

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
THE WOODS OF ST. CLARE SUBDIVISION, UNIT 2  
AND 17.695 ACRES DESCRIBED IN EXHIBIT A**

THE STATE OF TEXAS                    )  
  )  
COUNTY OF GUADALUPE                )  
  )        **KNOW ALL MEN BY THESE PRESENTS:**

WHEREAS this Declaration is made on the date hereinafter set forth by DMK LAND DEVELOPMENT LLC, a Texas Limited Liability Company, hereinafter called "Declarant", who owns lots in a real estate subdivision, in Guadalupe County, Texas, hereinafter sometimes called the "Property" or "The Woods of St. Clare Subdivision, Unit 2", or the "Subdivision", which property is described as follows:

The Woods of St. Clare Subdivision, Unit 2, a subdivision located in Guadalupe County, Texas, as shown by plat recorded in Volume 8, Pages 589-590 of the Plat and Map Records of Guadalupe County, Texas; and

WHEREAS, it is deemed to be in the best interest of the Declarant and any other persons who may purchase any portion of the Property that there be established and maintained a uniform plan for the improvement, development and maintenance of The Woods of St. Clare Subdivision, Unit 2.

WHEREAS, there have heretofore been filed in the Official Records of Guadalupe County, Texas, the following covenants, conditions and restrictions: Declaration of Covenants, Conditions and Restrictions for The Woods of St. Clare (herein called the "First Restrictions"), which cover a real property subdivision shown on a plat recorded in Volume 8, Pages 500-501 of the Plat and Map Records of Guadalupe County, Texas (The Woods of St. Clare, Unit 1) and are filed of record under Document Number 2016012962 of the Official Public Records of Guadalupe County, Texas, and thereafter the First Restrictions were amended by First Amendment to Declaration of Covenants, Conditions, and Restrictions of The Woods of St. Clare of record under Document Number 2016016439 of the Official Public Records of Guadalupe County, Texas (herein called "First Amendment to First Restrictions");

WHEREAS, Article XLV of the First Restrictions provide that the Declarant shall have the right to (i) annex or dedicate additional property so that owners of property in such additional lands may be members of the homeowners association provided for in the First Restrictions (the "Association") subject to the First Restrictions, as they may be modified, and (ii) to modify and add to the First Restrictions, as they may apply to such annexed property;

WHEREAS, Declarant has deemed it appropriate to annex The Woods of St. Clare Subdivision, Unit 2, so that it is governed by the covenants and restrictions contained herein, so that the owners of lots in The Woods of St. Clare Subdivision, Unit 2, are members of the Association in accordance with the terms hereof and so that there can be a common organization and development of the lots in The Woods of St. Clare, Unit 1 and The Woods of St. Clare Subdivision, Unit 2; and

WHEREAS, adjacent or contiguous to a portion of The Woods of St. Clare Subdivision, Unit 2, is a 17.695, more or less, acre tract, more particularly described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein for all purposes and is referred to herein as the "17.695 acre tract."

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, restrictions, covenants and conditions shall run with the Property and be binding upon all parties having or acquiring any right, title, or interest in the Property or any part thereof, their heirs, tenants, invitees, guests, successors and assigns, and shall inure to the benefit of each owner thereof. Declarant, pursuant to Article XLV of the First Restrictions, hereby annexes The Woods of St. Clare Subdivision, Unit 2, to the Association and the First Restrictions, as they are amended, modified, and restated hereby, so that the owners of lots in The Woods of St. Clare Subdivision, Unit 2, shall be members of the Association. In annexing The Woods of St. Clare Subdivision, Unit 2, Declarant is further exercising its right to amend or modify the restrictions and covenants applying to The Woods of St. Clare Subdivision, Unit 2, as provided in the First Restrictions. Such restrictions and covenants are modified and restated in this Declaration. In the event of any conflict between the First Restrictions, or any other restrictions, and the covenants and restrictions set forth in this Declaration, the provisions of this Declaration will control as they apply to The Woods of St. Clare Subdivision, Unit 2. The provisions and restrictions of this Declaration do not apply to the 17.695 acre tract unless specifically stated otherwise herein.

#### I. DEFINITIONS -

The following terms when used in this Declaration shall have the following meanings unless the context prohibits:

1. "Association" shall mean The Woods of St. Clare Property Owners Association, Inc., a nonprofit corporation which is referred to herein, and its successor and assigns.
2. "Declarant" shall mean DMK LAND DEVELOPMENT LLC, a Texas Limited Liability Company, and any other party to whom it assigns in writing any of its rights hereunder.
3. "Improvements" shall mean and include all buildings, outbuildings, patios, balconies, decks, fences, walls, hedges, landscaping, antennae, towers, poles, ponds, lakes, swimming pools, driveways, parking areas, utilities, signs and other structures, apparatus, improvements, recreational facilities, plantings or equipment of a permanent or semi-permanent character located on a Lot in The Woods of St. Clare Subdivision, Unit 2. Included are both original Improvements made to a Lot in the Subdivision and all subsequent changes, additions, treatments or replacements thereto.
4. "Dwelling" shall mean and refer to a single-family residence and its attached or detached garage situated upon a Lot.
5. "Lot(s)" shall mean any lot, plot, parcel or tract of land shown and designated by number on the recorded Subdivision Plat of the Subdivision or any other subdivision plat Declarant may hereafter annex in its sole discretion so that it becomes subject to the terms of this Declaration.
6. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title, to the surface estate of a Lot situated in the Subdivision (including contract sellers), but excluding those having such interest merely as security for the performance of an obligation.

7. "Architectural Control Committee" or "Committee" shall mean the Architectural Control Committee referred to in Article V hereof.
8. "Common Areas" shall mean that portion of the Subdivision on which Declarant or the Association may hereafter construct an entrance and landscaping, or any other property, which Declarant may hereafter designate as "Common Area".
9. "Subdivision Plat" shall mean that depiction of the Property and the Lots comprising the Subdivision which has been recorded in the Plat Records of Guadalupe County, Texas and is recorded in Volume 8, Pages 589-590, of the Plat Records of Guadalupe County, Texas.
10. "Development Period" means the period in which Declarant reserves a right to facilitate the development, construction, and marketing of the Subdivision, and a right to direct the size, shape, and composition of the Subdivision. The Development Period shall continue so long as Declarant owns any Lot in the Subdivision or any other real property annexed to it as provided below other than a personal residence of the Declarant. The Development Period shall continue to the maximum length of time allowed by law.
11. "Texas Residential Property Owners Protection Act" or "The Act" shall refer to the Texas Property Code Chapter 209, as same may be amended or repealed in whole or in part.
12. "Dedictory instrument" means each governing instrument covering the establishment, maintenance, and operation of the Subdivision. The term includes the Declaration, Bylaws, Architectural Control Guidelines, Rules and Regulations, Open Records and Records Retention Policies, and Alternative Payment Schedule, and all lawful amendments. Dedictory instruments shall be filed in the real property records of Guadalupe County, Texas.
13. "Management Certificate" means the instrument required to be recorded pursuant to Section 208.4 of the Texas Residential Property Owners Protection Act.
14. "Transfer Fee" means dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment under this Declaration, other dedicatory instrument, or under law, including a fee or charge payable for a change of ownership entered in the records of the Association.
15. "Collection Agent" means a debt collector, as defined by Section 803 of the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692a).
16. "Maintenance Fund" shall mean the Association's accumulation of funds from Regular and Special Assessments, as well as income and revenue from other legitimate sources, as prescribed in this Declaration.
17. "Declarant Control Period" shall mean and refer to the period of time constituting the Development Period as defined above. During the Declarant Control Period the Class "B" Member is entitled to appoint and remove the members of the Board of Directors and the officers of the Association, other than Board members or officers elected by Members of the Association pursuant to the Bylaws. The Declarant Control Period shall continue during the Development Period as defined above.

18. "Wooded Lots" shall mean and refer to Lots 35, 36, 37, 38, 39,40, 41, 42, 43, and 44 of the Subdivision.
19. "Live Oak Tree Lots" shall mean and refer to Lots 29-34 inclusive and Lots 45-50 inclusive.
20. "17.695 acre tract" is a 17.695, more or less, acre tract, more particularly described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein for all purposes and is referred to herein as the "17.695 acre tract."
21. "Pipeline Tracts" shall mean and refer to the 17.695 acre tract and Lots 39 and 40 of the Subdivision.

## II. PERMITTED LAND USE -

1. All of the lots in the subdivision shall be for single-family residential purposes only. Improvements are to be constructed for single family residential use only on the Lots. No professional, business, commercial, or industrial activity to which the general public is invited shall be conducted on any Lot. No structure shall be erected, placed, altered or permitted to remain on any Lot other than (i) one detached single-family dwelling with (ii) an attached, enclosed private car garage, storage rooms, and utility rooms. All residences must have an attached garage facing the side of the Lot it is on. One additional detached garage, workshop, or similar type building is allowed with approval of the Architectural Control Committee. Detached garages are prohibited except with prior approval of the Architectural Control Committee, and no garage, storage rooms or utility rooms shall be erected on any Lot until, after or coincidental with the building of the single family dwelling unit thereon and for use in connection therewith. No Dwelling previously constructed elsewhere may be moved on any Lot controlled by these covenants. No two story residences or buildings shall be constructed on any Lot except with prior approval of the Architectural Control Committee. Bonus rooms are allowed above the first floor, subject to approval of the Architectural Control Committee. Houses that may be deemed one and one-half stories are allowed, subject to the following: the top story may not exceed half of the bottom or main floor heated floor area. For example, if the ground floor has a heated floor space of 2,000 square feet the upstairs may not exceed more than 1,000 square feet of heated or air conditioned floor space. All plans providing for buildings with more than one level ground floor must be approved by the Architectural Control Committee.

There may be one outbuilding only on each Lot without the express written approval of the Architectural Control Committee, except as provided below for Lot 39.

The dwelling located on Lot 39 must be south of the Exxon and Koch Pipeline Easements shown on the Subdivision Plat and there may be two outbuilding located south of said Pipelines without the express written approval of the Architectural Control Committee. The location of the outbuildings and dwelling must be pre-approved by the Architectural Control Committee.

2. There are drainage easements shown on the Subdivision Plat and on the 17.695 acre tract, referred to as Drain and called Drain A, B, C, D, and E or Water Easement. It is intended that the City of Marion ("City") maintain, repair and replace any structures or improvements in these areas, provided that routine mowing is the obligation of the owner of the particular

lot or land such easement is on. If the lot owner on which the easement is located should fail to mow same the Property Owners Association may mow said easement areas and is granted an easement to do so. If the City should fail to maintain or repair the drainage facilities placed or erected in the drainage easements the Property Owners Association may draw such fact to the attention of the City and request such maintenance and repair to maintain those areas designated as drainage for the purposes for which said drainage easements were created. The drainage easements may not be used in any way or manner that will interfere with their function as a drainage area. The maintenance of the drainage area shall not be the responsibility of the Declarant. Marion Independent School District has a 50 foot wide drainage easement adjacent and congruous to the most northerly property line of Lot 39 and the 17.695 acre tract. Marion ISD shall be responsible for maintaining this easement.

### III. BUILDING REQUIREMENTS (INITIAL CONSTRUCTION) -

The Declarant shall maintain a list of "Preferred Builders." These builders have been approved to build in The Woods of St. Clare. All other builders must be approved by the Architectural Control Committee to build in the subdivision. The Declarant makes no representation or warranty regarding the work or construction of any improvements erected for an Owner by a Preferred Builder or that a builder on the Preferred Builder list builds a better quality house or other building than any other builder not on the Preferred Builder list. Each Owner by purchasing a Lot RELEASES and Holds HARMLESS Declarant and its owners and agents from and against any claims relating to the construction of any builder in the Subdivision including any Preferred Builder. The purpose of the Preferred Builder list is for the benefit of the Declarant to allow Declarant some choice as to who builds on the Property and to maintain some additional uniformity in style of homes in the Subdivision.

Any builder, architect or designer, prior to preparing any plans must consult with the City of Marion regarding Code Compliance and all plans and residences must conform to the City's requirements. At this time the City is requiring compliance with the International Residential Building Code (IRC), 2009 or more current version, as may be adopted by the City.

Prior to the beginning of construction on any Lot, the owner shall present to the Architectural Control Committee (as herein defined) the site plan and all other construction plans and specifications (including construction materials to be used) for said Committee's inspection and approval or disapproval. The approval by Committee is only preliminary since all plans must be submitted to the City of Marion after the preliminary approval by the Architectural Control Committee for a building permit to be issued by the City. Any modifications to construction plans and specifications made by the City must be incorporated into the plans and specs and resubmitted to the ACC for final written approval. All Construction shall be done solely in accordance with the site plan and other plans and specifications as approved by the Architectural Control Committee ("ACC") and the City. No more than fifteen (15) inches of slab shall be visible from any angle. Construction of a Dwelling must begin on each Lot within twenty four (24) months from the date of the conveyance of the Lot by Declarant. The owner or builder must, if requested by Declarant or Architectural Control Committee, place portable toilets and a trash dumpster at a Lot on the day construction commences. In the event the owner does not timely begin construction of the Dwelling within 24 months of the conveyance of the Lot by Declarant, the owner shall become responsible for and shall pay to Declarant, its successors or assigns, upon demand, a sum equal to any and all special assessments, penalties, non-user fees or other similar fees charged by Guadalupe Valley

Electric Cooperative or any other utility company to Declarant, its successors or assigns, for owners failure to utilize such utilities multiplied by a factor of 1.1. In the event the Dwelling fails to qualify for the Guadalupe Valley Electric Cooperative's all-electric (G-2) rate, the owner shall become responsible for and shall pay to the Declarant, upon demand, a sum equal to any and all charges or costs incurred by Declarant from GVEC resulting from such failure multiplied by a factor of 1.1. Construction must be completed within eight (8) months after construction has been commenced. No residence shall be occupied until 100% of the exterior of the house is complete and a certificate of occupancy has been issued by the City of Marion. In the event construction commencement and/or completion deadlines have not been met, the owner of the Lot shall, at the option of the Declarant, its successors or assigns, sell and re-convey the Lot to Declarant, its successors or assigns, for the same price originally paid to Declarant, its successors or assigns, for the Lot.

Each contractor building on a Lot must have storm water controls in place during construction, including a silt control fence, until grass cover is established. Each person building a residence on a Lot must obtain and follow the guidelines of the City regarding storm water control during construction.

Builders may not use any Lot or other portion of the Property as a concrete pour wash out area, after concrete has been poured on a Lot.

#### IV. BUILDING REQUIREMENTS (RENOVATIONS) -

Prior to the beginning of any construction for a renovation, remodeling, or other such construction on a Lot, the owner shall present to the Architectural Control Committee the site plan and all other construction plans and specifications (including construction materials to be used) for said Committees inspection and approval or disapproval. The construction or remodeling, renovation or other similar construction shall be done solely in accordance with the site plans and other plans and specifications as approved by the Architectural Control Committee. Construction must be completed within eight (8) months after the receipt of approval from the Architectural Control Committee unless the Architectural Control Committee shall extend the time for completion in writing. It is the responsibility of the Owner to verify if permits are required for said work from the City of Marion.

#### V. ARCHITECTURAL CONTROL -

1. Declarant shall designate and appoint an Architectural Control Committee consisting of not less than one (1) person. Declarant shall appoint the Architectural Control Committee so long as the Declarant owns at least one Lot in the Subdivision or any real property annexed to be subject to this Declaration or subject to the Association as provided herein. The Committee shall serve at the pleasure of the Declarant until such time as Declarant may terminate this right or transfer this right to another entity or transfer the right to appoint an Architectural Control Committee to the Association as may be organized pursuant to these restrictions. At such time as Declarant no longer owns any property subject to this Declaration or annexed into this Subdivision or subject to the Association or in the event the Declarant shall cease, in its sole discretion to serve as the Architectural Control Committee, the Architectural Control Committee shall consist of at least three (3) persons, who shall be appointed by and serve at the pleasure of the Association. The Architectural Control Committee may designate a member of the committee to act for it in any and all

matters for any period of time. In the event of such designation, such member shall have full authority to act on behalf of the Architectural Control Committee.

2. In the event of the death or resignation of any member of the Committee, the remaining member(s) may act without filling the vacancy or shall have full authority to designate a successor or successors. In event of the death or resignation of all the members of the Committee, Declarant or, in the event Declarant no longer has the right to appoint the Architectural Control Committee according to V.I. above, the Association as herein described, may appoint the needed successors to the Committee.
3. The goal of the Committee is to encourage the construction of buildings of architectural design, quality, and proper size compatible with Declarant's conceptual plan for the Subdivision as such conceptual plan may evolve. Buildings should be planned and designed with particular attention to the design and aesthetic appearance of the exterior and the use of such material as will, in the judgment of the Committee, create an attractive and harmonious blend with existing and proposed homes and the natural surroundings. The Committee may disapprove the construction or design of a home on purely aesthetic grounds where, in its sole judgment, which judgment shall be final and not subject to review by any third party, such disapproval is required to protect the continuity of design or Declarant's conceptual plan for the Subdivision as same may evolve. Prior judgments regarding matters of design or aesthetics shall not be deemed binding upon the Architectural Control Committee if the Committee feels in its sole discretion that the repetition of such matters will have an adverse effect on the subdivision.
4. No building, fence, wall or other structure, including but not limited to houses, garages, storage buildings, greenhouses or other accessory building, shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to, or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to, and approved in writing by the Architectural Control Committee as to the harmony of external design and location in relation to surrounding structures and natural surroundings and/or the Declarant's conceptual plan for the Subdivision.
5. In the event that any plans and specifications are submitted to the Architectural Control Committee as provided herein, and such Committee shall fail either to approve or reject such plans and specifications for a period of thirty (30) days following such submission, it shall be conclusively presumed that the Architectural Control Committee has disapproved the plans and specifications. The Architectural Control Committee shall have authority to grant variances in the restrictions as the Committee in its discretion, deems reasonable and appropriate. Such variances must be in writing. The granting of such variances shall in no event be considered or deemed to constitute a waiver or abandonment of the respective restriction and shall not prevent enforcement of the restriction for violations for which no variance has been granted.
6. Upon approval of final submittals, a building permit will be issued by the Architectural Control Committee and construction may begin. All such permits must be prominently displayed at the job site and covered with clear plastic to protect weathering.

7. Neither the Declarant, the Association, the Architectural Control Committee nor any of the members of such Committee or owners of the Declarant shall be liable for damages or otherwise to anyone submitting plans and specifications for approval or to any Owner of land affected by this Declaration by reason of mistake or judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications. The Association shall hold harmless and indemnify the Architectural Control Committee and each of its members from and against any claim (including, without limitation, claims for money, damages or injunctive relief and any judgments awarded for same) that may be asserted against the Architectural Control Committee or any member thereof based in whole or part on the duties and responsibilities delegated to the Architectural Control Committee by this Declaration. THIS INDEMNITY PROVISION SHALL APPLY WHETHER OR NOT SUCH CLAIM IS BASED IN WHOLE OR PART ON A NEGLIGENT ACT OR OMISSION OF THE ARCHITECTURAL CONTROL COMMITTEE OR ANY OF ITS MEMBERS. This indemnity shall further apply to any costs or expenses including, without limitation, attorney's fees that the Architectural Control Committee or any of its members may incur relating to a matter indemnified against.

#### VI. SIZE OF DWELLINGS -

In no event shall any residence be erected on any Lot without heated living area of at least one thousand eight hundred (1,800) square feet, exclusive of porches, garages, or other appendages, unless Declarant shall have waived in writing this minimum square footage requirement, in its sole discretion, which shall not be subject to review by any other person or party. Declarant shall have the right to be arbitrary and capricious in exercising its rights in this paragraph. Notwithstanding this provision, however, in no event may Declarant approve any residence with less than 1700 square feet of heated living area, exclusive of porches, garages or other appendages, to be erected.

#### VII. BUILDING LINES -

No front of any building or other roofed structures shall be located on any Lot nearer than eighty (80) feet from the front of the property line nor closer than fifteen (15) feet from the side property lines. No building or any roofed structure shall be located nearer than twenty (20) feet from any rear Lot line. In the event of any conflict or discrepancy between the setbacks set out herein and those noted or described on the Subdivision Plat, the setbacks in this declaration shall control.

#### VIII. BUILDING MATERIALS -

A minimum of ninety percent (90%) of the outer walls, exclusive of windows, of all residences, buildings and garages must be constructed of brick, brick veneer, rock or stucco subject to the discretion of the ACC for garages and storage buildings granted with prior approval according to Article XVII. The Architectural Control Committee shall have final approval of which portions of a building may be of some material other than brick, brick veneer, rock or stucco and what materials constitute brick, brick veneers, rock or stucco. For example, the Architectural Control Committee may (but shall not have to) require that any portion of a residence that is not brick, rock or stucco must be located on the side or rear of a residence. The builder shall include his proposal for exterior wall material to the Architectural Control Committee when he submits the proposed plans and specifications to the committee for approval. Notwithstanding the foregoing, the Architectural



Control Committee is empowered to waive this requirement in its sole discretion. All foundations of Dwellings must be of concrete unless waived by the Architectural Control Committee.

IX. ROOFS -

Roof pitch shall be a minimum of 6 on 12. All roofs must be fire retardant and consist of a minimum 25-year composition shingles or standing seam metal roofs, subject to approval of the Architectural Control Committee. All other types of roofing must be approved by the Architectural Control Committee. Other roofing materials may be allowed of the type that comply with all of the provisions of Section 202.011 of the Texas Property Code.

X. ALL ELECTRIC HOMES -

Each residence located on a Lot must be an all-electric home and must use electricity rather than propane or natural gas for its heating, air-conditioning, hot water, and major appliances.

XI. COMPLIANCE WITH DECLARANT'S AGREEMENTS WITH GUADALUPE VALLEY ELECTRIC COOPERATIVE, INC. -

1. Each residence must comply with the Declarant's agreements with Guadalupe Valley Electric Cooperative, Inc. (GVEC).
2. Each residence constructed on any Lot must qualify for GVEC's all-electric (G-2) rate, which shall include, but not be limited to, adequate thermal insulation, electric range, properly sized electric central heat pump unit, and permanently installed 40 gallon or larger electric water heater. Each owner agrees to allow GVEC to install a load control switch on each residential water heater and central heat pump unit.
3. Each residence must have installed at least a 200 ampere meter base and main disconnect switch assembly with raceway approved by GVEC from the bottom of the meter base to a point of approximately two (2) feet below the ground line to include a 90 degree ell. Grounding must be provided in accordance with the National Electric Code. The meter base and main disconnect switch assembly must be located on the side of each residence built nearest to the pad mounted transformer or secondary pedestal serving the structure, and further must be located as close to the front of the house as practical.
4. Each owner, by purchasing a Lot, consents to allow GVEC access to the meter location on a residence from the front yard of the residence with the meter location not being located within a fenced area.

XII. FENCES, TREES, AND SHRUBS -

1. Plans for fencing must be submitted to the Architectural Control Committee for approval or disapproval, prior to the commencement of erection of the fence. All rear fences on Lots 41-50 must be of wooden pickets 6 feet in height. The face of these fences must face to the rear or East of said lots so the bracing faces the interior of said Lots. The bracing for the fences on Lots in the Subdivision must face to the interior of the Lot. The boards of the fence on Lots 41-50 must face outward. The exterior face of these fences must be a consistent "brown" color that will be suited for said wood. The specific brand and color of

the fencing will be provided by the ACC at the time of the submittal of the plans. Outside fences represent the external view of the Subdivision and must be kept in good condition (straight, with uniform height and color) and repair. It will be the Owners financial obligation to keep their fences in good condition and repair. It shall be the Property Owners Association's responsibility to ensure compliance. No fences along the portion of a Lot adjacent to a street may be of chain link or vinyl but must be predominately made of wood. Fences shall not exceed 6 feet in height. No fence shall be allowed nearer to the front property line than the front of the residence structure on the Lot, and no fence shall enclose or encompass the utility meters for the residence.

2. No shrub, tree, fence or wall that obstructs sight lines at elevations between two (2) feet and six (6) feet above the roadway shall be constructed, planted or permitted to remain on any Lot corner within the triangular area formed by the edge of the pavement of such intersecting streets, or the extensions thereof, and of a line connecting this edge at points twenty-five (25) feet back from their intersection. The same sight line limitation shall apply on any Lot within ten (10) feet of the intersection of a street pavement edge and the edge of a driveway. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of more than six (6) feet above ground level.

Notwithstanding the above, each Live Oak Tree Lot, as defined above, must have planted on it two Live Oak trees exactly 30 feet from the front property line of said lot. All other vegetation, including shrubs or trees planted within the first 50 feet from the front property line of any Lot must be approved by the ACC.

3. The following are referred to herein as the Wooded Lots -- Lots 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44. These lots have trees that the Declarant wishes to protect to the extent reasonably possible. All site plans on any Wooded Lot must be developed with the view of retaining all trees on said lots as is reasonably possible. The Site Plan showing the trees and location of any building must be submitted to the Architectural Control Committee and approved by same before any building will be permitted on a Wooded Lot. Additionally, before a tree on a Wooded Lot may be cut or removed there must be a meeting on the Lot between the Architectural Control Committee, owner, and/or the Contractor. No tree on a Wooded Lot may be cut down without compliance with the provisions of this paragraph.

### XIII. EASEMENTS -

1. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Subdivision Plat and/or as provided by instruments now or to be hereafter recorded. The areas designated utility easements on the Subdivision Plat may also be used as locations for cable television facilities. Within these easements, if any, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities; or in the case of drainage easements, which may change the direction or flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all Improvements in such easement shall be maintained continuously by the Owner of the Lot. Lots 29, 34, 35, 44, 45, 50 and the 17.695 acre tract have areas designated as Drainage Areas that are to be maintained by the City of Marion or as areas to be maintained by the Association, if the City does not maintain. The owners of Lots 29, 34, 35, 44, 45, 50 and the 17.695 acre tract shall have the responsibility to mow their grass in the area designated Drainage Area and

keep it an appropriate height for a residential subdivision. Neither Declarant nor any utility company using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees, or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements, except as may be required by state, county or municipal statutes, ordinances, rules or regulations or by the Association or by custom and practice of such utility company. The Declarant and the Association shall have the right but not the obligation to maintain and keep clear of all obstructions all drainage easements and sight clearance easements or restrictions, shown on the Subdivision Plat or otherwise placed on any Lot in the Subdivision, except that the Association shall have the obligation to maintain the drainage easements on Lots 29, 34, 35, 44, 45, 50 and the 17.695 acre tract as provided above. Neither Declarant nor the Association shall be liable for any loss or damage to person or property by reason of any such drainage or sight clearance easement not being properly maintained or kept clear of obstructions.

2. No owner of any Lot may perform or cause to be performed any act which would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate or impede the natural flow of water over and across such drainage easements. No owner may:
  - a. Alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easements, provided, however, that Lot owners must plant grasses in any drainage easement that does not have existing grasses and must maintain and mow such easement grasses to encourage water flow and prevent erosion; or
  - b. Alter, change or modify the existing configuration of the drainage easements; or fill, excavate or terrace such easements or remove trees or other vegetation therefrom; or
  - c. Construct, erect or install a fence or other structure of any type or nature within or upon such drainage easements; provided, however, fences may be permitted in the event proper openings are incorporated therein to accommodate the natural flow of water over said easements; or
  - d. Permit storage, either temporary or permanent, of any type upon or within such drainage easements; or
  - e. Place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis.

The failure of any Owner to comply with the provisions of this Article or any other provision of this Declaration shall in no event be deemed or construed to impose liability of any nature on the Architectural Control Committee and/or Declarant and/or the Association, and such Committee, Declarant and/or Association shall not be charged with any affirmative duty to police, control or enforce such provisions. The drainage easements provided for in this Article shall in no way affect any other recorded easement in the subdivision.

3. All access to lots shall be exclusively to and from the interior road system of the subdivision.

4. Neither Declarant nor the Architectural Control Committee nor the Association shall be responsible for or liable to any person for any act or omission of any utility service provider including, without limitation, electrical, water, garbage, telephone, cable television, etc.

#### XIV. TEMPORARY STRUCTURES -

No building previously constructed elsewhere including, but not limited to, manufactured housing or mobile homes shall be moved on any Lot in this subdivision. No manufactured housing, mobile home, recreational vehicle, camper, tent, shack, garage, basement, barn, or other out-building shall be used or maintained on any Lot, street or easement within the subdivision at any time, temporarily or permanently, as a residence.

#### XV. GARAGES AND CARPORTS -

Each Dwelling constructed in the subdivision shall have a garage suitable for parking a minimum of two standard-sized automobiles and shall conform in design and materials with the main structure. Carports are not allowed. The garage must be a side entry garage and face the side of the house and not the front.

#### XVI. UTILITIES SERVICE CONNECTIONS -

Utility service connections to any and all area utility and telephone lines must be installed below ground from the structure being served to the utility line connection. Electrical utility line must be of single phase.

#### XVII. STORAGE BUILDINGS -

A storage building, workshop, garage, or similar type building may be built independently of the house. Storage buildings shall be no larger than 36 feet in width and 48 feet in length with a height not to exceed the height of the main Dwelling house on the Lot. No storage building may be nearer to the street than the rear building line of the main Dwelling house. The bottom four feet of the front of the building must be of the same material as the residence and the rest of the building may be of different material but must be of good quality. The storage building may not be taller than the residence located on the Lot. The Architectural Control Committee shall be given wide latitude in granting variances regarding the dimensions of and materials used for any storage building. Notwithstanding the above in this Article XVII all storage buildings are subject to approval of the City Planning and Zoning Department and permits from the City for all such building are required. Outbuildings on the Wooded Lots may be of a different material and are not subject to the rock, brick or stucco requirement, with prior approval of the Architectural Control Committee and provided they are not visible from other lots because of being screened by trees on such Wooded Lot.

#### XVIII. MAIL BOXES -

All mailboxes, if any, shall be constructed at the time the main residence is constructed and shall be of brick or other material to harmonize with the main residence. The Lot Owner must consult with the United States Post Office and locate the mail box in the location required by said postal service.

XIX. DRIVEWAYS, DRIVEWAY PIPE and DRAINAGE -

The owner of each Lot is solely responsible for all expenses for building a driveway and for driveway drainage pipe. Driveways shall be constructed of reinforced concrete or asphalt and not less than 12 feet wide and no less than 4 inches thick. No gravel or dirt driveways are permitted. If a driveway requires a culvert pipe in the area between the asphalt of the public street and the Lot's line (bar ditch area), said pipe must be installed at the expense of the Lot owner when construction of a Dwelling commences and the culvert pipe must be encased in concrete with a 3 to 1 slope. No head walls will be allowed. The City of Marion in addition to the ACC must approve driveway drainage improvements. There will be a culvert required from the paved portion of the road to the front property line of the Lot.

XX. PETS -

No animals, livestock, pigs, swine, hogs, insects or reptiles of any kind shall be kept, bred or raised on any Lot, EXCEPT rabbits, chickens or similar type bird, and goats, sheep or lamb per one acre of total land with the following requirements:

- (1) Rabbits - No more than 6 total rabbits,
- (2) Chickens - no more than 10 per acre,
- (3) Goats, Sheep or Lamb - No more than 2 total, provided you possess at least one acre of land and they are for a Youth organization Project and the City Council of Marion has approved such animals.

Dogs and cats may be kept for pet purposes. There may be a total of no more than three of any combination of adult dogs and cats allowed plus any baby dogs and cats. All puppies and kittens that would increase the number of allowed pets beyond three must be removed from the Subdivision as soon as reasonably practical but in no less than three months after their birth. All animals shall be kept in accordance with all local laws and ordinances, and all animals shall be restrained from going onto lots other than those of the animals owner. No dogs or cats may be chained. In addition to the above, all City rules and ordinances regarding pets must be complied with, including Animal Ordinance No. 14-2009, as same may be amended from time to time; provided this sentence shall not increase the number of animals that may be kept on a Lot.

The portion of Lot 39 north of the Pipelines shown on the Subdivision Plat and designated Exxon Pipe Line Easement and Koch Pipe Line Easement shall not be governed by the restrictions for pets and other animals set forth in this paragraph but shall be governed by the restrictions for animals on the 17.695 acre tract set forth in Article XLIV below. It is understood that said north portion of Lot 39 may have more animals than other Lots in the Subdivision so long as they comply with the provisions for animals relating to the 17.695 acre tract.

XXI. SUPPLY TANKS AND EARTH PONDS -

No portable water supply tank shall be operated or maintained on any Lot. No portable fuel tank or similar storage facility shall be installed, operated or maintained on any Lot. No earth ponds shall be built except on that portion of Lot 39 North of the pipelines (and the 17.695 acres, which are not subject to this provision anyway). Swimming pools are allowed but a building permit for same must be obtained prior to construction of same and the construction of the pool will be inspected by the

City. No swimming pool shall be built or installed except in the back yard of a Lot, no nearer to the front property line than the rear line of the residential structure located on a Lot.

XXII. WATER WELLS -

No water wells may be dug on any Lot. All water must be supplied by Green Valley Special Utility District.

XXIII. OIL AND MINING OPERATIONS -

Declarant reserves unto itself Surface rights only. To the extent Declarant may lawfully restrict the use of the surface to develop minerals in the Subdivision, no derrick or other structure designed for use in boring for oil, natural gas or other minerals shall be erected, maintained or permitted upon any Lot. Any production of any minerals shall be by pooling with other land, by slant wells, or by other means not inconsistent with this paragraph. All other mineral rights that Declarant may own shall transfer from Declarant to owner at closing when transfer of real property takes place.

XXIV. GARBAGE AND REFUSE -

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste must be kept in normal acceptable sanitary containers. All other equipment for the storage or disposal of waste material shall be kept in a clean and sanitary condition. The City of Marion will provide the waste and garbage disposal in the Subdivision.

XXV. CONSTRUCTION DEBRIS -

The builder shall, if requested by the Declarant, deposit the sum of \$500.00 with the Declarant to insure that the Lot and adjacent areas are properly cleaned of debris from construction site during construction. If the Lot and adjacent areas are properly cleaned the deposit will be refunded to the builder following construction completion. If the Lot and adjacent areas are not properly cleaned of all debris, all or part of the deposit will be used to clean the Lot and the balance, if any, will be refunded to the builder. All construction materials must be removed within ninety (90) days of occupancy of a completed residence.

XXVI. SIGNS -

No signs or advertising device may be displayed on any Lot except a "For Sale" sign, when a Lot is on the market to be sold. There may be one For Sale sign per Lot. Such sign must be rectangular in shape which shall be 18 inches by 24 inches in size. A "garage sale" sign may be permitted for temporary event as long as all rules with City of Marion are followed.

XXVII. SEWAGE -

Every structure shall be served by a septic tank system or other system approved by Guadalupe County, designed and submitted by a licensed engineer or a licensed sanitarian and built in accordance with the requirements of Guadalupe County sanitation standards and all other applicable rules, regulations and/or standards.

#### XXVIII. SANITARY REGULATIONS -

No outside toilets will be permitted, and no installation of any kind of disposal of sewage shall be allowed which would result in raw, treated or untreated sewage or septic tank drainage on or into the surface, alleys, ditches or water bodies. No septic tank or sewage disposal system may be installed without prior approval of the proper governmental agencies and authorities. If an aerobic water system is installed it must be approved by the appropriate governmental authorities in advance of installation. All State, County, and municipal health and sanitation statutes, rules, ordinances and regulations must be complied with at all times.

#### XXIX. ANTENNAS AND WINDMILLS -

No stand-alone television or radio tower shall be allowed on any Lot. Decorative windmills less than eight (8) feet in height may be on a Lot. Antennae on a roof shall be no higher than four (4) feet above the contiguous roof ridge line and shall not be located on the front part of a Dwelling. Lot owners must use reasonable efforts to screen satellite dishes, solar panels, discs, etc. from view of adjacent lots or streets.

#### XXX. TRASH AND GARBAGE -

No trash, garbage, construction debris, or other refuse may be dumped, disposed of, burned or allowed to remain upon any Lot vacant or otherwise.

#### XXXI. VEHICLES, BOATS, ABANDONED VEHICLES OR INOPERATIVE VEHICLES, ETC. -

No abandoned vehicle, stripped-down vehicle, junked vehicle or wrecked vehicle may be located on any Lot outside a garage. Any vehicle without a current license plate or inspection permit will be deemed a junked vehicle under these restrictions. Any vehicle without a current license plate and registration will be deemed abandoned. Trailers, boats, recreational vehicles and commercial vehicles must be placed behind the residence located on a Lot. No object commonly known or referred to as a "camper", "truck camper", or "slide in camper" may be located on any Lot except behind the residence so that it is not visible from the streets in the subdivision. No vehicle service or repair may be conducted on any Lot or property within the subdivision, including but not limited to, the streets and other access ways in the subdivision. No commercial vehicles greater than 1 ton, other than those on routine delivery or being used in temporary connection with the installation or repair of a residence are permitted to park in the subdivision. The Declarant and the Association, subject to approval of Declarant are each empowered to establish additional or different rules and regulations relating to the parking and storage of vehicles, equipment, and other property on Lots and streets as it may from time to time deem necessary and such rules and regulations shall, when promulgated, be in all respects binding on and enforceable against all Owners.

#### XXXII. NUISANCES -

No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or material be stored or placed thereon, which may be or may become an annoyance or nuisance to the neighborhood, or which is prohibited by law.

XXXIII. FIREARMS -

The discharge of any firearm within the subdivision is strictly prohibited and each Owner shall ensure that his guests and family members do not violate such prohibition. Additionally, the use of any bow and arrow, or other launching or catapulting device is strictly prohibited.

XXXIV. CITY, STATE, COUNTY OR OTHER GOVERNMENTAL LAWS -

No owner shall allow or engage in any activity on any Lot which is in violation of any City, state, county or other governmental laws or regulations. In the event of conflict between the provisions in this Declaration and any City ordinance or law or regulation of any governmental authority, the more restrictive provision shall control, unless prohibited by a governmental law, rule or regulation.

XXXV. STREET LIGHTS -

Declarant shall install street lights in the Subdivision. It is anticipated that the City of Marion will pay for the monthly electricity costs of the street lights; however, if that should ever cease to be the case, the costs for such lighting shall be paid for by the Association.

XXXVI. MISCELLANEOUS RESTRICTIONS -

No exterior security lights may be installed on a Lot without the approval of the ACC. No exterior light of any sort shall be installed or maintained on any Lot where the light source is offensive or a nuisance to neighboring property, except reasonable voltage landscape lighting and street lights which may be installed by Declarant or the Association. No exterior speakers, horns, whistles, bells or other annoying devices are permitted, except for security for the main Dwelling house. No clotheslines may be used or erected unless to rear of Lot and behind a privacy fence.

XXXVII. CASUALTY -

If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the owner thereof, with all due diligence, to rebuild, repair or reconstruct such residence in a manner which will substantially restore it to its original condition prior to such destruction. Reconstruction, if any, shall be undertaken within three (3) months after the damage occurs, and shall be completed within six (6) months after the damage occurs. In the event that the owner shall determine not to rebuild or repair such damaged structure, the owner shall clean and clear the Lot within three (3) months of the loss. If the owner does not clear or clean the Lot, the Declarant or the Association may cause the Lot to be cleared and cleaned, including removal and disposal of debris and materials. The cost of such clearing and cleaning may be assessed against the property in the same manner and with the same force and effect as the maintenance assessments prescribed in this declaration.

XXXIII. EXTERIOR MAINTENANCE -

All improvements and properties shall be kept and maintained in a neat and orderly appearance, to the degree necessary to be consistent with the intent and purpose of these restrictions as a whole; and shall not be allowed or caused to deteriorate in appearance or structural soundness. If an owner of any Lot fails to maintain the premises in a neat and orderly manner, including the mowing of the grasses on the Lot, the Declarant or the Association shall have the right, through its agents and



employees, to enter the Lot in order to repair, maintain, and restore the Lot, including landscaping, and the exterior of any buildings and other improvements located on the Lot, all at the expense of the owner<sup>1</sup>. Within 45 days of occupying a residence the owner of the Lot must plant improved grasses in the majority of the front yard, including St. Augustine or Bermuda. In lieu of planting improved grasses in the front yard, the Owner may submit a landscape plan to the ACC for approval, which must provide for a uniform, visually appealing landscape and may include, xeriscaping the front yard. The ACC shall have absolute discretion to reject any plan for any or no reason and insist on the planting of improved grasses. Before doing any front yard landscape in lieu of improved grasses, the Owner must obtain approval of the ACC. If the Owner landscapes the front yard without the approval of the ACC with anything other than improved grasses, the Owner will be responsible for removing said landscaping and replacing it with grasses as provided above. Any landscaping plan will be considered not approved unless the ACC's approval is obtained in writing prior to 45 days of the residence on a Lot being occupied for the first time.

#### XXXIX. ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS -

1. Membership: Every person or entity who is a record Owner of a Lot which is a part of the Property, and which is subject to this Declaration, shall hold a membership in the Association. The foregoing does not include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation or those who own mineral rights in the property but do not own the surface rights of a Lot in the Subdivision. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. Regardless of the number of persons who may own a Lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Lot. Additionally, after the expiration of the Declarant Control Period, the Directors of the Association must be Members of the Association. Ownership of the Lots shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association. Membership is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's designated representative.
2. Voting Rights: There shall be two classes of membership entitled to voting rights in the Association and they shall be as follows:
  - (a) Class A: All members in the Association, other than Declarant, shall be considered Class A Members, and for each Lot owned shall be entitled to one vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors. When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be considered Class A Members, however, for that particular Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine by majority vote.
  - (b) Class B: Class B Members shall be Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots in the Subdivision.

3. Voting. Class "A" Members shall be entitled to one (1) vote for each Lot of which they are record Owner. Class "B" Members shall be entitled to ten (10) votes per Lot owned. The Class "B" membership shall terminate and be converted to Class "A" on or before the 120<sup>th</sup> day after the date seventy-five percent (75%) of the Lots that may be made subject to this Declaration (including such lots as may be annexed to be part of this Subdivision or Declaration as provided below) are conveyed to Class "A" Members.
4. Appointment of Board of Directors. During the Declarant Control Period, the Class "B" Member is entitled to appoint and remove the members of the Board of Directors and the officers of the Association. Notwithstanding, at least one-third (1/3) of the members of the Board shall be elected by the Owners other than the Declarant not later than the tenth (10th) anniversary after this Declaration was recorded in the Official Public Records of Real Property of Guadalupe County, Texas.
5. Nonprofit Corporation. The Woods of St. Clare Property Owners Association, Inc., a nonprofit corporation, has been organized and it shall be governed by Chapter 22 of the Business Organizations Code, the Certificate of Formation, and Bylaws of the Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.
6. Bylaws. The Association has adopted Bylaws to govern the organization or operation of the Subdivision and the use and enjoyment of the Lots and Common Area; provided that the same are not in conflict with the terms and provisions in this Declaration.

**XL. COVENANT FOR MAINTENANCE ASSESSMENTS AND EASEMENT MAINTENANCE**

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 covenant and agree to pay to the Association an annual Maintenance Charge, and any other assessments or charges hereby levied.
2. Maintenance Charge. The Maintenance Charge shall be used to create the Maintenance Fund, which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot to the Association. The Maintenance Charge for the year of purchase shall be prorated at closing and then shall be paid annually, in advance, on or before the first day of the first month of each calendar year. Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Maintenance Charge by the non-use of any Common Areas or by the abandonment of his or her Lot. The initial amount of the Regular Assessment applicable to each Lot will be \$40.00 per year due in advance, payable on January 1st of each year. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Declarant or the Board of Directors of the Association, subject to the provisions hereof. The Association, shall have the right at any time, to adjust the Regular Assessment from year to year as it deems proper to meet the

reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

3. **Special Assessment.** In addition to the Regular Assessment, the Association may upon the affirmative vote of two-thirds (2/3) of the Members of the Association at a meeting duly called for such purpose levy a Special Assessment in any year for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, including fixtures and personal property. Notwithstanding the foregoing, if an emergency exists such that the Board of Directors determines that the repair of a capital improvement upon the Common Area is necessary to eliminate or reduce the risk of injury to third parties and there is not enough money held by the Association, in reserve or otherwise, to repair the capital improvement to reduce or eliminate this risk, the Board of Directors may levy a Special Assessment in an amount sufficient to repair the capital improvement to reduce or eliminate such risk without the affirmative vote of two-thirds (2/3) of the Members of the Association.
4. **Capital Budget and Contribution.** The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to meet the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and general assessment. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.
5. **Commencement Date of Annual Assessments.** The Association shall levy the first annual Regular Assessment provided for herein, based on the operating budget for the remainder of the initial calendar year, on the first day of the month following the initial conveyance of the Common Area to the Association. Thereafter the Regular Assessments shall continue from calendar year to calendar year.
6. **Common Area Exempt.** All Common Areas and all portions of the Subdivision owned or otherwise dedicated to any political subdivision, shall be exempt from the assessments and liens created herein.
7. **Transfer and Other Fees.** A transfer fee of may be charged by the Association or its Managing Agent to reflect changes of ownership, tenancy or occupancy on the records of the Association. The right and authority to set the amount of and receive payment of charges for statements of Maintenance Charges, Regular Assessments, Special Assessments or other indebtedness, resale certificates, and similar responses and transfer fees as aforesaid is deemed to be assigned by virtue of contracting with a Managing Agent to provide the associated functions and services for so long as the applicable contract remains in effect, unless the applicable contract expressly provides otherwise.

#### XLI. COLLECTION OF MAINTENANCE CHARGES

1. **Section 7.01. Creation of Lien and Personal Obligation.** In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, each Owner

of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot, which may be foreclosed judicially or by Expedited Foreclosure Proceedings, pursuant to the provisions of Section 209.0092 of the Act and Texas Rules of Civil Procedure Rules 735 and 736 (and any successor statutes); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. Expedited Foreclosure Proceedings are not required under this section if the Owner of the Lot to be foreclosed agrees in writing to waive said Expedited Foreclosure Proceedings at the time the foreclosure is sought. A waiver under this section may not be required as a condition of the transfer of title to a Lot.

2. Prerequisites to Foreclosure. Prior to referring an Owner's account to a collection agent, the Association shall provide written notice, by certified mail, return receipt requested, that specifies each delinquent amount and the total amount of the payment required to make the account current, describes the options the Owner has to avoid the referral including payment plan options, and provides at least 30 days to cure the delinquency before further action is taken.
3. Collection Fees: Owners are not liable for costs that are dependent or contingent on amounts recovered, or under an agreement that does not require the Association to pay all fees for the action taken by the collection agent.
4. Contact: An agreement between the Association and a collection agent may not prohibit an Owner from contacting the Association's Board of Directors or Managing Agent regarding their delinquency.
5. Non-transferability of Lien. The Association shall not sell or transfer its interest in accounts receivable except for the purpose of collateral for a loan.
6. Alternative Payment Schedule. Pursuant to Section 209.062 of the Act, the Association hereby adopts reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments for delinquent regular or special assessments or any other amount owed without incurring additional penalties. The Association hereby adopts the following guidelines with regard to alternative payment schedules for delinquent assessments and other amounts owed by an Owner.
7. Term: The minimum term for a payment agreement shall be (3) three months and the maximum shall be (18) eighteen months from the date of the Owner's request for a payment plan. Subject to such minimum and maximum terms, the Association shall determine the appropriate term of the payment plan in its sole discretion.
8. Form: Any and all alternative payment agreements shall be in writing and signed by the Owner and a duly authorized member of the Board of the Association.
9. Additional Monetary Expense: So long as an Owner is not in default under the terms of the payment agreement, the Owner shall not incur additional monetary expenses; however, the Owner shall be responsible for all interest accruing during the term of the payment plan as well as reasonable costs associated with administering the payment plan or interest.

10. Application of Payments: If at the time the Association receives a payment, the Owner is not in default under an alternative payment agreement, the Association shall apply the payment to the owner's debt in the following order of priority: (a) any delinquent assessment; (b) any current assessment; (c) any attorney's fees or third party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure; any attorney's fees incurred by the Association that are not subject to subsection (c); (e) any fines assessed by the Association; and (f) any other amounts owed to the Association.
11. Default: If the Owner defaults under a payment plan agreement, the account may immediately be turned over to the Association's attorney for collection. The Association shall not be required to enter into an alternative payment agreement with an Owner who failed to honor the terms of a previous payment agreement during the two (2) years following the Owner's default under the previous alternative payment agreement. At the discretion of the Association, an Owner who failed to honor the terms of a previous payment agreement may be required to waive Expedited Foreclosure Proceedings under Section 209.0092 of the Act as a condition to an additional alternative payment agreement. If, at any time the Association receives a payment from an Owner who is in default of an alternative payment agreement, the Association is not required to apply the payment in the order of priority specified by Paragraph 4, Sections (a) through (f) above.

The Association may reduce or waive some or all of the charges addressed by this policy on an *ad hoc* basis without waiving the right to charge such fees on future requests.

12. Notice and Opportunity to Cure for Certain Other Lienholders. The Association may not foreclose its assessment lien by Expedited Foreclosure Proceedings or judicially unless it has: provided written notice by certified mail, return receipt requested, of the total amount of the delinquency to any other holder of a lien that is inferior or subordinate to the Association's lien and is evidenced by a deed of trust; and provided the recipient of the notice an opportunity to cure within sixty-one (61) days from the receipt of the notice.
13. Foreclosure Sale Prohibited in Certain Circumstances. The Association may not foreclose its assessment lien for debts consisting solely of fines or attorneys' fees associated with the fines assessed, or for copy charges under its Open Records Policy, pursuant to § 209.005 of the Act.
14. Assessment Lien Filing. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim of lien against the Lot of the delinquent Owner by recording a Notice of Lien setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, the legal description and street address of the Lot against which the lien is claimed and (e) the name of the Owner. The Notice of Lien shall be recorded in the Official Public Records of Real Property of Guadalupe County, Texas, and is a legal instrument affecting title to a Lot, and shall be prepared by the Association's attorney. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice of satisfaction of the delinquent assessment upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such instrument.

15. **Attorney's Fees.** All attorney's fees, costs, and other amounts collected from an Owner shall be deposited into an account maintained at a financial institution in the name of the Association or its Managing Agent. Only Board members or the Association's Managing Agent or employees of its Managing Agent may be signatories on the account. On written request from the Owner, the Association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the Association seeks reimbursement of fees and costs.
16. **Notice After Foreclosure Sale.** After the Association conducts a foreclosure sale of an Owner's Lot, the Association must send to the Owner and to each lienholder of record, not later than the thirtieth (30th) day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the Lot Owner and each lienholder of record of the right of the Lot owner and lienholder to redeem the property. The notice must be sent by certified mail, return receipt requested, to the Lot Owner's last known mailing address, as reflected in the records of the Association, the address of each holder of a lien on the Lot subject to foreclosure evidenced by the most recent deed of trust filed of record in the real property records of the county in which the property is located, and the address of each transferee or assignee of a deed of trust who has provided notice to the Association of such assignment or transfer. Notice provided by a transferee or assignee to the Association shall be in writing, shall contain the mailing address of the transferee or assignee, and shall be mailed by certified mail, return receipt requested, or United States mail with signature confirmation to the Association according to the mailing address of the Association pursuant to the most recent Management Certificate filed of record. If a recorded instrument does not include an address for the lienholder, the Association does not have a duty to notify the lienholder as provided by this section. For purposes of this section, the Lot Owner is deemed to have given approval for the Association to notify the lienholder. Not later than the thirtieth (30th) day after the date the Association sends the notice, the Association must record an affidavit in the Real Property Records, stating the date on which the notice was sent and containing a legal description of the Lot. Any person is entitled to rely conclusively on the information contained in the recorded affidavit. The notice requirements of this section also apply to the sale of an Owner's Lot by a sheriff or constable conducted as provided by a judgment obtained by the Association.
17. **Right of Redemption After Foreclosure.** The Owner of a Lot in the Subdivision or a lienholder of record may redeem the property from any purchaser at a sale foreclosing a the Association's assessment lien not later than the one hundred eightieth (180th) day after the date the Association mails written notice of the sale to the Owner and the lienholder under Sections 209.010 and 209.011 of the Act. A lienholder of record may not redeem the Lot as provided herein before ninety (90) days after the date the Association mails written notice of the sale to the Lot Owner and the lienholder under the Act, and only if the Lot Owner has not previously redeemed. A person who purchases a Lot at a sale foreclosing the Association's assessment lien may not transfer ownership of the Lot to a person other than a redeeming Lot Owner during the redemption period.
18. **Removal of Foreclosure Authority.** The right to foreclose the lien on real property for unpaid amounts due to the Association may be removed by a vote of at least sixty-seven percent (67%) of the total votes allocated in the Association. Owners holding at least ten percent (10%) of all voting interests may petition the Association and require a special meeting to be

called for the purposes of taking a vote for the purposes of this section. This section is required pursuant to §209.0093 of the Act, and should this provision be amended or repealed in any form, this section shall be deemed to be automatically amended or repealed in accordance therewith.

19. Right of Declarant to Set Rate. During the Development Period, Declarant is entitled to change the annual rate of a Regular or Special Assessment as set forth in this section without the joinder, vote, or consent of any Owner and without further formality than giving notice. Without limitation to the foregoing, the provisions regarding disapproval of an annual rate of Regular or Special Assessments is specifically declared inapplicable when the rate is set by Declarant under this section.
20. Payment of Assessments by Declarant during Development Period. Notwithstanding any provision herein to the contrary, so long as a Class "B" membership exists, Declarant shall pay twenty-five percent (25%) of the Regular Assessment Declarant would owe pursuant to this Declaration as a Class "A" Member; and, as long as Declarant is a Class "B" Member, Declarant, or any assigns of Declarant, shall pay any deficiency in the operating budget, less capital contributions and reserves for the Common Expenses for the Subdivision, which deficiency shall be reimbursed to Declarant by the Association as funds become available.
21. Assessments for Contractors. From the date a Contractor acquires a Lot until the earlier of (a) the date a residence is constructed thereon and sold to another person or (b) the date which is eighteen (18) months thereafter, each Contractor shall pay fifty percent (50%) of the Assessments such Contractor would owe pursuant to this Declaration as a Class "A" Member.

## XLII. DUTIES AND POWERS OF THE ASSOCIATION

1. General Duties and Powers of the Association. The Association has been formed to further the common interest of the Members. The Association, acting through the Board of Directors or through persons to whom the Board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the members, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness, desirability and safety of the Subdivision. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration and other dedicatory instruments.
2. Duty to Manage and Care for the Common Area. The Association shall manage, operate, care for, maintain and repair all Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members, except as may otherwise be provided herein or another dedicatory instrument. The duty to operate, manage and maintain the Common Areas shall include, but not be limited to the management, maintenance, repair and upkeep of the Subdivision and Common Areas.
3. Duty to Insure. The Association shall obtain such insurance as may be required by law, and as the Association shall deem necessary or desirable.

4. Duty to Prepare Annual Budget. The Association shall prepare annual budgets for the Association, which shall include a reserve fund for the maintenance of the Common Areas.
5. Duty to Levy and Collect the Maintenance Charge. The Association shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in this Declaration.
6. Duty to Provide Annual Review. The Association shall provide for an annual un-audited independent review of the accounts of the Association. Copies of the review shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying, pursuant to the Association's Open Records Policy, pursuant to § 209.005 of the Act.
7. Duties with Respect to Architectural Approvals. The Association shall perform functions to assist the Architectural Control Committee as elsewhere provided in this Declaration.
8. Duty to Prepare and Record Management Certificates. The Association shall record in the Official Public Records of Real Property of Guadalupe County a Management Certificate, signed by an officer of the Association, or the Managing Agent stating the name of the Subdivision, the name of the Association, the recording data of the Subdivision, the recording data of this Declaration, the name and mailing address of the Association, the name and mailing address of the Association's Managing Agent or designated representative, and other information the Association considers appropriate. The Association shall record an amended Management Certificate not later than the thirtieth (30th) day after the Association has a change in any information required herein. The Association, and its officers, Directors, employees, and agents are not subject to liability to any person for a delay in recording, or a failure to record the Management Certificate, unless the delay or failure is caused by gross negligence.
9. Power to Acquire Additional Property and Construct Improvements. The Association may acquire additional property (including leases) for the common benefit of Owners including improvements and personal property. The Association may construct improvements on such property and may demolish existing improvements.
10. Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce Rules and Regulations, and levy fines, as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the Common Areas, and the use of any other property, facilities or improvements owned or operated by the Association.

#### XLIII. ENFORCEMENT

1. Power to Enforce Restrictions Contained in Association Dedicatory Instruments. The Association or their designated agent shall have the power to enforce the provisions of this Declaration, Bylaws, Design Guidelines and the Rules and Regulations and shall take such action as the Board of Directors deems necessary or desirable to cause such compliance by each Owner. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of the dedicatory instruments by any one or more of the following means: (a) by entry upon any Lot within the Subdivision, after notice and hearing



(unless a bona fide emergency exists in which event this right of entry may be exercised without written or oral notice to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability in trespass or otherwise by the Association to the Owner thereof, for the purpose of enforcement; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach; (c) by exclusion, after notice and hearing, of any Owner from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (d) by levying and collecting, after notice and hearing, reimbursement to the Association for the costs incurred by the Association (including, but not limited to pre-litigation attorney's fees) in connection with the remedy of such breach; (e) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties established in advance in the Rules and Regulations of the Association, from any Member for breach of the dedicatory instruments; and/or (f) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Owner, plus attorney's fees incurred by the Association with respect to exercising such remedy.

2. **Duty to Provide Notice Before Enforcement Action.** Before the Association may suspend an Owner's right to use the Common Area, file a suit against an Owner other than a suit to collect a Maintenance Charge, or a Regular or Special Assessment or foreclose under the Association's lien, charge an Owner for property damage, or levy a fine for a violation of the Declaration, Bylaws, Design Guidelines, or Rules and Regulations, the Association or its Managing Agent must give written notice to the Owner by certified mail, return receipt requested. The notice must describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the Association from the Owner and inform the Owner that the Owner is entitled to a reasonable period to cure the violation and avoid the fine or suspension (unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months), may request a hearing under Section 209.007 of the Act on or before the thirtieth (30th) day after the date the Owner receives the notice, and may have special rights or relief related to the enforcement action under federal law, including the Service members Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the Owner is serving on active military duty.
3. **Hearing Before Board; Alternative Dispute Resolution.** If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the Board or before the Board of Directors if a committee is not appointed. If a hearing is to be held before a committee, the notice prescribed by Section 209.006 of the Act must state that the Owner has the right to appeal the committee's decision to the Board by written notice. The Association shall hold a hearing under this section not later than the thirtieth (30th) day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the tenth (10th) day before the date of the hearing. The Board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Association may make an audio recording of the meeting. The Association shall hold a hearing under this section not later than the thirtieth (30th) day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and

place of the hearing not later than the tenth (10th) day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Association may make an audio recording of the meeting and may use alternative dispute resolution services. The Owner's presence is not required to hold a hearing.

4. The Association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the Association relating to collecting amounts, including damages, due the Association for enforcing restrictions contained in its dedicatory instruments only if the Owner is provided a written notice that attorney's fees and costs will be charged to the Owner if the delinquency or violation continues after a date certain. An Owner is not liable for attorney's fees incurred by the Association relating to a matter described by the notice under this section if the attorney's fees are incurred before the conclusion of the hearing; or, if the Owner does not request a hearing, before the date by which the Owner must request a hearing. All attorney's fees, costs, and other amounts collected from an Owner shall be deposited into an account maintained at a financial institution in the name of the Association or its Managing Agent. Only Board members or the Association's Managing Agent or employees of its Managing Agent may be signatories on the account. On written request from the Owner, the Association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the Association seeks reimbursement of fees and costs.
5. Creation of the Lien and Personal Obligation for Assessments: Each Owner of any Lot which shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be expressed in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:
  - (a) Annual or monthly assessments or charges;
  - (b) Special assessments for capital improvements; and
  - (c) Any other sum to the extent they are specifically provided for elsewhere in this instrument.

Such assessments or charges are to be fixed, established and collected as hereinafter provided and as provided in the Bylaws of the Homeowner's Association. These charges and assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which such assessments or charges are made as hereafter provided.

6. Purpose of Assessments: The assessment levied by the Association shall be used for the purpose of paying the street light costs, maintaining any common areas, maintaining any improvements erected by the Declarant or the Association, and carrying out other duties or obligations relating to the subdivision as provided herein and as may hereafter be undertaken by the Association.
7. Effect of Nonpayment of Assessment; the Personal Obligation of the Owner; the Lien; and Remedies of Association:

8. (a) Effective as of, and from and after the filing and recordation of this Declaration, there shall exist a self-executing and continuing contract Payment and Performance Lien and equitable charge on each Lot to secure the full and timely payment of each and all assessments and all other charges and monetary amounts and performance obligations due hereunder. Such lien shall be at all times superior to any claim of homestead by or in any Owner. If any assessment, charge or fine or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment or charge shall (after the passage of any stated grace period) be considered delinquent and shall, together with any late charge and interest thereon at the rate of 12% per annum or the highest rate of interest per annum allowed by applicable law, if less, and costs of collection thereof, become a continuing debt secured by the self-executing Payment and Performance Lien on the Lot of the non-paying Owner/Member/Resident which shall bind such Lot in the hands of the Owner and Owner's heirs, executors, administrator, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The personal obligation of the then-existing Owner to pay such assessment, however, shall remain the Owner's personal obligation and shall not pass to Owner's successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for any assessment provided herein by non-use of the roads or abandonment of the Lot. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner;
- (b) The Association may also give written notification to the holder(s) of any mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment or charge;
- (c) If any assessment, charge or fine or part thereof is not paid when due, the Association shall have the right and option to impose a late charge (but only to the extent permitted by applicable law) to cover the additional administrative costs involved in handling the account and/or to reflect any time-price differential assessment schedule adopted by the Association. The unpaid amount of any such delinquent assessment, charge or fine shall bear interest from and after the date when due at the lesser of 12% per annum or the highest lawful rate of interest per annum until fully paid. The Association may, at its election, retain the services of an attorney to review, monitor and/or collect unpaid assessments, charges, fines and delinquent accounts, and there shall also be added to the amount of any unpaid assessment, charge, fine or any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association;

(d) The Association may, at its discretion but subject to all applicable debt collection statutes: (i) prepare and file a lien affidavit in the public records of Guadalupe County, Texas, which specifically identifies the unpaid assessments, charges or fines; and (ii) publish and post, within one or more locations within the Properties, a list of those individuals or entities who are delinquent until and unless the delinquency has been cured to the reasonable satisfaction of the Association. Each Owner consents to these procedures and authorizes the Board to undertake such measures for the general benefit of the Association;

(e) All agreements between any Owner and the Association and/or Declarant, whether now existing or hereafter arising and whether written or oral and whether implied or otherwise, are hereby expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to the Association and/or Declarant or for the payment or performance of any covenant or obligation contained herein or in any other document exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof or of such other document at the time performance of such provision shall be due, shall involve transcending the limit validly prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit allowed by law, and if from any such circumstance the Association and/or Declarant should ever receive an amount deemed interest by applicable law which shall exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the actual base assessment amount or principal amount owing hereunder and other indebtedness of the Owner to the Association and/or Declarant and not to the payment of interest. If such excessive interest exceeds the unpaid balance of the actual Annual Assessment hereof and such other indebtedness, the excess shall be refunded to Owner. All sums paid or agreed to be paid by any Owner for the use, forbearance or detention of any indebtedness to the Association and/or Declarant shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the interest charged, collected or received on account of such indebtedness is never more than the maximum amount permitted by applicable law. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between any Owner and the Association and/or Declarant.

The lien described within the preceding Section is and shall be a contract Payment and Performance Lien. Each Owner, for the purpose of better securing each and all monetary obligations described within these Covenants, and in consideration of the benefits received and to be received by virtue of the ownership of real estate within the Subdivision, has granted, sold and conveyed and by these covenants does grant, sell and convey unto the President of The Woods of St Clare Property Owners Association, Inc., his successors or assigns, as Trustee, such Owner's Lot. To have and to hold such Lot, together with the rights, privileges, and appurtenances thereto belonging unto the said Trustee, and to its substitutes or successors, forever. And each Owner does hereby bind himself and/or herself, their heirs, executors, administrators and assigns to warrant and forever defend the Lot unto the said Trustee, its substitutes or successors and assigns, forever, against the claim, or claims of all persons claiming or to claim the same or any part thereof.

This conveyance is made in trust to secure payment of each and all assessments and other obligations prescribed by these Covenants to and for the benefit of the Association as the Beneficiary. In the event of default in the payment of any obligation hereby secured, in accordance with the terms thereof, then and in such event, Beneficiary may, subject to the notice, cure and other provisions of Section 209, et. seq., of the Texas Property Code, pursue any and all lawful methods of enforcement of such obligations, including but not limited to declaring the entire indebtedness hereby secured with all interest accrued thereon, if any, and all other sums hereby secured, due and payable (subject, however, to the notice and cure provisions set forth in Section 51.002 of the Texas Property Code and any other provisions of the Texas Property Code that may apply), and in the event of default in the payment of said indebtedness when due or declared due, it shall thereupon, or at any time thereafter, be the duty of the Trustee, or its successor or substitute as hereinafter provided, at the request of Beneficiary (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the Lot then subject to the lien hereof, and mailing and filing notices as required by Section 51.002, Texas Property Code, as then amended (and any other provision of the Texas Property Code that may apply including Section 209, et. seq. of said code), and otherwise complying with that statute, the Trustee shall sell the Lot, then subject to the lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., to the highest bidder for cash, selling all of the Lot as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the Purchaser or Purchasers, with general warranty binding upon the Owner, his heirs and assigns; and out of the money arising from such sale, the Trustee acting shall pay first, all the expenses of advertising the sale and making the conveyance, including a reasonable commission to itself, which commission shall be due and owing in addition to the attorney's fees provided for, and then to Beneficiary the full amount of principal, interest, attorney's fees and other charges due and unpaid on said indebtedness secured hereby, rendering the balance of the sales price, if any, to the Owner, his heirs or assigns and/or to any other lienholders (if so required by applicable law); and the recitals in the conveyance to the Purchaser or Purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance shall be conclusive against the Owner, his heirs and assigns.

It is agreed that in the event a foreclosure hereunder should be commenced by the Trustee, or its substitute or successor, Beneficiary may at any time before the sale of said property direct the said Trustee to abandon the sale, and may then institute suit for the collection of said indebtedness, and for the foreclosure of this contract Payment and Performance Lien; it is further agreed that if Beneficiary should institute a suit for the collection thereof, and for a foreclosure of this contract lien, that it may at any time before the entry of a final judgment in said suit dismiss the same, and require the Trustee, its substitute or successor to sell the Lot in accordance with the provisions of this section. Beneficiary, if it is the highest bidder, shall have the right to purchase at any sale of the Lot, and to have the amount for which such Lot is sold credited on the debt then owing. Beneficiary in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a

substitute or successor trustee; and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness hereby secured has been paid in full, or until said Lot is sold hereunder, and each substitute and successor trustee shall succeed to all of the rights and powers of the original trustee named herein. In the event any sale is made of the Lot, or any portion thereof, under the terms of this section, the Owner, his heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the Purchaser at such sale, and in the event of his failure to do so he shall thereupon from and after the making of such sale be and continue as tenants at will of such Purchaser, and in the event of his failure to surrender possession of said property upon demand, the Purchaser, his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such property, or any part thereof is situated. The foreclosure of the continuing contract lien on any one or more occasions shall not remove, replace, impair or extinguish the same continuing lien from securing all obligations arising from and after the date of foreclosure. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.

The requirements of Section 209, et. seq. of the Texas Property Code for collection of obligations and for foreclosure of liens are hereby adopted into this Declaration as if set forth herein and shall control in event of conflict with the provisions hereof. After foreclosure of a lien as provided herein, the owner or a lienholder may redeem the property in accordance with Section 209.011 of the Texas Property Code.

5. Subordination of the Lien to Mortgages: The lien securing the payment of the assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:
  - (a) bona-fide first mortgage or deed of trust liens for purchase money and/or home construction or improvement purposes placed upon a Lot, including without limitation Institutional Mortgages and Eligible Mortgages, in which event the Association's lien shall automatically become subordinate and inferior to such first lien;
  - (b) liens for taxes or other public charges as are by applicable law made superior to the Association's lien; and
  - (c) such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien; provided, however, such subordination shall apply only to: (i) the assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien; (ii) the permitted lien on the Lot alone and not on or to any easement appurtenant for use and enjoyment of the Common Properties. Such sale shall not relieve such Lot from liability for the amount of any assessment thereafter becoming due nor from the lien of any such subsequent assessment. Such subordination shall not apply where

the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay assessments and/or to hinder the Association in performing its functions hereunder.

#### XLIV. 17.695 ACRE TRACT

The 17.695 acre tract is not incorporated into the Subdivision nor subject to the Association or its rules, assessments, and restrictions, except for the enforcement rights granted the Association for the restrictions set forth in this Article. Nevertheless, recognizing that said 17.69 acre tract is adjacent to the Subdivision and uses thereon will affect the Subdivision, Declarant imposes on the 17.695 acre tract, the restrictions as to use and covenants as set forth in this article. These restrictions shall run with the land and be binding on all future owners and occupants of said 17.695 acre tract, and shall be enforceable by any person owning or occupying the 17.695 acre tract or any Lot in the Subdivision, Declarant and the Association, by any lawful means in accordance with Article XLVI below, the terms of which shall apply to the covenants relating to the 17.695 acre tract also. The Restrictions affecting the 17.695 acre tract are as follows:

1. There may be no residences placed on the 17.695 acre tract. No professional, business, or commercial activity, to which the general public is invited shall be conducted on said 17.695 acre tract. No factory, production facility, manufacturing facility or other industrial use is permitted on the 17.695 acre tract even if the general public is not invited. Only buildings used in conjunction with an existing residence on a lot in The Woods of St. Clare Unit 2 which is contiguous to the 17.695 acre tract may be erected on said 17.695 acre tract. The following are the lots in Unit 2 that are adjacent to the 17.695 acre tract: Lots 35, 36, 37, 38, and 39. The owner of the contiguous lot in Unit 2 must also own the portion of the 17.695 acre tract contiguous to said lot in order to erect and use a building on the 17.695 acre tract.
2. The 17.695 acre tract may only be subdivided into smaller tracts under the following conditions: (a) the subdivided portion of the 17.695 acre tract must be conveyed to the owner of a Lot in the Subdivision contiguous to the subdivided portion of the 17.695 acre tract or to an owner of an adjacent part of the 17.695 acre tract, and (b) the Lot the portion of the 17.695 acre tract is combined with must have a primary residence already located on it unless it is being combined with a contiguous portion of the 17.695 acre tract. Any subdivision of the tract is subject to subdivision requirements of applicable governmental entities with jurisdiction, such as the City of Marion and Guadalupe County. Except as set forth in this paragraph, the 17.695 acre tract may not be re-subdivided.
3. A portion of the 17.695 acre tract is shown on the Subdivision Plat as Detail Drain Easement "A" and this portion of the 17.695 acre tract is subject to the rules and regulations of the Property Owners Association except for the obligation to pay dues or other fees to the Association.
4. There may be farm animals of any sort located on the 17.695 acre tract. Farm animals are cows, horses, hogs, goats, donkeys, mules and sheep. The following rules and requirements apply: There may be no feed lots on the 17.695 acre tract for any kind of animal. There may be located on the entire 17.695 acre tract no more than 6 domesticated adult pigs or hogs. An adult is an animal pig or hog is one that is weaned from feeding from its mother. In no event

may there be animals in excess of the number of animals recommended by the Guadalupe County Agriculture Extension office.

5. There may be no mobile homes, manufactured homes or non on site built buildings located on the 17.695 acre tract.
6. No portion of the 17.695 acre tract may be used as a dump, junk yard or other similar activity. Non-licensed vehicles may be left or stored on the 17.695 acre tract.

#### XLV. PIPELINE TRACTS

The 17.695 acre tract and Lot 39 of the Subdivision are subject to pipeline easements, recorded in Volume 343, Page 452 and Volume 894, Page 500, of the Deed Records of Guadalupe County, Texas. These pipelines may contain oil, gas, petroleum and/or other substances. These easements each may contain one or more pipelines. The Subdivision Plat shows the general location of the easements on Lot 39. Each owner or person occupying or using a Pipeline Tract is responsible for determining the location of the easements and the pipelines. Before erecting any improvement on a Pipeline Tract the owner and/or contractor erecting said improvement must locate the pipeline and confirm that they are not building over a pipeline or within a pipeline easement. Digging or excavating within the pipeline easements is inherently dangerous and each person who does so ASSUMES THE RISK of injury to person or property, RELEASES Declarant and each owner or officer thereof from any such injury to person or property and shall HOLD HARMLES and INDEMNIFY Declarant and each owner and officer thereof from and against any such injury or damage. The owners of the pipelines have the right to access said pipelines. No person may erect a fence or other barrier preventing the pipeline owners from accessing a pipeline. If there is a fence or other improvement preventing access the owner of the pipeline may damage or destroy said improvement including fences. If a fence is built crossing the pipeline or within one of the pipeline easement the owner shall contact the pipeline company in advance for their requirements and comply with same.

#### XLVI. INTERPRETATION AND ENFORCEMENT -

1. The Declarant, the Association, or other persons having any right, title or interest in the surface estate in any Lot or parcel of land in this subdivision, shall have the right, but not the obligation, to enforce, by any proceeding at law or in equity, all restrictions, covenants and reservations imposed by this Declaration. Violations of any restriction or condition or breach of any covenant herein contained shall give the Declarant or the Association, in addition to all other remedies, the right, but not the obligation, to enter upon the land, and to abate and remove the violation at the expense of the owner, and the Declarant, the Association, or its agents, shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal. The right is expressly reserved to the Declarant and its successors and assigns, to interpret any and all conditions, limitations and restrictions but such right shall be without prejudice to the rights of enforcement prescribed in the above paragraphs. The reservation by Declarant of this right of enforcement shall not create a duty or obligation of any kind to enforce same, and Declarant shall not be subjected to any claim, demand, or cause of action from any Lot Owner by virtue of enforcing or not enforcing any restriction or other covenant herein contained.



2. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provision, and all other provisions shall remain in full force and effect.
3. If DMK LAND DEVELOPMENT LLC should assign its obligations (if any) and its rights under this Declaration to a person or entity that assumes same, then in such event DMK LAND DEVELOPMENT LLC shall be relieved of all obligations, liabilities or responsibilities under this Declaration.

#### XLVII. RIGHT TO ANNEX AND REMOVE PROPERTY -

Declarant shall have the right during the Declarant Control Periods to annex or dedicate to the subdivision, additional property and subject such property to the jurisdiction of the Association and any or all of these restrictions and covenants, as if such properties were originally included in the initial subdivision. Declarant shall have the right in the annexation or dedication of additional property to the restrictions and covenants contained herein to modify or amend these restrictions as they may apply to such annexed property.

#### XLVIII. NO COMMON SCHEME OF DEVELOPMENT -

Declarant does not intend hereby nor shall any provision of this Declaration of Covenants, Conditions and Restrictions be construed to impose any restriction or limitation upon any property not located within The Woods of St. Clare Subdivision, Unit 2, according to Plat recorded in Volume 8, Pages 589-590 of the Plat Records of Guadalupe County, Texas, specifically including, but not limited to, any other owned by Declarant or Dale Koehler or any other person. It is expressly understood and agreed that while other property has heretofore been or may hereafter be sold to and/or developed or platted as subdivisions by Declarant or Declarant's predecessors, successors, owners, and assigns, the covenants, conditions, easements and restrictions contained herein shall not affect any such other properties unless Declarant shall hereafter execute and cause to be recorded in the office of the County Clerk of Guadalupe County, Texas, a specific declaration that these restrictions apply to any such property. The purpose of this provision is to negate any implication that the covenants and restrictions herein create a "common scheme of development" or otherwise apply by implication to ANY OTHER PROPERTY OWNED BY Declarant or any other person.

#### XLIX. ACCEPTANCE OF THE DEED -

By the acceptance of the deed to a Lot within this subdivision, the owner thereof covenants and agrees to keep and maintain in a neat and clean condition the Lot conveyed to him, including any easements which may traverse a portion of the Lot conveyed by said deed, including the keeping of weeds or grass mowed within such Lot and easement area.

#### L. AMENDMENT AND DURATION -

At any time, the owners of legal title to sixty percent (60%) of the Lots within the Subdivision may amend (including changing, revoking or modifying) the restrictions and covenants set forth herein by filing an instrument containing such amendment in the office of the County Clerk of Guadalupe County, Texas; provided, however, that so long as Declarant owns one or more lots in the Subdivision or other property otherwise annexed so as to be subject to the covenants contained herein, no such amendment shall be valid or effective without the written joinder of Declarant, unless Declarant

specifically waives this requirement by written recorded instrument. The right to amend this Declaration does not apply to the restrictions applying to 17.695 acre tract, which may only be amended by the Declarant and the owners of said 17.695 acre tract.

LII. RESERVATION OF RIGHTS -

THE DECLARANT SHALL HAVE AND RESERVE, SO LONG AS DECLARANT OWNS AT LEAST ONE LOT IN THE SUBDIVISION OR OTHERWISE SUBJECT OF THIS DECLARATION, THE RIGHT AT ANY TIME AND FROM TIME TO TIME, WITHOUT THE JOINDER OR CONSENT OF ANY OTHER PARTY, TO AMEND THIS DECLARATION OR ANY FUTURE DECLARATION OF PROTECTIVE COVENANTS, BY AN INSTRUMENT IN WRITING DULY SIGNED, ACKNOWLEDGED, AND FILED FOR RECORD. IN NO EVENT MAY DECLARANT AMEND THIS DECLARATION TO LOWER THE MINIMUM SQUARE FOOTAGE OF RESIDENCES OR ALLOW MANUFACTURED HOMES TO BE LOCATED ON THE LOTS IN THE WOODS OF ST CLARE, ACCORDING TO THE PLAT RECORDED IN VOLUME 8, PAGES 589-590 OF THE MAP AND PLAT RECORDS OF GUADALUPE COUNTY, TEXAS. THIS PROVISION SHALL NOT EXTEND BEYOND THE "DEVELOPMENT PERIOD" AS DEFINED IN ARTICLE I. 10. ABOVE.

LII. NOTICE BY ASSOCIATION -

Whenever written notice to a member (or members) is permitted or required hereunder, such notice shall be given by the mailing of such notice to the member at the address of such member appearing on the records of the Association, unless such member has given written notice to the Association of a different address, in which event such notice shall be sent to the member at the address so designated. In such event, such notice shall conclusively be deemed to have been given by the Association by placing same in the United States Mail, properly addressed, whether received by the addressee or not.

LIII. TITLES -

The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part hereof.

LIV. OMISSIONS -

If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

LV. COMPLIANCE WITH RESIDENTIAL REAL PROPERTY OWNERS ACT-

The provisions of this Declaration and the exercise of any and all rights and remedies granted herein are subject to the Texas Residential Property Owners Protection Act, Chapter 209 of the Texas Property Code, as same may have been heretofore or hereafter amended from time to time, to the extent same apply by application of said law.

LVI. GENDER AND GRAMMAR -

The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions herein apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

LVII. RULE OF CONSTRUCTION-

If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern. The provisions hereof will not be construed against the Declarant because the Declaration was drafted by it. In the event of conflict of the provisions hereof with any of the organizational documents of the Association, the provisions hereof shall control.

EXECUTED this the 17 day of April, 2017.

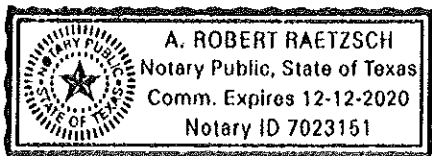
DMK LAND DEVELOPMENT LLC,  
DECLARANT

BY: [Signature]  
DALE KOEHLER, MANAGER

THE STATE OF TEXAS

COUNTY OF GUADALUPE

This instrument was acknowledged before me on the 17 day of April, 2017, by DALE KOEHLER, Manager of DMK LAND DEVELOPMENT LLC, a Texas limited liability company, on behalf of said company.



[Signature]  
Notary Public, State of Texas  
Notary's printed name: A. Robert Raetzsch

**FIELD NOTES**

January 16, 2017

Revised February 28, 2017

BEING 17.695 acres of land, more or less, out of the Claiborne Rector Survey No. 83, Abstract 270, Guadalupe County, Texas and also being out of a 71.624 acre tract described in Doc. #2015020463 of the Official Records of Guadalupe County, Texas and being more particularly described as follows:

BEGINNING at an iron rod found in the existing common line with a 120 acre tract described in Volume 4218, Page 276 of the Official Records of Guadalupe County, Texas for the most northerly corner of this tract and the most westerly corner of The Woods of St. Clare Subdivision, Unit 2 as recorded in Volume 8, Page 590 of the Plat Records of Guadalupe County, Texas;

THENCE, along the common line with said subdivision as follows:

S 29°38'21" E, 441.82 feet to an iron rod found for an angle point,

S 54°33'34" E, 278.31 feet to an iron rod found for an angle point, and

N 66°57'20" E, 259.17 feet to an iron rod found in the existing southwest R.O.W. line of Sienna Woods for a corner of this tract;

THENCE, along said southwest R.O.W. line in a southeasterly direction with a curve to the left having a central angle of 54°58'22", a radius of 65:00 feet, a tangent distance of 33.82 feet, an arc length of 62.36 feet, and a chord bearing and distance of S 23°02'40" E, 60.00 feet to an iron rod found for a corner of this tract;

THENCE, continuing along the common line with said subdivision as follows:

S 66°57'20" W, 259.17 feet to an iron rod found for a corner,

S 23°02'40" E, 393.99 feet to an iron rod found for a corner,

S 58°41'06" W, 198.05 feet to an iron rod found for a corner, and

S 29°22'23" E, 317.59 feet to an iron rod found in the common fence line with a 175.03 acre tract described in Volume 686, Page 16 of the Official Records of Guadalupe County, Texas for the most southeasterly corner of this tract;

THENCE, S 61°19'37" W, generally along an existing fence and the common line with said 175.03 acre tract, passing an iron rod found in same at 477.55 feet and continuing a total distance of 557.55 feet to a point for the most southerly corner of this tract;

THENCE, along the meanders of the following surveyed line and generally along the centerline of Santa Clara Creek (*It is the intent of the parties involved in this division to establish this meandered surveyed line as the boundary and does not necessarily follow the centerline meanders of said creek.*) as follows:

N 13°04'18" W, 148.18 feet to an angle point,

N 00°16'10" W, 150.27 feet to an angle point,

N 28°30'47" W, 43.35 feet to an angle point,

N 26°00'35" E, 71.83 feet to an angle point,

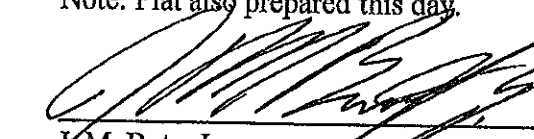
N 23°18'38" E, 165.82 feet to an angle point,

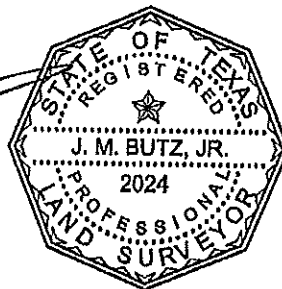
Page 2 (17.695 acres)

N 24°04'22" W, 68.74 feet to an angle point,  
N 06°02'12" E, 65.62 feet to an angle point,  
N 78°47'12" E, 20.58 feet to an angle point,  
N 51°14'32" E, 48.24 feet to an angle point,  
N 25°46'02" E, 50.33 feet to an angle point,  
N 36°51'53" W, 168.42 feet to an angle point,  
N 88°56'39" W, 242.70 feet to an angle point,  
S 82°37'47" W, 152.78 feet to an angle point,  
S 13°48'18" W, 29.38 feet to an angle point,  
S 60°40'22" E, 56.76 feet to an angle point,  
S 55°14'29" W, 88.56 feet to an angle point,  
S 80°26'39" W, 74.08 feet to an angle point,  
N 87°05'59" W, 53.62 feet to an angle point,  
N 45°36'30" W, 47.15 feet to an angle point,  
N 29°52'10" W, 97.34 feet to an angle point,  
N 06°21'13" E, 99.25 feet to an angle point,  
N 52°04'23" E, 122.92 feet to an angle point,  
N 83°43'01" E, 51.50 feet to an angle point,  
N 50°31'38" E, 67.80 feet to an angle point,  
N 26°00'56" E, 32.13 feet to an angle point,  
N 02°03'39" W, 64.71 feet to an angle point,  
N 10°02'15" W, 124.80 feet to an angle point, and  
N 11°20'22" W, 101.60 feet to a point in the common line with said 120 acre tract for the most northwesterly corner of this tract;

THENCE; N 59°42'51" E, generally along an existing fence and the common line with said 120 acre tract passing an iron rod found at 80.00 feet and continuing a total distance of 384.11 feet to the POINT OF BEGINNING and containing 17.695 acres of land, more or less.

Note: Plat also prepared this day.

  
J. M. Butz, Jr.  
Registered Professional Land Surveyor  
No. 2024



FN15-138.A3

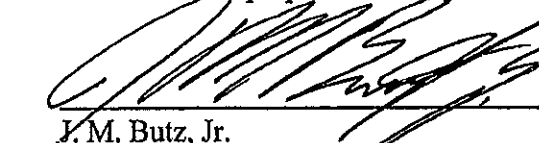
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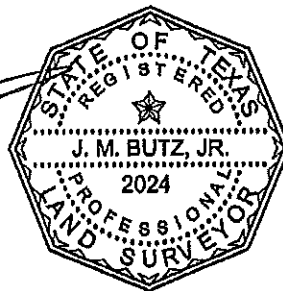
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FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS  
04/18/2017 4:13:06 PM  
PAGES: 37  
TERESA KIEL, COUNTY CLERK  
GUADALUPE COUNTY, TEXAS

 Teresa Kiel