

Notary Public, State of Texas
My commission expires: _____

SECOND AMENDED AND RESTATED
COVENANTS, CONDITIONS, AND
FOR THE
PEACH CREEK FARMS SUBDIVISION

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

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE PEACH CREEK FARMS SUBDIVISION (this “Declaration”) is executed on the date hereinafter set forth by ET CAPITAL INVESTMENTS, LLC, a Texas limited liability company (“Developer”).

WHEREAS, Developer is the owner of that certain tract of land known as Peach Creek Farms, being a subdivision of 89.50 acres of land situated in the Ezekiel Foster Survey, Abstract No. 130, San Jacinto County, Texas, according to the maps or plats thereof recorded in Clerk's File Nos. 20210607, 20216227, and _____ of the San Jacinto Deed Records (the "Property"); and

WHEREAS, it is the desire of Developer to place certain restrictions, easements, covenants, conditions, stipulations, and reservations (the "Covenants") upon and against the Property in order to establish a uniform plan for the development, improvement, and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future Owners of Lots in the Subdivision (as such terms are hereinafter defined).

NOW, THEREFORE, Developer hereby adopts, establishes, and imposes upon the Property, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property, which Covenants shall run with the Property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof, except that no part of this Declaration or the Covenants shall be deemed to apply in any manner to any area not included in the boundaries of the Property, except as otherwise provided herein. Developer also declares that the Subdivision shall be subject to the jurisdiction of the Property Owners Association (as hereinafter defined).

DEFINITIONS

"ACC" means the Architectural Control Committee 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.

"Board" means the Board of Directors of the Property Owners Association.

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

"Common Area" means all property within the Subdivision not designated as a Lot on the Plat and that has not been accepted for maintenance by the applicable governmental body, including, but not limited to, the street road Quiet Springs Trail. Declarant will convey the Common Area to the Property Owners Association.

"Control Transfer Date" means the date upon which eighty (80%) of all Lots in the Subdivision are conveyed by Declarant.

"Declarant" means ET Capital Investments, LLC, a Texas 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, and rules of the Property Owners Association, and the standards of the ACC, as amended.

"Development Period" means the period of time from the date of this Declaration until the Control Transfer Date.

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

"Lot" means each tract of land designated as a lot on the Plat, excluding lots that are part of the Common Area.

"Member" means Owner.

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

"Plat" means, collectively and as applicable, the plats of the Property recorded in Clerk File Nos. 20210607, 20216227, and _____ of the real property records of San Jacinto County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

"Property Owners Association" means the Peach Creek Farms Property Owners Association, a Texas nonprofit corporation, which has or will be incorporated.

"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.

"Short Term Renting" means granting the right to occupy and use a Residence or Structure in exchange for consideration for a period of time less than thirty (30) days.

"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.

"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 Plat and any additional property made subject to this Declaration.

"Vehicle" means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, 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 it to a fine, an action for amounts due to the Property Owners Association, damages, or injunctive relief.

B. Plat and Easements

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.

2. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.

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.* A Lot may be used only for an approved Residence and approved Structures for Single Family residential use, including Short Term Renting in compliance with applicable law.

2. *Prohibited Activities.* Prohibited activities are:

- a. any activity that is otherwise prohibited by the Dedicatory Instruments;
- b. any illegal activity;
- c. any nuisance, noxious, or offensive activity;
- d. any dumping of rubbish;
- e. any storage of:
 - i. building materials except during the construction or renovation of a Residence or a Structure;
 - ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; or
 - iii. unsightly objects unless completely shielded by a Structure;
- f. any exploration for or extraction of minerals;
- g. any keeping or raising of animals, livestock, or poultry for commercial purposes, but excepting the same to the extent kept as domesticated household pets, confined to a fenced yard or within the Residence; provided, however, that Owners of Lots comprising at least five (5) acres or more shall have the right to keep and/or raise bees for agricultural purposes;
- h. any commercial or professional activity except reasonable home office use and commercial uses reasonably ancillary to the allowed keeping and raising of bees as provided in Section C.2.g. above;
- i. the Renting of a portion of a Residence or Structure;
- j. the drying of clothes in a manner that is visible from any street;
- k. the display of any sign except:
 - i. one (1) not more than five (5) square feet, advertising the Lot for sale or rent or advertising a garage or yard sale;

- ii. political signage relevant to a current election beginning ninety (90) days before the election and up until thirty (30) days after the election, which must feature either a candidate who is up for election or an issue that will be on the ballot, and in all cases not otherwise prohibited by law or the Dedicatory Instruments; and
- iii. signage of an institution of primary and/or secondary education promoting educational or extra-curricular activities;
- l. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
- m. moving a previously constructed house onto a Lot;
- n. interfering with a drainage pattern without ACC approval;
- o. hunting and shooting, except as otherwise allowed on the Owner's Reserve as shown on the Plat;
- p. occupying a Structure that does not comply with the construction standards of a Residence;
- q. garage or yard sales, except on the first Saturday of each month;
- r. display any flags, except for "Permitted Flags" as provided below:
 - i. "Permitted Flags" mean:
 - (A) the flag of the United States;
 - (B) the flag of the State of Texas;
 - (C) the official flag of any branch of the United States armed forces; and
 - (D) the flag of any institution of higher education.
 - ii. Permitted Flags may be displayed subject to these guidelines. Advance written approval of the ACC is required for any free-standing flagpole and any additional illumination associated with the display of Permitted Flags.
 - iii. Permitted Flags must be displayed in a respectful manner in accordance with the current relevant federal, state, or military code.
 - iv. Permitted Flags must be displayed from a pole attached to a structure

or to a freestanding pole. Permitted Flags may not be draped over or directly attached to structures. For example, a Permitted Flag may not be laid across a fence or stapled to a garage door.

v. Permitted Flags shall be no larger than three feet (3') by five feet (5') in size.

vi. Only one (1) Permitted Flag may be displayed on a flagpole attached to a Structure. Up to two (2) Permitted Flags may be displayed on an approved free-standing flagpole that is at least fourteen feet (14') tall.

vii. Flagpoles must be constructed of permanent, long-lasting materials with an appropriate finish that is harmonious with the dwelling.

viii. A flagpole attached to a Structure may be up to six feet (6') long and must be securely attached with a bracket with an angle of thirty to forty-five degrees (30° – 45°) down from vertical. The flagpole must be attached in such a manner as to not damage the Structure. One attached flagpole is allowed on any portion of a Structure facing a street and one attached flagpole is allowed on the rear or backyard portion of a Structure. Brackets which accommodate multiple flagpoles are not allowed.

ix. Free-standing flagpoles may be up to twenty feet (20') tall, including any ornamental caps. Free-standing flagpoles must be permanently installed in the ground according to manufacturer's instructions. One (1) free-standing flagpole is allowed in the portion of the Lot between the main residential dwelling and any street, but may not be installed in any location described below:

(A) in any location other than the Owner's Lot;

(B) within an Easement;

(C) beyond the side or front setback lines; or

(D) closer to a dwelling on an adjacent Lot than the height of the flagpole (for example, a twenty-foot (20') flagpole cannot be installed closer than twenty feet (20') from an adjacent Structure).

x. Lighting may be installed to illuminate Permitted Flags if they will be displayed at night and if existing ambient lighting does not provide proper illumination. Flag lighting must:

(A) be ground mounted in the vicinity of the flag;

(B) utilize a fixture that screens the bulb and directs light in the

intended direction with minimal spillover;

(C) point towards the flag and face the main Structure on the Lot or to the center of the Lot if there is no Structure; and

(D) provide illumination not to exceed the equivalent of a sixty (60)-watt incandescent bulb.

xi. Flagpoles must not generate unreasonable noise levels which would disturb the quiet enjoyment of other residents. Each flagpole owner should take steps to reduce noise levels by using vinyl or plastic snap hooks, installing snap hook covers or securing a loose halyard (rope) around the flagpole with a flagpole clasp.

xii. Flagpoles are allowed solely for the purpose of displaying Permitted Flags. If a flagpole is no longer used on a daily basis, it must be removed.

xiii. All flags and flagpoles must be maintained in good condition. Deteriorated flags must be removed and promptly replaced. Deteriorated or structurally unsafe flagpoles must be promptly repaired, replaced, or removed.

s. utilize rainwater recovery systems, except as provided below:

i. Rainwater recovery systems may be installed with advance written approval of the ACC subject to these guidelines.

ii. All such systems must be installed on the Owner's Lot. No portion of the systems may encroach on adjacent properties or Common Areas.

iii. Other than gutters and downspouts conventionally attached to a dwelling or appurtenant Structure, all components of the systems, such as tanks, barrels, filters, pumps, motors, pressure tanks, pipes and hoses, must be substantially screened from public view from any street or Common Area. Screening may be accomplished by:

(A) placement behind a solid fence, a structure or vegetation;

(B) burying the tanks or barrels; or

(C) placing equipment in an outbuilding otherwise approved by the ACC.

iv. A rain barrel may be placed in a location visible from public view from any street or Common Area only if the configuration of the guttering system on the Structure precludes screening as described above with the

following restrictions:

- (A) the barrel must not exceed fifty-five (55) gallons;
 - (B) the barrel must be installed in close proximity to the Structure on a level base with the guttering downspout leading directly to the barrel inlet at a substantially vertical angle;
 - (C) the barrel must be fully painted in a single color to blend with the adjacent home or vegetation; and
 - (D) any hose attached to the barrel discharge must be neatly coiled and stored behind or beside the rain barrel in the least visible position when not in use.
- v. Overflow lines from the systems must not be directed onto or adversely affect adjacent properties or Common Areas.
- vi. Inlets, ports, vents, and other openings must be sealed or protected with mesh to prevent children, animals, and debris from entering the barrels, tanks, or other storage devices. Open top storage containers are not allowed, however, where space allows and where appropriate, ACC approved ponds may be used for water storage.
- vii. Harvested water must be used and not allowed to become stagnant or a threat to health.
- viii. All systems must be maintained in good repair. Unused systems should be drained and disconnected from the gutters. Any unused systems in public view must be removed from public view from any street or Common Area.
- t. utilize solar energy devices, except as provided below:
 - i. These guidelines apply to solar energy devices ("Devices") as defined in Section 171.107(a) of the TEXAS TAX CODE. A solar energy device means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.
 - ii. Such Devices may only be installed with advance written approval of the ACC subject to these guidelines.
 - iii. Any such Device must be installed on the Lot or Structures owned

by the Owner. No portion of the Devices may encroach on adjacent properties or Common Areas.

- iv. Such Devices may only be installed in the following locations:
 - (A) on the roof of the main residential dwelling;
 - (B) on the roof of any other approved structure; or
 - (C) within a fenced yard or patio.
- v. For Devices mounted on a roof, the Device must:
 - (A) have no portion of the Device higher than the roof section to which it is attached;
 - (B) have no portion of the Device extend beyond the perimeter boundary of the roof section to which it is attached;
 - (C) conform to the slope of the roof;
 - (D) be aligned so the top edge of the Device is parallel to the roof ridge line for the roof section to which it is attached;
 - (E) have a frame, brackets and visible piping or wiring that is a color to match the roof shingles or a silver, bronze or black tone commonly available in the marketplace; and
 - (F) be located in a position on the roof which is least visible from any street or common area, so long as such location does not reduce estimated annual energy production more than ten percent (10%) over alternative roof locations (as determined by a publicly available modeling tool provided by the National Renewable Energy Laboratory [www.nrel.gov] or equivalent entity).
- vi. For Devices located in a fenced yard or patio, no portion of the Device may extend above the top of the fence. If the fence is not a solid fence which blocks view of the Device, the Property Owners Association may require the Device be placed in a location behind a Structure or otherwise require visual screening. The Property Owners Association may consider installation of Devices on Lots without a fenced yard if there is adequate screening from public view from any street or Common Area.
- vii. All Devices must be installed in compliance with manufacturer's instruction and in a manner that does not void material warranties. Licensed craftsmen must be used where required by law. Permits must be obtained

where required by law.

viii. Installed Devices may not:

(A) threaten public health or safety;

(B) violate any law; or

(C) substantially interfere with the use and enjoyment of land by causing unreasonable discomfort or annoyance to any adjoining property owner.

ix. All Devices must be maintained in good repair. Unused or inoperable Devices must be removed.

u. display of seasonal decorations, except as provided below:

i. Seasonal displays must be limited in scope and must not become a nuisance or annoyance to the neighborhood.

ii. Winter holiday decorations and lights may be installed no earlier than October 1 and must be removed by January 15 of the following year.

iii. Winter holiday decorations and lights may be illuminated no earlier than November 1 through January 15 of the following year.

iv. All other seasonal decorations may be displayed for a period not to exceed three (3) weeks.

v. sale or use of fireworks, of any kind whatsoever, except as provided below:

i. use of fireworks on July 3 and July 4, but no later than 11:00 p.m.

ii. use of fireworks on December 31 and January 1, but no later than 1:00 a.m. on the following day.

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.

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.

2. *Residences and Structures*

a. *Aesthetic Compatibility.* All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC, and all Structures must substantially match the aesthetics of the Residence to which it belongs. For the avoidance of doubt, commercially standard “barndominiums” are allowed to be constructed as Residences, subject to the approval of the ACC, and provided that such barndominiums substantially match the aesthetics of a residential home, rather than a workshop or other commercial structure, and have a 4/12 minimum roof pitch.

b. *Maximum Height.* The maximum height of a Residence is two and one-half (2.5) stories.

c. *Required Area.* The total area of a Residence, exclusive of porches, garages, or carports, must be at least 1,800 square feet.

d. *Location on Lot.* No Residence or Structure may be located in violation of the setback lines shown on the Plat. Each Residence must face the front Lot line. All Structures must be located behind the front wall of the Residence. All outbuildings, except garages and workshop extensions from garages, must not be visible from any street.

e. *Intentionally Omitted.*

f. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within thirty (30) days (or within a 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 sixty (60) days and the Lot restored to a clean and attractive condition.

g. *Fences, Walls, and Hedges.* No fence, wall, or hedge may be located forward of the front wall line of the Residence, except for trellises and decorative fences that are approved by the ACC. Any fencing of the front wall line of the Residence must exactly match the Subdivision fencing (i.e., split rail cedar fencing). Chain link and other material fencing is strictly prohibited. All other fencing within a Lot (including privacy fencing and wrought iron fencing) must be approved by the ACC.

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

i. *Mailboxes.* All Owners shall provide and install, and all Owners shall maintain, mailboxes for each Lot at the Owner's expense in such location and of such size, color, and design as approved by the ACC, which shall, at a minimum, (i) be comprised of the same or substantially similar masonry of the subject Residence or otherwise in general conformance with the aesthetics of the Subdivision; and (ii) must have the street address number on both sides of said mailbox, in general conformance with the aesthetics of the Subdivision, unless otherwise agreed to by the ACC.

j. *Landscaping.* Landscaping must be installed within thirty (30) days after occupancy. The minimum landscaping is specified in the standards of the ACC. No living tree greater than eight inches (8") in diameter as measured at a point two feet (2') above natural grade may be removed without prior approval of the ACC; excluding those trees initially removed within the approved homesite/slab footprint. Trees to be removed must be flagged on site. For multiple-trunk trees, the trunk diameter is deemed to equal the diameter of the largest trunk plus half the diameter of each additional trunk greater than one inch (1") diameter. Measurements should be accurate to the nearest inch.

k. *Wells.* All water wells must be installed in the rear of the Lot and as otherwise specified by the ACC and applicable law.

l. *Septic Systems.* All septic systems must be installed in the front of the Lot and as otherwise specified by the ACC and applicable law, and all such septic systems must be regularly maintained and inspected as required by applicable law.

3. *Building Materials for Residences and Structures*

a. *Roofs.* Only metal, composite, and tile material roofs may be used on Residences and Structures, unless otherwise approved by the ACC. All roof stacks must be painted to match the roof color.

Nothing herein shall be interpreted to prohibit or restrict an Owner who is otherwise authorized to install shingles on the roof of the Owner's Residence and Structures from installing shingles that are (i) designed primarily to be wind and hail resistant, (ii) provide heating and cooling efficiencies greater than those provided by customary composite shingles, or (iii) provide solar generation capabilities; and that, when installed: (A) resemble the shingles used or otherwise authorized for use on Lots in the Subdivision; (B) are more durable than and are of equal or superior quality to the shingles used or otherwise authorized for use on Lots in the Subdivision; and (C) match the aesthetics of the Lots surrounding the Owner's Lot.

b. *Air Conditioning.* Window- or wall-type air conditioners may not be used in a Residence.

c. *Exterior Walls.* All Residences must have exterior walls approved by the ACC (in both material and composition).

d. *Color Changes.* No change to the color of the exterior walls, trim, or roof of a Residence will be permitted, unless otherwise approved by the ACC.

e. *Driveways and Sidewalks.* All driveways and sidewalks must be surfaced with concrete or asphalt, unless otherwise approved by the ACC. Driveways and sidewalks may not be surfaced with dirt, gravel, shell, or crushed rock.

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

4. *Waste Disposal.* The Property Owners Association has entered or will enter into contracts with a commercial waste disposal company that grants that company the exclusive right for the trash collection and waste disposal in the Subdivision. If the waste disposal company provides waste and/or recycling carts to each Owner, the cart shall remain the property of the waste disposal company, and the Owner will have no ownership or interest in the carts. The carts shall remain at the location of the Lot where they are delivered by the waste disposal company. The Owner shall be responsible for all loss or damage to the carts, except for normal wear and tear or any loss or damage to the carts resulting from the waste disposal company's handling of the equipment. Any carts removed from the Lot shall be deemed lost, and the waste disposal company or the Property Owners Association will send an invoice to the Owner for the actual replacement cost of the lost carts. The entire amount of this invoice shall become payable in full on the due date set forth in the invoice. The total amount of this invoice shall be secured by the continuing assessment lien as set out herein and shall be recoverable in the same manner as the Regular Assessment.

5. *Electric Utility Service.* Prior to beginning any construction on a Lot, each Lot Owner, at its expense, shall be required to install electric service lines from the transformer or source of feed to the meter location on said Lot. Further, each Owner may expect to pay a charge for connection to such electric utility service, and the Owner is obligated to contact the utility company serving the Subdivision to determine such charge and make arrangements for the installation of said service lines and connection to the electrical distribution system. Each Owner shall also be responsible for all charges for all utility service furnished to such Owner's Lot.

E. Property Owners Association

1. *Establishment and Governance.* The Property Owners Association has been or will be established by filing its Certificate of Formation and is governed by its Certificate of Formation, this Declaration, and its 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. Members have one (1) vote per Lot. When more than one (1) person is an Owner, each is a Member, but only one (1) vote may be cast for a Lot. The voting rights of the Members are set forth in the Bylaws.

4. *Board of Directors.* During the Development Period, Declarant shall retain the sole authority to appoint all members of the Board. At the first annual meeting of the Members following the Control Transfer Date, the Members shall elect any then-open Board seats, and thereafter, the rights of the Members for election and appointment of Board members shall be as set forth in the Bylaws.

F. 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 consists of at least three (3) persons appointed by the Board, at least one (1) of which must have professional building experience. The Board may remove or replace an ACC member at any time.

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

d. *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 may be erected 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. 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.* 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. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within thirty (30) days after complete submission, the submitted plans and specifications are deemed approved.

c. *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of the appeal to the Board, and if the appeal is by an Owner who is not the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within five (5) days after the ACC's action. The Board shall determine the appeal within fifteen (15) days after timely notice of appeal is given. The determination by the Board is final.

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 Property Owners 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.* The Property Owners Association may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund operating expenses of the Property Owners Association, and to improve and maintain the Common Areas.

2. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.

3. *Creation of Lien.* Assessments are secured by a continuing vendor's lien on each Lot, which lien is reserved by Declarant and hereby assigned to the Property Owners Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Property Owners Association to secure Assessments.

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

5. *Regular Assessments*

a. *Rate.* Regular Assessments are levied annually by the Board to fund the anticipated operating and maintenance expenses of the Property Owners Association. Until changed by the Board, the Regular Assessment through calendar year 2022 is \$600.00, and continuing from and after January 1, 2023 is \$450.00. For purposes of calculation, the initial Regular Assessment for a Lot shall commence on the date of closing. An Owner's initial Regular Assessment shall be made for the balance of the calendar year as determined on a pro-rata basis and shall become due and payable on the commencement date described above. The Regular Assessment for any year after the first year shall be due and payable on the first day of January. Any Owner who purchases a Lot or Lots after the first day of January in any year shall be personally responsible for a prorated Regular Assessment amount for that year.

b. *Changes to Regular Assessments.* Regular Assessments may be changed annually by the Board. Written notice of the Regular Assessment will be sent to every Owner at least thirty (30) days before its effective date.

c. *Collections.* Regular Assessments shall be due in advance on January 1st for the coming year and shall be delinquent if not paid in full as of January 31st of each year.

6. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area or for any other purpose benefitting the Subdivision but requiring funds exceeding those available from the Regular Assessments. Special Assessments must be approved by the Members. Written notice of the terms of the Special Assessment will be sent to every Owner.

7. *Approval of Special Assessments.* Any Special Assessment must be approved by a sixty-seven percent (67%) vote at a meeting of the Members in accordance with the Bylaws.

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 Property Owners Association is subordinate to any lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The foreclosure of a superior lien extinguishes the Property Owners Association's lien as to Assessments due before the foreclosure.

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

11. *Initiation Fee.* Notwithstanding anything to the contrary contained in the foregoing, and in addition to the Regular Assessment and any Special Assessments, for each initial Lot sale from the Developer to an Owner, a Special Assessment of \$1,000.00 shall be charged as an

initiation fee and shall be immediately due and owing as of the closing of such sale.

12. *Transfer Fee.* Notwithstanding anything to the contrary contained in the foregoing, and in addition to the Regular Assessment and any Special Assessments, for each subsequent Lot sale from an Owner to any other person, a Special Assessment of \$250.00 shall be charged as transfer fee and shall be immediately due and owing as of the closing of such sale.

H. Remedial Rights

1. *Late Charges and Interest.* A late charge of \$50.00 is assessed for delinquent payments. Delinquent Assessments accrue interest at the lesser rate of (a) eighteen percent (18%) per year or (b) the maximum non-usurious rate of interest under the laws of the State of Texas. The Board may change the late charge and the interest rate.

2. *Costs, Attorney's Fees, and Expenses.* If the Property Owners Association complies with all applicable notice requirements, an Owner is liable to the Property Owners Association for all costs and reasonable attorney's fees incurred by the Property Owners Association in collecting delinquent Assessments, foreclosing the Property Owners Association's lien, and enforcing the Dedicatory Instruments.

3. *Judicial Enforcement.* The Property Owners Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Property Owners 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.

4. *Remedy of Violations.* The Property Owners Association may levy a fine against an Owner for a violation of the Dedicatory Instruments.

5. *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.

6. *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. Common Area

1. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Property Owners 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 sixty-seven percent (67%) vote of the Members at a meeting in accordance with the Bylaws.

2. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends solely 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.

4. *Disclaimer of Liability.* Notwithstanding anything to the contrary contained herein or otherwise enforceable in accordance with applicable law, the grant hereunder shall not be interpreted to imply or create a grant to the general public to the Common Area, and the Property Owners Association expressly disclaims any and all liability arising from or related to the access and/or use of the Common Area by anyone other than those permitted users provided hereunder and in accordance with the terms provided herein.

J. General Provisions

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

2. *No Waiver.* Failure by the Property Owners Association or an Owner to enforce the Dedicatory Instruments is not a waiver.

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.*

a. This Declaration may be amended at any time by a sixty-seven percent (67%) vote of Owners entitled to vote on the amendment. An instrument containing the approved amendment will be signed by the Property Owners Association and recorded.

b. In addition to specific amendment rights granted elsewhere in this Declaration, until the Control Transfer Date, Declarant may unilaterally amend this Declaration for any purpose; provided, however, any such amendment shall not impair or adversely affect the vested property or other rights of any Owner unless such Owner shall consent thereto in writing. After the Development Period,

Developer shall also have and reserves the right, at any time and from time to time, without the joinder or consent of any Owner or other party, to amend this Declaration (i) for the purposes of correcting any typographical or grammatical error, oversight, ambiguity or inconsistency appearing herein; or (ii) to the extent necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vested property or other rights of any Owner unless such Owner shall consent thereto in writing.

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 this Declaration.

7. *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) when properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address or authorized e-mail 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.

8. *Annexation of Additional Property.* On written approval of the Board and not less than sixty-seven percent (67%) 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.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this ____ day of _____ 2022.

DECLARANT:

ET CAPITAL INVESTMENTS, LLC,
a Texas limited liability company,

By: _____

Name: Jonathan Eller

Title: President

STATE OF TEXAS §

§

COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared Jonathan Eller, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that Jonathan Eller executed the same as the act of ET Capital Investments, LLC, a Texas limited liability company, as its President, for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of _____ 2022.

Notary Public, State of Texas

My commission expires: _____