned by the Association is to be the areas of land comprising the streets of the Subdivision, which areas of land shall be conveyed to the Association by Declarant, subject however, to a reservation by Declarant of utility and access easements, in common with the Association, over and across the areas of land comprising the utility easements and all streets as depicted upon the Plats. Such reservation of utility and access easements by Declarant is to provide rights of ingress to and egress from all lands owned by Declarant, and that are adjacent to and/or within the vicinity of the Subdivision; such reserved easements being for the benefit of Declarant, the successors and assigns of Declarant and any and all future owner(s) of and/or lienholder(s) upon such lands that are adjacent to and/or within the vicinity of the Subdivision. The Common Area also includes any entrance monuments, security gates, perimeter walls, drainage facilities and detention ponds, esplanade and right-of-way landscaping, any areas lying within indicated public easements or rights-of-way as deemed appropriate by the Board of Directors of the Association for the preservation, protection and enhancement of the property values and the general health, safety or welfare of the lot owners, safety lanes, and other areas of the Subdivision not comprised of lots.

"Covenants" means the covenants, conditions, and restrictions contained in this Declaration.

"Declarant" means MCR – Phase Four, a series of Magnolia Creek Ranch, L.L.C., a Texas series limited liability company, MCR – Phase Five, a series of Magnolia Creek Ranch, L.L.C., a Texas series limited liability company, and MCR – Phase Six, a series of Magnolia Creek Ranch, L.L.C., a Texas series limited liability company and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

"Dedictory Instruments" means this Declaration and the certificate of formation, Bylaws, rules of the Association, and standards of the ACC, as amended.

“Development Period” means a period of time commencing on the date this Declaration is recorded in the real property records of Polk County, Texas and terminating on the fifth (5<sup>th</sup>) anniversary of that recording date, during which period of time Declarant reserves a right to facilitate the development, construction, and marketing of the Subdivision.

"Easements" means Easements within the Property for streets, utilities, drainage, and other purposes as shown on the Plats or of record.

"Lot" means each plot or tract of land in the Subdivision and depicted as a lot or tract either on the recorded Plat, excluding any Reserve areas and areas that are part of the Common Area, or in a deed executed by Declarant to one or more third parties whereby such deed is made expressly subject to these Covenants.

"Member" means all those lot owners who are members of the Association as provided herein.

"Owner" means every record Owner of a fee interest in a Lot.

"Plat" or “Plats” mean, as the context dictates, the Plat of each Phase of the Subdivision with (a) Phase Four being recorded in the office of the County Clerk of Polk County, Texas, on

\_\_\_\_\_, 2023, and thereafter filed in the Plat Cabinet in Sleeve \_\_\_\_\_, Pages \_\_\_\_\_ in the Real Property Records of Polk County, Texas, (b) Phase Five being recorded in the office of the County Clerk of Polk County, Texas, on \_\_\_\_\_, 2023, and thereafter filed in the Plat Cabinet in Sleeve \_\_\_\_\_, Pages \_\_\_\_\_ in the Real Property Records of Polk County, Texas, and (c) Phase Six being recorded in the office of the County Clerk of Polk County, Texas, on \_\_\_\_\_, 2023, and thereafter filed in the Plat Cabinet in Sleeve \_\_\_\_\_, Pages \_\_\_\_\_ in the Real Property Records of Polk County, Texas and any replat of or amendment to the Plat made in accordance with this Declaration.

"Renting" means granting the right to occupy and use a Residence or Structure in exchange for consideration.

"Residence" means a detached building designed for and used as a dwelling by a Single Family and constructed on one or more Lots.

"Resident" means each lot owner who resides within the Subdivision, a bona fide lessee who has an enforceable lease agreement with a lot owner and who resides on a Lot, and any individual who is otherwise lawfully domiciled in a dwelling situated upon a Lot.

"Single Family" means a group of individuals related by blood, adoption, or marriage or a number of unrelated roommates not exceeding the number of bedrooms in a Residence.

"Street" means all streets shown upon the Plats or any automobile passageway shown as a thoroughfare on the Plats and any automobile passageway designated as such by any instrument executed by Declarant and/or the Association and filed for record in the Real Property Records of Polk County, Texas.

"Structure" means any improvement on a Lot (other than a Residence), including a sidewalk, driveway, fence, wall, tennis court, swimming pool, outbuilding, or recreational equipment.

"Subdivision" means the Property covered by the Plats and any additional property made subject to this Declaration.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled method of transportation, whether self-propelled or towed.

## **Clauses and Covenants**

### **A. Imposition of Covenants**

1. Declarant imposes the Covenants on the Subdivision. All Owners and other occupants of the Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.

2. The Covenants are necessary and desirable to establish a uniform plan for the development and use of the Subdivision for the benefit of all Owners. The Covenants run with the land and bind all Owners, occupants, and any other person holding an interest in a Lot.

3. Each Owner and occupant of a Lot agrees to comply with the Dedicatory Instruments and agrees that failure to comply may subject him, her, them or it to a fine, an action for amounts due to the Association, damages, or injunctive relief.

### **B. Plat, Estates, and Easements**

1. Estate. Each Lot shall be conveyed as a separately designated and legally described freehold estate according to (a) the applicable Plat, subject to these Restrictions, but without the necessity of specifically referring to same and/or (b) a deed executed by Owner to one or more third parties whereby such deed is made expressly subject to these Restrictions.

2. Easements. All Lots are subject to certain easements over and across portions of each Lot, as shown by (a) the recorded plats of the Subdivision and/or (b) reference to same in any deed executed by an Owner in which one or more Lots are conveyed. The easements are deemed appropriate or necessary for the purpose of installing, using and maintaining public

utilities and/or equipment necessary for the performance of any public or quasi-public utility service or function. The easements include the right of access for the purpose of further construction and maintenance. The right of access shall include the right, without liability on the part of the owners or operators of such utilities, to remove any obstructions on said easements as in its opinion may interfere with installation or operations. The easements are for the general benefit of the Subdivision and the lot owners and are reserved and created in favor of all utility companies serving the Subdivision. Nothing set out above shall prohibit the use of the easements or rights-of-way by abutting Owners for the construction of fences, walks or drives, provided no permanent structures are constructed in it and provided no damages shall accrue to the Owner, the political subdivision or subdivisions of the State of Texas with jurisdiction over the Subdivision, if any, or any utility company because of the removal and non-replacement of all or any portion of such improvements for the purpose of operating utilities in such easements.

3. Neither Declarant nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.

4. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.

### **C. Use and Activities**

1. *Permitted Use.* Each Lot in the Subdivision shall be used only for residential related purposes as set forth below. The Association, acting through the Board of Directors and ACC shall have the right and power to enforce the restrictions contained in this Declaration and all other dedicatory instruments.

2. *Single Family Dwelling and Related Buildings and Structures.* Except to the extent hereafter set forth, all Lots in the Subdivision shall be used for single family dwellings in which only one family per dwelling may reside. In addition thereto, accessory buildings and/or structures (such as a guest house, well house, a household assistant's quarters, a storage building, gazebo, spa, greenhouse or a child's playhouse) shall be permitted upon a Lot provided that it is compatible with the dwelling to which it is appurtenant in terms of design and material composition. All such accessory buildings and structures shall be subject to the approval of the ACC. Except as set forth in the following paragraph, no building or structure intended for or adapted to business or commercial use shall be constructed or maintained on any lot.

Notwithstanding the provisions contained in the preceding paragraph, (a) a Resident shall be permitted to utilize (i) one or more rooms of the main residence or (ii) any outbuilding approved by the ACC for use as an office, but such use shall be limited to what is typically referred to as "office or paper work" and shall not be construed to allow the general public or the customer's of the Resident's business to come upon the Lot on a regular basis, and (b) a Lot Owner may construct an outbuilding that is approved by the ACC for use as an office, which use is to be limited as set forth in (a) immediately above.

3. *Detached Buildings and Temporary Structures.* No garage or outbuilding apartments for rental purposes are permitted on any Lot. All living quarters on any Lot, other than in the main building, must be for the bona fide use of the owner's or occupant's immediate family or household helpers hired to maintain the household. No structure of a temporary nature, nor any trailer, basement, tent, shack, garage, porte cochere, barn or other outbuilding, or any part thereof, shall be used as a residence or dwelling, either temporarily or permanently, except as specifically authorized by these Restrictions. No prefabricated dwelling or building previously constructed elsewhere may be placed or maintained on any Lot. No modular, manufactured, prefabricated or mobile home, whether or not the wheels have been removed, may be placed or maintained on any Lot. The construction or installation of any outbuilding of any kind or character on a Lot must be approved by the ACC prior to its installation or the commencement of the construction thereof.

4. *Walls, Fences and Mailboxes.* Walls and fences must be approved prior to construction by the ACC and shall not be closer to front street Subdivision lines than the Lot boundary line and no closer than the Lot Boundary line as shown on the Plats. Furthermore, the Association shall have the authority, from time to time, to adopt such rules and regulations as it deems appropriate relating to Lots that are subject to pipeline or similar types of easements.

5. *Parking.* Boats, recreational vehicles, trucks or similar vehicles shall be parked only as and where approved by the ACC.

6. *Construction Period.* Notwithstanding any provisions in this instrument contained to the contrary, it shall be expressly permissible for the Lot owner or the general contractor constructing improvements to maintain during the period of construction and sale of said home, upon such portion of the premises as the Lot owner deems necessary, such facilities as may be reasonably required, convenient or incidental to the construction, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales office, provided same are removed within thirty (30) days after completion of construction and sale. All exterior construction of the primary residential structure, garage, porte cochere, porches, driveways, and any other appurtenances or appendages of every kind on any Lot, and all interior construction (including but not limited to all electrical outlets in place and functional, all plumbing fixtures installed and operational [including being connected to water and sewer lines], all cabinet work completed, all interior walls, ceilings, and doors completed and covered by paint, wallpaper, paneling or the like, and all floors covered by wood, carpet, tile or other similar floor covering) shall be completed not later than twelve (12) months following the date on which foundation forms are set. While a model home may be maintained for one (1) year following construction, all of the privileges approved here shall expire for any other home six (6) months following completion of it. If all or any portion of the improvements are damaged or destroyed by fire or other casualty, it shall be the duty of the owner thereof, with all due diligence, to reconstruct such improvements in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within six (6) months after the damage occurs.

7. *Upkeep.* The owner of each Lot shall be responsible for the proper maintenance and upkeep of the Lot and improvements thereon at all times. The Lot owner shall keep any weeds neatly mowed, and shall not permit the accumulation of trash, rubbish, deteriorating improvements or other unsightly articles on said Lot or the abutting easements or streets. The area between the pavement and the Lot line shall also be kept and maintained by the owner of the abutting Lot, as well as the maintenance of the ditches (such as mowing same and keeping debris from clogging culverts, etc.). If any Lot owner does not comply with these terms, then Declarant (during the first five [5] years) and/or the Association (thereafter) is authorized to have such Lot cleaned and maintained in order to comply with these provisions for the account of the Lot owner, and the paying party shall be entitled to reimbursement of the amount of any reasonable expenses so incurred from the Lot owner for whose account and benefit such maintenance and upkeep was performed.

8. *Activity.* Except as expressly allowed by the terms of these Restrictions, no commercial activity shall be carried on upon any Lot, nor shall anything be done thereon which may create environmental contamination or which may be or become an annoyance, nuisance, or environmental hazard to other Lot owners in the Subdivision. No hobby may be conducted on any Lot which attracts excessive vehicular or pedestrian traffic to the Lot. No direct sales activities (excluding therefrom however (a) the growing of merchantable timber, (b) the production of produce from a garden for the Resident's own consumption, and (c) the raising of certain animals as allowed by the terms of paragraph 9 immediately below, all of which are hereby deemed to not be direct sales activities), such as flea markets, bazaars, sample sales, promotional parties or similar activities, shall be conducted upon any Lot or any other portion of the Subdivision.

9. *Animals.* Except to the extent hereafter set forth, no cattle, horses, swine, sheep, goats, poultry, or livestock of any other kind, other than dogs, cats, and other types of pets of reasonable kind and number ordinarily kept in residential subdivisions, may be kept on any Lot. Except as provided in the following paragraphs, no pets may be kept or bred for commercial purposes. No animals or pets shall be allowed to run at large within the Subdivision. Should ordinary household pets become a nuisance, in the opinion of the Declarant during the first five (5) years, and thereafter in the opinion of the Association, they must be immediately removed from the Subdivision.

*Allowed Activities.* Notwithstanding the provisions of the preceding paragraphs, the following activities shall be allowed to be conducted upon any Lot or, when more than two Lots are contiguous and owned by the same Lot Owner, Lots, to-wit:

- A. For a Resident or Residents of a Lot or contiguous Lots, the following activities are allowed, provided that such Resident or Residents are residing upon a Lot or contiguous Lots:

Children of such Resident or Residents, as well as other persons living with and under the direct supervision of a Resident, who are enrolled in kindergarten, elementary school, junior high, high school or post high school education may raise a steer, a heifer, chickens, geese, turkeys or ducks, provided that they are intended to be shown for competition in school related activities, as well as in similar non-school activities such as youth rodeos, fairs, Future Farmers of America, playdays, etc., so long as they (a) are maintained in such a manner as to prevent health hazards and (b) do not become a nuisance or offensive to neighboring Residents. Should any of the above become a nuisance or offensive to the neighboring Residents (as determined solely by the Association), then such activities or situation shall be deemed and constitute a violation of these Restrictions.

A Resident or Residents may not have more than a total of five head of cows (including one bull in such number) and horses.

- B. A Resident or Residents of a Lot or contiguous Lots in the Subdivision, are allowed to keep animals on their Lot or Lots in accordance with the Board guidelines and/or rules that may be adopted and/or amended from time to time.
- C. Notwithstanding anything contained in A or B immediately above, and under no circumstances shall any mules, donkeys or similar type of animals whose voice should be considered by the Association to be a nuisance or offensive to neighboring Residents as well as any hog, pig, wild boar or other form of swine.

As used in the foregoing provisions, a use or situation shall be deemed by the Association to be (a) "offensive" if it becomes so unpleasant that a Resident of a reasonable nature and personality would object to or be offended by the use, activity or the situation and (b) a "nuisance" if the use, condition, activity or situation (such as loud noise or foul odor) unreasonably interferes with a neighboring Resident's use or enjoyment of his, her or their Lot or Lots.

Furthermore, as used in the foregoing provisions, the term "neighboring Resident" shall mean any Resident who is in such close proximity to the subject Lot or Lots so as to be affected by one or more uses or activities described above.

All permitted animals, poultry and fowl shall be kept and maintained in strict compliance with (a) all local laws and ordinances (including existing and/or future leash laws), and (b) all rules promulgated and/or established from time to time by the Association.

10. *Environmental Safeguards.* The owner of each Lot shall never allow any Hazardous Substance to be brought onto, installed, used, stored, treated, disposed of or transported over a Lot in violation of any Applicable Law, and all activities on the Lot shall, at all times, comply with Applicable Law. The term "Hazardous Substance" shall mean any substance which, as of the date hereof, or from time to time hereafter, shall be listed as "hazardous" or "toxic" under the regulations implementing the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., The Resources Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq., or listed as such in any applicable state or local law or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under applicable law. The term "Applicable Law" shall include, but shall not be limited to, CERCLA, RCRA, The Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq., The Clean Air Act, 42 U.S.C. Section 7401 et seq., and any other local, state and/or federal laws or regulations that govern the existence, cleanup and/or remedy of contamination on property, the protection of the environment from spill deposited or otherwise in place contamination, the control of hazardous waste or the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials.

11. *Prohibited Activities.* Prohibited activities are -

- a. Further Subdivision. No Lot shall be further subdivided and separated into smaller Lots, and no portion less than all of any such Lot, shall be conveyed or transferred; provided that this provision shall not prohibit deeds of correction or deeds to resolve boundary line disputes and similar corrective instruments.

- b. Garbage Disposal and Dumping. Garbage shall not be kept except in sanitary containers and such containers shall be kept in a clean and sanitary condition. Garbage can holders or other devices (designed to prevent unsightly cans being seen from the street) must be approved by the ACC. Other than on the day of trash pick-up, no trash cans or garbage cans shall at any time or times be permitted to remain on the street or in front of the Lots forward of the building line so that same may be seen by a person using the street in the Subdivision. No Lot shall be used or maintained as a dumping ground for trash, and no dumpsters shall be placed anywhere in the Subdivision, including the streets.
- c. Illegal Activity. No illegal activity of any kind shall be permitted upon any Lot.
- d. Nuisance. No nuisance, noxious, or offensive activity of any kind shall be permitted upon any Lot.
- e. Signs. No sign of any kind shall be displayed to the public view except one professional sign of not more than five (5) square feet advertising the property for sale or signed used by a homebuilder to advertise the property during the construction and initial sales period. Signs advertising subcontractors or suppliers are specifically prohibited. The sign may state only the name and phone number of the seller and/or their agent. Distressed, foreclosures and bankruptcy references are specifically prohibited. No political signs may be erected upon a Lot by the Resident advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal. The ACC shall have control over all verbiage on all signs. Except for signs advertising a Lot or Lots and residence for sale and adhering to the standards of this paragraph, all signs within the Subdivision shall be subject to the prior written approval of the ACC or its agents. The ACC shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above, and in doing so shall not be subject to any liability for trespass or any other liability in connection with such removal.
- f. Flags. Except for the flag of the State of Texas and the United States of America, no flags, pennants, banners or other types of symbols of an organization or belief may be maintained for any period of time upon a Lot.
- g. Mobile/Manufacture Home/Building. Owner shall not install a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot.
- h. Hunting/Shooting. An Owner shall not hunt upon any Lot. Furthermore, an Owner shall not discharge a firearm in a manner that is obnoxious or offensive to neighboring owners. In no event shall any activity that could be construed as a “shooting range” or similar activity shall be conducted upon a Lot.
- i. Offensive Activities. 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 is expressly allowed herein or meets one of the following criteria: (a) no additional exterior sign of activity is present, (b) it is the type of action that usually happens in a home, (c) no additional traffic, that would not be there normally is created, and (d) nothing dangerous is present.

No Lot owner or occupant shall perform any work that will impair the structural soundness or integrity of another dwelling or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Residents of the Subdivision.

No exterior lighting of any sort shall be installed or maintained on a lot



where the light source is offensive or a nuisance to other Lot owners (reasonable security, landscape or other lighting is permitted with the approval of the ACC).

No exterior speakers, horns, whistles, bells or other sound devices (except security devices such as entry doors and patio intercoms used exclusively to protect the Lot and improvements situated thereon) shall be placed or used upon any Lot.

The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

- j. Vehicle Parking. No trailer, tent, boat, marine craft, hovercraft, air craft, recreational vehicle, motor home, camper body, travel trailer, truck larger than a one (1) ton pick-up (except those used by a contractor during the construction of improvements or used by any Owner of a Lot in their occupation or employment), or wrecked, junked or inoperable vehicle shall be kept, parked, stored or maintained on the front yard area of a Lot nor shall be kept, parked, stored or maintained on other portions of the Lot unless in an enclosed structure or in a screened area which prevents the view thereof from any Lots or streets. No stripped down, wrecked, junked or inoperable trailers, boats, recreational vehicles or motor vehicles shall be kept, parked, stored or maintained on any Lot. No dismantling or assembling of a motor vehicle, boat, trailer, truck or any other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. All such activities shall be confined to an enclosed structure which has previously been approved by the ACC. The ACC shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by the ACC, the vehicle and/or accessory shall be immediately removed and/or otherwise brought into compliance with this paragraph. No vehicles, trailer, implement or apparatus may be parked on any easement. No vehicles of any description may be parked overnight on any street. No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Subdivision at any time.
  
- k. As used in this paragraph the term tree shall mean a living woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground and having a diameter in excess of six inches. For purposes relating to this part C-K, a dead tree shall not be considered a tree as defined herein. The ACC shall have the sole authority to determine whether or not a tree is dead. All dead trees shall be removed from the Lot by the Owner of the Lot and at such Owner's cost and expense. No trees shall be removed unless approved by the ACC. In connection with the construction of Residences and/or Structures, all plans and specifications submitted to the ACC must itemize and depict which trees are being cut and removed. However, the ACC shall not authorize the removal of more than 50% of the trees located and growing on a Lot. The Property Owners Association shall also have the authority to mandate a minimum number of trees per Lot.

#### **D. Construction and Maintenance Standards**

##### *1. Lots*

- a. *Consolidation of Lots.* An Owner of adjoining Lots, with ACC approval, may consolidate those Lots into one site for the construction of a Residence.
- b. *Subdivision Prohibited.* No Lot may be further subdivided into smaller tracts of land.
- c. *Easements.* No easement in a Lot may be granted without ACC approval.
- d. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.

All improved yards and lawns shall be kept neat and well maintained and all grass, weeds and vegetation on each Lot shall be kept mowed at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from each Lot and replacements of equal quality or value promptly installed. Lawns must be properly maintained and fences must be repaired and maintained and no objectionable or unsightly usage of Lots will be permitted which is visible to public view. Building materials shall not be stored on any Lot, and any excess materials not needed for construction and any building refuse shall promptly be removed from each Lot. Until a residence is built on a Lot, Owner or the Association may, at his, her, their or its option, have the grass, weeds and vegetation cut when and as often as the same is necessary in his, her, their or its judgment, and have dead trees, shrubs and plants removed therefrom. Owner or the Association may also, at his, her, their or its option, remove any excess building materials or building refuse situated on a Lot in violation of this covenant. The Lot owner shall be obligated to reimburse Owner or the Association (as the case may be) for the cost of such maintenance or removal upon demand.

2. *Residences and Structures*

a. *Aesthetic Compatibility.* All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC.

b. *Maximum Height and Required Area.* No building shall be permitted on any Lot unless it complies with the following:

1. No dwelling, garage or appurtenant building shall exceed three (3) stories in height.

2. The enclosed ground floor area of the main dwelling of any one-story residence, exclusive of porches, garages or porte cochere (whether attached or detached), patios, breezeways or other appendages, shall contain a minimum of two thousand (2,000) square feet.

3. The enclosed ground floor area of the main dwelling of any multi-story residence, exclusive of porches, garages or carports (whether attached or detached), patios, breezeways or other appendages, shall contain a minimum of two thousand (2,000) square feet, and the total square footage of such multi-story residence shall be not less than two thousand five hundred (2,500) square feet.

c. *Location on Lot.* No Residence or Structure may be located in violation of the setback lines shown on the applicable Plat. Each Residence must face the front Lot line, except that the ACC may authorize the construction of improvements on corner Lots facing either diagonally across such Lot or facing the street abutting the longer dimension of such Lot. All Structures must be located behind the front wall of the Residence.

d. *Detached Building Locations.* Any garage, household assistant's quarters or any outbuilding of any kind detached from the main building shall be located on the rear one-third (1 /3) of the Lot, unless prior written approval of a variance is given by the ACC.

e. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within one hundred eighty (180) days (or within a longer period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within ninety (90) days and the Lot restored to a clean and attractive condition.

f. *Fences, Walls, and Hedges.* No fence or hedge relative to a Residence shall be erected, placed, altered or maintained on any Lot unless such fence is (a) constructed of such materials as approved in rules or guidelines adopted by the ACC and amended from time to time and (b) approved as to location, design, color, size, and other related matters by the ACC prior to its installation. No fence for the purpose of containing livestock shall be erected, placed, altered or

maintained on any Lot unless such fence is approved by the ACC and the ACC shall approve the same if the fences meet the following requirements: (i) at least five strand barbed wire, welded wire, or woven wire, be no more than fifty-two inches (52") in height, and constructed in a good and workmanlike manner and capable of containing horses or cattle of an ordinary disposition.

g. *Traffic Sight Lines.* No landscaping that obstructs traffic sight lines may be placed on any Lot.

h. *Building Lines.* No building, fence or wall shall be constructed on any Lot nearer the front lot line than one hundred feet (100') ("Front Setback Area"), nor farther away from the front lot line than the ACC determines to be in harmony with existing buildings in the immediate vicinity of the Subdivision. No portion of any main building shall be constructed nearer than twenty feet (20') ("Side Setback Area") to any interior lot line. No building shall be constructed on any Lot within the Side Setback Area, except that, in the case of an unusual or irregularly shaped Lot, buildings and other improvements may be constructed therein as approved by the ACC.

i. *Landscaping.* Prior to the occupancy of any dwelling, except as otherwise approved by the ACC, the owner will plant and maintain shrubs and/or other forms of landscaping, as well as a complete grass covering in all areas of the Lot between the street in front of such dwelling, and the location of the front edge of the foundation. The minimum landscaping is specified in the standards of the ACC.

j. *Aerials.* Without the written consent of the ACC first had and obtained, no radio, telephone, television or other aerial communication antennae or wires shall be maintained on any portion of any Lot forward of the front wall line of the main dwelling constructed on such Lot.

k. *Clotheslines.* No clotheslines may be visible from any street. Such clotheslines must be enclosed by a hedge or other type of screening enclosure as maybe approved by the ACC as a part of the plans for the improvements to be located on the Lot.

l. *Swimming Pool Equipment.* All pool or pool service equipment shall be located either (a) in a side yard between the front and rear boundaries of the main dwelling or (b) in the rear yard directly abutting and adjacent to the main dwelling. In addition, this equipment (a) must be visually screened by a solid masonry wall or wood fence of approved type and construction and (b) meet with the approval of the ACC. All screening walls shall be fully landscaped with landscaping of a type, quality and quantity approved by the ACC.

m. *Tennis Courts.* No tennis court lighting shall be constructed or placed upon any Lot, unless otherwise approved by the ACC.

n. *Toilets.* No outdoor toilets shall be placed on any Lot. However, the preceding sentence shall not prohibit toilets in swimming pool houses and similar facilities.

### 3. *Building Materials for Residences and Structures*

a. *Materials.* All materials must be new materials or substantially the same or better than that which can be produced on the date construction of the improvements commences and no second-hand or used materials shall be utilized in the construction of improvements on any Lot.

b. *Foundation.* On all main dwellings and on all outbuildings, either attached or detached, all pier and beam or block foundations must be fully enclosed at the perimeter and all slab-on-grade foundations must be of concrete and designed by a professional who has sufficient experience in foundation design, in accordance with the most recent criteria established by the Builders Research and Advisory Board (B.R.A.B.) or Post Tension Institute (P.T.I.) or other comparable standard designated by the ACC.

c. *Air Conditioning.* No window or wall type air conditioners shall be permitted to be used, placed or maintained on or in any building or in any part of the Subdivision, without the prior written consent of the ACC, which consent the ACC shall be under no obligation to give.

d. *Garages, Driveways and Sidewalks.* All driveways and sidewalks must be surfaced with concrete, rock or asphalt (including any combination thereof), unless otherwise approved by the ACC. Driveways and sidewalks may not be surfaced with dirt, gravel, shell, or crushed rock. Each Lot must have an automobile garage, carport, or a porte cochere, which garage, carport, or porte cochere shall be capable of storing a minimum of two (2) conventional size automobiles. A garage, carport, or porte cochere may be detached from or attached to the main dwelling. The size, configuration, location, storage area, and all other matters relating to a porte cochere must be approved by the ACC prior to the construction thereof. All dwellings must have concrete, asphalt or rock driveways running from the garage, carport, or the porte cochere to the street adjoining the Lot(s) where the dwelling is located.

e. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Subdivision.

f. *Screening.* All service and sanitation facilities must be enclosed within fences, walls and/or landscaping such that they are not visible from the primary street on which the Lot fronts. The ACC may, in its reasonable discretion, permit Lot owners to place additional lattice-work screening or other decorative screening on the subject Lots for the purpose of screening public view of hot-tubs, sunbathing areas, servicing equipment, etc.

## **E. Property Owners Association**

1. *Establishment and Governance.* The Property Owners Association is established by filing its certificate of formation and is governed by the certificate, the Declaration, and the Bylaws. The Property Owners Association has the powers of a nonprofit corporation and a property owners association under the Texas Business Organizations Code, the Texas Property Code, and the Dedicatory Instruments.

2. *Rules.* The Board may adopt rules that do not conflict with law or the other Dedicatory Instruments. On request, Owners will be provided a copy of any rules.

3. *Membership and Voting Rights.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot. The Property Owners Association has two classes of voting Members:

a. *Class A.* Class A Members are all Owners, other than Declarant. Class A Members have one vote per each Lot owned. When more than one person is an Owner, each is a Class A Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

b. *Class B.* The Class B Member is Declarant and has four (4) votes for each Lot owned. The Class B Membership ceases and converts to Class A Membership on the happening of either of the following events, whichever occurs earlier:

i. when the Class A Members' votes exceed the total of Class B Member's votes or

ii. at such time as the Declarant has conveyed ninety percent (90) or more of the Lots, whether in a single transaction or multiple transactions, to an individual or entity.

4. *Suspension of Voting Rights.* All voting rights of a Lot owner may be suspended by the Board of Directors of the Association during any period in which such Lot owner is delinquent in the payment of any duly established assessment or is otherwise in default and/or

violation thereunder or under the By-laws or rules and regulations of the Association.

5. *Registration with the Association.* In order that the Owner and the Association can properly determine voting rights and acquaint every Lot purchaser and every Lot owner with these Restrictions and the day-to-day matters within the Association's jurisdiction, each Lot owner shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, various items of information to the Association such as: (a) the full name and address of each Lot owner; (b) the personal address, occupation and telephone number of other local individuals who can be contacted (in the event the Lot owner cannot be located) in case of an emergency; and (c) such other information as may be reasonably requested from time to time by the Association. In the event any Lot owner fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Lot owner shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

## **F. Architectural Control Committee -- ACC**

### 1. *Establishment*

a. *Purpose.* The ACC is established as a committee of the Property Owners Association to assist the Property Owners Association in ensuring that all Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to the Dedicatory Instruments.

b. *Members.* The ACC shall consist of no less than three (3) persons or more than seven (7) persons appointed by the Board. Any person appointed by the Board (a) must be an Owner and (b) does not have to be (but can be) a member of the Board. The Board may remove or replace an ACC member at any time. In the event of the death or resignation of any member of the ACC, the remaining member or members shall have full authority to designate and appoint a successor. Members of the ACC shall serve without compensation.

c. *Term.* ACC members serve until replaced by the Board or they resign.

d. *Designated Representative.* A majority of the then members of the Committee may designate a representative to act for it.

e. *No Liability.* The ACC and its members shall be free from liability for actions within the scope of the ACC's function, unless gross negligence is proven. All owners of Lots hereby expressly waive and relinquish any and all claims against the ACC or its members, except for claims of gross negligence.

f. *Change of Membership and Amendment of Authority.* The record owners of at least seventy-five percent (75%) of the Lots in the Subdivision shall have the power, at any time with Declarant's consent, or, after ten (10) years from the date of this instrument without Declarant's consent, through a duly recorded written instrument, to change the membership of the ACC, to withdraw powers and duties from the ACC, or to restore the powers and duties of the ACC. Such action shall be effective upon recordation of a written instrument properly reflecting same in the Real Property Records of Polk County, Texas.

g. *Standards.* Subject to Board approval, the ACC may adopt standards that do not conflict with the other Dedicatory Instruments to carry out its purpose. These standards are not effective unless recorded with the county clerk. On request, Owners will be provided a copy of any standards.

### 2. *Plan Review*

a. *Required Review by ACC.* No Residence or Structure or improvement may be erected, placed or altered on any Lot, or the exterior altered, unless plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC as to: (i) quality of workmanship and materials; (ii) harmony of external design with existing structures and

improvements; (iii) location with respect to topography and finish grade elevation; and (iv) compliance with these Restrictions. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require.

b. *Procedures*

i. *Complete Submission.* All final plans and specification must be submitted in duplicate to the ACC for approval prior to the start of any construction. Any structure or improvements affected by these Restrictions shall be the subject of such a plan. Within fifteen (15) days after the submission of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.

ii. *Procedure for Review.* At such time as the plans and specifications meet the approval of the ACC, one complete set of such plans and specifications will be retained by the ACC and the other complete set will be marked "approved", and returned to the Lot owner. Any modification or change to the approved set of plans and specifications which affects an aspect which is the subject of these Restrictions must be approved by the ACC. In the event such plans and specifications are not approved, or in the event construction is not in conformity with the approved plans and specifications, the Lot owner and the contractor agree and covenant to conform such construction to the requirements of these Restrictions and the ACC.

iii. *Deemed Approval.* If the ACC or its designated representative, fails to give notice of disapproval of the plans and specifications to the submitting Owner within fifteen (15) days after complete submission, and if no suit to enjoin the construction is commenced prior to the completion of such construction, the submitted plans and specifications are deemed approved.

iv. *Authority to Modify.* The ACC shall have the right and authority to waive or modify any Regulation where, in the opinion of the ACC, such action is necessary for the advantage and best appearance of the Subdivision, but only in the following circumstances:

- a. Where one Lot and all or a portion of other contiguous Lots are being used together for the purpose of building a single family residence;
- b. In the case of a Lot or Lots which are unusual in size, or which are of an unusual or irregular shape; or,
- c. In the case of changed circumstances arising from either advances in technology or other unforeseen developments resulting in the need for such action in order to accomplish the original purposes of these Restrictions.

c. *Architectural Standards Bulletins.* The ACC may (but shall not be obligated to) from time to time promulgate and publish architectural standards bulletins ("Bulletins") which shall be fair, reasonable, and uniformly applied and shall carry forward the spirit and intention of these Restrictions. Although the ACC shall not have unbridled discretion with respect to taste, design and any absolute standards specified herein, the ACC shall be responsive to technological advances or general changes in architectural designs and related conditions in future years and use its best efforts to balance the equities between matters of taste and design and use of private property. Such Bulletins shall supplement these Restrictions and are incorporated herein by reference and shall be furnished

to each Lot owner upon request.

d. *Records.* The ACC will maintain written records of all requests submitted to it and of all actions taken. The Board will maintain written records of all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.

e. *No Liability.* The Association, the Board, the ACC, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.

## **G. Assessments**

1. *Authority.* To the extent the Annual Maintenance Charge (as defined in Section I below) is insufficient, the Association may levy one or more assessments hereafter contained in this part G. (the "Assessments") to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to pay the costs and related expenses need to repair, maintain or replace the roadbed of all streets reflected on the Plat of the Subdivision, to fund operating expenses of the Association, and to improve and maintain the Common Area.

2. *Personal Obligation.* Each Owner, by acceptance of a deed to a Lot, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) the Assessments or charges; and (2) member charges levied against individual Lot owners to reimburse the Declarant or Association (as the case may be) for extra or unusual costs incurred by the Declarant or Association (as the case may be) for curing the lot owner's violation of a restrictive covenant or other provision contained in these Restrictions. The Assessments, together with such interest thereon, reasonable attorney's fees and costs of collection thereof, as are herein provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot or Lots against which each such Assessment is made. Each such assessment, together with such interest thereon, reasonable attorney's fees and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person or entity who was the owner of such Lot at the time the obligation accrued.

3. *Use of Assessments.* The Assessments levied by the Association shall be used for upgrading, repairing and/or maintaining streets and installing, acquiring, maintaining, repairing and up keeping improvements and/or facilities of the Association or the Subdivision (such as paying electricity charges of street lights), as well as for the purpose of promoting the recreation, health, safety and welfare of the lot owners, and in particular, for the improvement, maintenance and operation of the Subdivision, including the Common Area, as well as services and facilities devoted to this purpose and related to the use and enjoyment of the Subdivision by the lot owners.

4. *Creation of Lien.* Each and every Assessment or charge including but not limited to the Annual Maintenance Charge contained in this part G are secured by a continuing vendor's lien on each Lot, which lien is reserved by Declarant and hereby assigned to the Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Association to secure Assessments and charges. Each lot owner, by his, her or its acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such lot owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial or judicial foreclosure by an action brought in the name of the Association, and grants to the Association the power of sale in connection with said lien. The President of the Board of Directors shall have the right to appoint one or more agents, to mail and file the notices required by Texas Property Code § 51.002 (as well as any other applicable section of the Texas Property Code or other applicable laws), to conduct the sale, and to otherwise comply with the applicable statute(s). The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other lot owners. No lot owner may waive or otherwise escape liability for the Assessments provided for herein by abandonment of his, her, it's or their lots.

5. *Commencement.* A Lot becomes subject to Assessments on conveyance of the Lot by Declarant.

6. *Budget.* Each year, the Board of Directors of the Association shall adopt an annual budget and, when applicable, set the amount of the annual assessment, taking into consideration the Association's operating cost for the then current year, expected increases or decreases in such costs over the next year, and the future needs of the Association. The annual budget shall be adopted by the Board of Directors at least thirty (30) days prior to the commencement of each calendar year.

7. *Member Charge.* In addition to the annual assessment and any special assessment, the Association, by a majority vote of the Board of Directors, may impose a charge (Member Charge) upon any lot owner for the purposes of reimbursing the Association for all direct and indirect costs incurred by the Association with regard to the maintenance, repair or replacement of landscaping or site improvements on any particular lot when the Board of Directors has determined the maintenance, repair or replacement of improvements associated with such owner's lot has been neglected to the point where conditions existing on such lot are not in conformance with the maintenance obligations set forth in these Restrictions. The owner of such lot shall be notified in writing of said determination and the specific deficiencies found to exist and shall be afforded a reasonable period of time to respond to said notice by correcting the deficiencies. The owner of such lot shall be assessed the cost of reimbursing the Association for any and all costs, including attorney's fees, to secure compliance. Member charges are due and payable within thirty (30) days after the lot owner was served with notice by the Association of the amount of such Member Charge.

8. *Fines.* The Board may levy a fine against an Owner for a violation of the Dedicatory Instruments as permitted by law.

9. *Subordination of Lien to Mortgages.* The lien granted and reserved to the Association is subordinate to the vendor's lien and the lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The lien of the assessments provided for herein shall be subordinate to the lien or liens of any mortgage or mortgages now or hereafter placed upon the lot or lots subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such lot or lots pursuant to a decree of foreclosure, non-judicial foreclosure, or conveyance in lieu of foreclosure or in satisfaction of mortgage debt. Such sale or transfer shall not relieve such lot or lots from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

10. *Notice of Lien.* Notice of the lien may be given, but is not required, by the recordation in the Real Property Records of Polk County, Texas of an Affidavit of Delinquent and Notice of Assessment Lien, duly executed by an officer, managing agent, attorney or officer of the Association, setting forth the amount owed, the name of the last known lot owner or owners of record, and the legal description of the lot.

11. *Delinquent Assessments.* Any Assessment not paid within thirty (30) days after it is due is delinquent.

## **H. Remedial Rights**

1. *Late Charges and Interest.* Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate to be determined, from time to time, by the Board of Directors, not to exceed the maximum rate of interest permitted by law. If the Board of Directors shall refuse or fail to determine a rate of interest, the rate of interest shall be the lesser of ten per cent (10%) per annum or the maximum rate of interest permitted by law. The Board may change the late charge and the interest rate.

2. *Costs, Attorney's Fees, and Expenses.* In addition to the foregoing charges for delinquent accounts, each lot owner shall be obligated to pay to the Association all actual costs of collection incurred by the Association, including attorney's fees and such reasonable collection charges as the Board of Directors may establish, all of which shall also be subject to the liens of the Association.

3. *Payment Application.* All payments shall be applied first to costs and attorney's fees, then to applicable charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual



assessment or special assessments which are the subject matter of suit in the order of their coming due.

4. *Judicial Enforcement.* The Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Association's lien, or enforce or enjoin a violation of the Dedicatory Instruments. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Dedicatory Instruments.

5. *Foreclosure.* At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure, the occupants of such lot shall be required to pay a reasonable rent for the use of such lot and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale be entitled to appoint a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such lot by forcible detainer, by writ of possession, or by any other remedy allowed by law.

6. *Suspension of Rights.* If an Owner violates the Dedicatory Instruments, the Property Owners Association may suspend the Owner's rights under the Dedicatory Instruments in accordance with law.

7. *Damage to Property.* An Owner is liable to the Property Owners Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law.

## **I. Maintenance Charges and Fund**

1. *Maintenance Fund Obligation.* Each Owner, by acceptance of a deed to a Lot, whether or not it shall be expressed in any such deed or other conveyance, is deemed to be a covenant and agreement to pay to the Association an Annual Maintenance Charge. The Board of Directors, at its first meeting of each calendar year, shall establish the Annual Maintenance Charge for that year.

2. *Exemption from Annual Maintenance Charge.* Until such time as Declarant has sold and conveyed ninety percent (90%) of the Lots, Declarant shall be exempted from the payment of the Annual Maintenance Fund the subject of this Part I. The obligation of Declarant to pay the Annual Maintenance Charge on the Lots then owned by the Declarant following the conveyance of the ninety Percent (90%) of the Lots shall commence on January 1<sup>st</sup> of the year following the conveyance of the Lot of Declarant that exceeds the ninety percent (90%) figure.

3. *Maintenance Fund.* The Board of Directors of the Association, for the benefit of the lot owners, shall establish and maintain a maintenance fund into which shall be deposited the Annual Maintenance Charge collected from lot Owners and which maintenance fund shall be used, without limitation, for the payment of the following:

- A. Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against any Common Area rather than against the individual lot owners, if any.
- B. Care and preservation of any or all Common Areas.
- C. Repair and/or maintenance of any street in the Subdivision.
- D. Legal and accounting services.
- E. A policy or policies of insurance insuring the Association, as well as its directors and/or officers, against any liability to the public or to the lot owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board of Directors.
- F. Workers compensation insurance to the extent necessary to comply with any applicable laws.
- G. Such fidelity bonds as may be required by the By-Laws or as the Board of

Directors may determine to be advisable.

- H. Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessment assessed against an individual lot owner) which the Board of Directors is required to obtain or pay for pursuant to the terms of these Restrictions or by law or which in its opinion shall be necessary or proper for the enforcement of these Restrictions.
- I. Perpetual maintenance and enhancement of all areas maintained by the Association, including walls, gates, roads, landscaping, lights, irrigation and electric for right-of-way and all entry monuments, walls, and signs owned or maintained by the Association.

## **J. Powers and Duties of Board**

1. *General Powers and Duties.* The Board of Directors of the Association, for the benefit of the lot owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for in these Restrictions, by law, and in the Bylaws of the Association:

- A. To execute all declaration of ownership for tax assessment purposes and with regard to any Common Area, if any, on behalf of all lots owners.
- B. To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent lot owners if the Board of Directors sees fit.
- C. To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.
- D. To protect or defend any Common Area from loss or damage by suit or otherwise and to provide adequate reserves for replacements.
- E. To make reasonable rules and regulations for the operation of any Common Areas and to amend them from time to time; provided that, any rule or regulation may be amended or repealed by an instrument signed by a majority of the lot owners.
- F. To make available for inspection by lot owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by lot owners at reasonable times and intervals.
- G. To adjust the 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 lot owners in proportionate amounts to cover the deficiency.
- H. To enforce the provisions of any rules and regulations made hereunder and to enjoin and seek damages from any lot owner for violation of such provisions, rules or regulations.
- I. To collect all assessments and enforce all penalties for non-payment, including the filing of liens and institution of legal proceedings.
- J. To establish a monetary "fines" system which shall include due process hearings and a discretionary range of fine amounts, which, when levied, shall constitute a permitted Member Charge assessment secured by the lien herein established.
- K. To establish reserve funds which may be maintained and/or accounted for separately from other funds maintained for annual operating expenses.
- L. To accept title to real and/or personal property for any streets, Common Area, and Reserves.

2. *Exclusive Rights.* The Board of Directors shall have the exclusive right to contract for all goods, services, and insurance payment of which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board of Directors except as otherwise provided herein.

3. *Full Authority to Contract.* The Board of Directors, on behalf of the Association, shall have full power and authority to contract with any lot owner or other person or entity for the performance by the Association of services which the Board of Directors is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board of Directors may deem proper, advisable and in the best interest of the Association.

4. *Creation of Lien.* The payment of the Annual Maintenance Charge shall be secured by the same lien that is created by the provisions of these Restrictions to secure the payment of Assessments as set forth in part G of these Restrictions. The Board of Directors shall have the same rights of enforcement as well as all remedies that are set for in said part G. The lien to secure the Annual Maintenance Charge shall be subordinate to the lien of a mortgage to the same extent as set forth in paragraph 9 of said part G.

#### **K. Common Area**

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Association to -

- a. charge reasonable admission and other fees for the use of recreational facilities situated on the Common Area, and if an Owner does not pay these fees, the Owner may not use the recreational facilities;
- b. suspend an Owner's rights to use a Common Area under the Dedicatory Instruments;
- c. grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes; and
- d. dedicate or convey any of the Common Area for public purposes, on approval by a vote of two-thirds (2/3rds) of the Owners at a meeting in accordance with the Bylaws.

2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Dedicatory Instruments.

3. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

#### **L. Enforcement**

1. *Parties Bound.* These Restrictions shall be binding upon Declarant, Declarant's successors and assigns, and all parties claiming by, through or under Declarant and all subsequent owners of property in the Subdivision, each of whom shall be obligated and bound to observe the terms of this instrument; provided, however, that no such persons, entities or parties shall be liable except with respect to breaches committed during ownership of said lots.

2. *Limitation of Impact on Mortgages.* The violation of any term or provision of this instrument shall not operate to invalidate any mortgage, deed of trust, security agreement or other lien or security interest acquired and held in good faith against any lot, or any part thereof, but such liens or security interests may be enforced as against any and all lots so encumbered.

3. *Standing and Remedies.* The Association, any lot Owner, Declarant, or the holder of a lien, deed of trust, security agreement, or mortgage on any lot or lots in the Subdivision shall have the right to enforce observance or performance of the provisions of this instrument. If any person violates or attempts to violate any term or provision of this instrument, it shall be lawful for the Association, any lot owner, Declarant, any party holding a lien, security interest or

mortgage on any lot in the Subdivision, or the ACC, to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate any term or provision of this instrument, in order to accomplish any one or more of the following: to prevent the lot owner, or his, her, it's or their tenants, invitees or representatives from so doing; to correct such violation; to recover damages; or, to obtain such other relief for such violation as then may be legally available.

4. *Result of Conflicting Restrictions.* These Restrictions shall not permit any action or thing prohibited by the laws, rules or regulations of any governmental authority. In the event of any conflict, the most restrictive provisions of such laws, rules, regulations, or these Restrictions shall govern and control.

## **M. General Provisions**

1. *Term.* This Declaration and Restrictions set forth herein shall continue and be binding upon Owner and Owner's successors and assigns for a period of fifty (50) years ("Primary Term") from the date of this instrument, unless terminated or amended. At the expiration of the Primary Term, these Restrictions shall automatically be extended for an additional twenty (20) year period ("Extension Term") and for successive twenty (20) year periods of the Extension Term thereafter, unless terminated or amended. After the expiration of the Primary Term, the owners of seventy-five per cent (75%) of the lots may execute and acknowledge an agreement in writing terminating or revising the terms of this instrument and file the same in the Real Property Records of Polk County, Texas, or in such office as conveyance of real estate then may be required to be filed, and then and thereafter the Restrictions set forth in this instrument shall be null, void and of no further force and effect, or shall be modified as such recorded instrument may direct.

2. *No Waiver.* Failure by the Association or an Owner to enforce the Dedicatory Instruments is not a waiver. No waiver or consent, express or implied, by any lot owner to or of any breach or default by any lot owner in the performance by such owner of the obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such lot owner of the same or any other obligations of such lot owner hereunder. Failure on the part of a lot owner to complain of any act of any other lot owner or to declare any lot owner in default, irrespective of how long such failure continues, shall not constitute a waiver by such owner of the rights hereunder until the applicable statute of limitation period has run.

3. *Corrections.* The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.

4. *Amendment.* This Declaration may be amended as follows:

- a. By Declarant. Declarant, during the Development Period, reserves the sole and exclusive right, without joinder or consent of the Association or any Owner, to (i) amend, restate, modify or repeal, this Declaration and other dedicatory instruments; (ii) amend, revise, modify or vacate any one or more of the Plats; and (iii) annex and subject any other property to the scheme of this Declaration, provided that any annexation is not inconsistent with the scheme of the Subdivision. However, this Declaration or other dedicatory instrument of the Subdivision may not be amended during the period of time between which Declarant loses the majority of voting rights and the time a new Board of Directors of the Association, consisting of Owners assume office.
- b. By Owners. Following the expiration of the Development Period, this Declaration may be amended or restated by the written agreement or by signed ballots voting for such of not less than sixty-seven percent (67%) of all of the Owners in the Subdivision. There shall be one (1) vote per Lot. Anyone owning more than one Lot shall have one vote for each Lot owned. Such amendment must be approved by said Owners within three hundred and sixty-five (365) days of the date the first Owner executes such amendment.

Otherwise, such amendment shall fail. If the amendment is adopted it shall bind and affect all the Lots. The date an owner's signature is acknowledged shall constitute *prima facie* evidence of the date of execution and adoption of said amendment by such Owner. Those Members of the Board of Directors of the Association entitled to cast not less than sixty-seven percent (67%) of all of the votes of the Association may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) business days and not more than sixty (60) calendar days in advance and shall set forth the purpose of such meeting. Any such amendment shall become effective when an instrument is filed for record in the real property records of Polk County Texas, accompanied by a certificate, signed by a majority of the Board of Directors, stating that the required number of Owners voted in favor of the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose.

c. By the Association. The Board of Directors has the right in its sole judgment, from time to time, and at any time, to amend this Declaration without joinder of any Owner or Member for the following purposes:

- i. To resolve or clarify any ambiguity or conflicts herein, or to correct any inadvertent misstatements, errors, or omissions herein; or to confirm this Declaration to the requirements of any lending institution; provided, the Board has no obligation whatsoever to amend this Declaration in accordance with any such lending institution requirements and the Board may not so amend this Declaration if, in the sole opinion of the Board, any substantive and substantial rights of Owners would be adversely affected thereby; or
- ii. To conform this Declaration to the requirements of any governmental agency including the Federal Home Loan Mortgage Corporation, Federal National Mortgage Agency, Veterans Administration, or Federal Housing Administration, and in this respect, the Board shall so amend this Declaration to the extent required by law upon receipt of written notice of such requirements and request for compliance; or
- iii. To amend the Rule and Regulations of the Association, if the Board deems appropriate to comply with the scheme of the Declaration and the Subdivision; and
- iv. To amend the alternative payment schedule for certain assessments, open records policy, records retention policy, and/or other policies to comply the Texas or federal law.

5. *Conflict.* This Declaration controls over the other Dedicatory Instruments.

6. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.

7. *Attorney's Fees.* Any party subject to this instrument who is the prevailing party in any proceeding, whether it is in negotiation, mediation, arbitration or litigation, against any other party brought under or in connection with this instrument or the subject matter hereof, shall be additionally entitled to recover all costs and reasonable attorney fees, and all other related expenses, including deposition costs, arbitrator and mediator fees, and travel and expert witness fees from the non-prevailing party.

8. *Binding Effect.* This instrument shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors and assigns where permitted by this instrument.

9. *Choice of Law.* This instrument shall be subject to and governed by the laws of the State of Texas. Each party hereby submits to the jurisdiction of the state and federal courts in the State of Texas and to venue in Polk County, Texas.

10. *Legal Construction.* In case any one or more of the provisions contained in this instrument shall for any reason be invalid, illegal or unenforceable in any respect, to the extent such invalidity or unenforceability does not destroy the basis of the bargain among the parties, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this instrument shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Whenever required by the context, as used in this instrument, the singular number shall include the plural and the neuter shall include the masculine or feminine gender, and vice versa. The Article and Section headings appearing in this instrument are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Article or Section. This instrument shall not be construed more or less favorably between the parties by reason of authorship or origin of language.

11. *Notices.* All notices must be in writing and must be given as required or permitted by the Dedicatory Instruments or by law. Notice by mail is deemed delivered (whether actually received or not) two (2) days following the date the Notice was properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address according to the Property Owners Association's records, and (b) to the Property Owners Association, the Board, the ACC, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

12. *Recitals.* Any recitals in this instrument are represented by the parties hereto to be accurate and constitute a part of the substantive agreement.

13. *Annexation of Additional Property.* At any time during the first fifteen (15) years following the date this instrument is recorded in the real property records of Polk County, Texas, Declarant reserves and retain the right, but not obligation), to add additional property owned by Declarant to be subject to this Declaration by recording in the real property records of Polk County, Texas an annexation agreement that will impose this Declaration and Covenants upon the property described in the annexation agreement. Following the expiration of such fifteen (15) year period, on written approval of the Board and not less than fifty-one percent (51%) of the Members at a meeting in accordance with the Bylaws, the owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.

14. *Time.* Time is of the essence. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays, and legal banking holidays in the State of Texas. In the event the date for performance of any obligation hereunder shall fall on a Saturday, Sunday or Texas legal banking holiday, then that obligation shall be performable on the next following regular business day.

15. *No Representations or Warranties.* No representation or warranties of any kind, express or implied, shall be deemed to have been given or made by the Declarant, the Association or its agents or employees in connection with any portion of the Subdivision, or any improvement thereon, its or their physical condition, compliance with applicable laws, fitness for intended use, or in connection with the sale, operation, maintenance, cost of maintenance, taxes, or regulation thereof, unless and except as specifically shall be set forth in writing.

MCR – Phase Four, a series of Magnolia Creek Ranch, L.L.C., a Texas series limited liability company,

BY: \_\_\_\_\_  
Clifford M. Rowland, Manager

MCR – Phase Five, a series of Magnolia Creek Ranch, L.L.C., a Texas series limited liability company,

BY: \_\_\_\_\_  
Clifford M. Rowland, Manager

MCR – Phase Six, a series of Magnolia Creek Ranch, L.L.C., a Texas series limited liability company,

BY: \_\_\_\_\_  
Clifford M. Rowland, Manager

STATE OF TEXAS )

COUNTY OF POLK )

This instrument was acknowledged before me on \_\_\_\_\_, 2023, by Clifford M. Rowland, Manager of MCR – Phase Four, a series of Magnolia Creek Ranch, L.L.C., a Texas Series Limited Liability Company on behalf of said series.

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

STATE OF TEXAS )

COUNTY OF POLK )

This instrument was acknowledged before me on \_\_\_\_\_, 2023, by Clifford M. Rowland, Manager of MCR – Phase Five, a series of Magnolia Creek Ranch, L.L.C., a Texas Series Limited Liability Company on behalf of said series.

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

STATE OF TEXAS )

COUNTY OF POLK )

This instrument was acknowledged before me on \_\_\_\_\_, 2023, by Clifford M. Rowland, Manager of MCR – Phase Six, a series of Magnolia Creek Ranch, L.L.C., a Texas Series Limited Liability Company on behalf of said series.

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

After recording, please return to:

Hannah Law Firm, PLLC  
411 N. Yaupon Ave.  
Livingston, Texas 77351