



SECOND AMENDMENT TO THE  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE ESTATES OF AUSTIN TRAIL  
CITY OF LUCAS, COLLIN COUNTY, TEXAS

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

THIS SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made by THE ESTATES OF AUSTIN TRAIL HOMEOWNERS ASSOCIATION, INC., a Texas Non-Profit Corporation (the Association).

WITNESSETH:

WHEREAS, The Association is comprised of all of those certain Lots (hereinafter defined) located in THE ESTATES OF AUSTIN TRAIL, an Addition to the City of Lucas, County of Collin, State of Texas, according to the Amended Final Plat (the "Final Plat") thereof recorded at County Clerk's File No. \_N709 & S428of the Plat Records of Collin County, Texas (all of the land in said Addition and the improvements now or hereafter situated thereon by or at the direction of the Declarant being hereinafter referred to as the "Property"), with a copy of said Final Plat being attached hereto as Exhibit "A" and made a part hereof for all purposes;

WHEREAS, The Association desires to enhance and protect the lifestyle and the atmosphere for all those who acquire a Lot and proposes to establish and implement plans and aesthetic considerations in order to create a residential community on the Property and, to this end, desires to subject the Property to the covenants, conditions, restrictions, and easements hereinafter set forth (sometimes collectively referred to herein as the "Covenants, Conditions and Restrictions");

WHEREAS, The Association desires to impose said Covenants, Conditions and Restrictions on the Property and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to control and maintain the quality and distinction of the Property;

WHEREAS, The Association was created to own and maintain the Common Properties (hereinafter defined) and to which would be delegated and assigned the powers of administering and enforcing the covenants, conditions and restrictions contained herein and collecting and disbursing the assessments and charges hereinafter created; and;

WHEREAS, The Association was incorporated under the Texas Non-Profit Corporation Act,

under the name of THE ESTATES OF AUSTIN TRAIL HOMEOWNERS ASSOCIATION, INC. (the "Association") and;

WHEREAS, the Association having executed a Second Amendment to the current Declaration of Covenants, Conditions and Restrictions executed on 6 March 2001 and recorded on 6 March 2001 and to the First Amendment thereto effective on 22 January 2002 and recorded on 2 February 2002 and to the Amendment recorded on 15 January 2008, in accordance with the Article V, Section 5.18 of the current Declaration: and

WHEREAS, this Second Amendment to the current Declaration and the amendments thereto replaces in the entirety the aforesaid Declaration and amendments;

NOW, THEREFORE, The Association hereby declares that the Property is and shall be held, transferred, sold, conveyed, leased, used and occupied subject to the Second Amendment to the Declaration of Covenants, Conditions and Restrictions, as follows:

#### ARTICLE I DEFINITIONS

Section 1.1. The following words, when used in this Declaration (unless the context shall otherwise clearly indicate or prohibit) shall have the following meanings:

- (a) "Addition" shall mean and refer to THE ESTATES OF AUSTIN TRAIL, City of Lucas, Collin County, Texas according to the Final Plat, as hereinabove described, together with any additional property made subject to the terms hereof as provided herein.
- (b) "Association" shall mean and refer to THE ESTATES OF AUSTIN TRAIL HOMEOWNERS ASSOCIATION, INC.
- (c) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.
- (d) "City" shall mean and refer to the City of Lucas, Texas.
- (e) "Committee" shall mean the Architectural Control Committee.
- (f) "Common Properties" shall mean all real property (including improvements thereon) now or hereafter owned or controlled by the Association for the common use and enjoyment of the Owners (hereinafter defined). The Common Properties to be owned or controlled by the Association shall likely include an easement over certain portions

of the Property for the purposes of maintaining an entry way, landscaped entries, and landscaped areas, all as more particularly discussed in Article VII herein below, together with any and all improvements that are now or may hereafter be constructed thereon,

(g) "County" shall mean and refer to Collin County, Texas.

(h) "Lot" shall mean and refer to any one (1) of the enumerated plots or tracts of land shown upon the Final Plat, and "Lots" shall mean and refer to more than one (1) of same.

(i) "Owner" shall mean and refer to each and every person or business entity (whether one or more), including Declarant (so long as applicable), that is a record owner of a fee or undivided fee interest in any Lot; provided, however, that (i) the term "Owner" and "Owners" shall not include any person or entity who holds a bona fide lien or interest in a Lot as security merely for the performance of an obligation (specifically including, but not limited to, any mortgagee or trustee under a mortgage or deed of trust) unless and until such mortgagee, beneficiary or trustee has acquired title to such Lot pursuant to foreclosure or any proceeding in lieu thereof; and (ii) with respect to any matter requiring the vote, consent, approval or other action of an Owner, only one (1) vote per Lot shall be cast.

## ARTICLE II CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

**Section 2.1. Residential Use Only.** The Property shall be used for single-family residential purposes only. No building or other structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family residence per Lot, which residence may not exceed three (3) stories in height, and necessary private garages, cabanas and storage buildings and other out-buildings, as provided below, which shall be constructed to minimum Federal Housing Authority ("FHA") and Veteran's Administration ("VA") standards, unless otherwise approved in writing by the Committee (as hereinafter defined).

**Section 2.2. Single-Family Use.** Each residence may be occupied by only one (1) family consisting of persons related by blood, adoption or marriage or no more than two (2) unrelated persons living and cooking together as a single housekeeping unit, together with any household servants and occasional guests. This paragraph is intended to restrict communal-style living, such as group homes, homes or facilities for rehabilitation, drug treatment, group foster homes, nursing or assisted group living arrangements.

**Section 2.3. Garage Required.** Each residence shall have a garage suitable for parking at least two (2) standard size automobiles, which garage conforms in design and materials with the

main structure. No garage shall have an opening which faces or opens facing the street or any side street; provided, however, the placement of garages on corner Lots shall be subject to special approval of the Committee.

**Section 2.4. Septic Tanks.** All septic tanks shall be built and at all times operated and maintained in accordance with all local, state and federal rules, laws, codes and regulations regarding the same, and shall be kept at all times in compliance with all national building codes regarding same. All septic tanks shall be chemically treated or otherwise serviced at reasonably sufficient intervals, in conformity with good practice and procedure, and pursuant to all rules and regulations established by the Board of Directors regarding the same.

**Section 2.5. Driveways.** Driveway design must be included on the plans submitted to the Committee for approval. The approval of the plans shall be contingent upon satisfactory design layout of the driveway and the bordering light posts and mail box. Any changes from the original plan shall require specific written approval of the Committee. All driveways shall be completed at the time of construction for the primary dwelling and shall be concrete (or masonry with a concrete base). Where culverts are required, they shall have head walls (with a brick, stone or other masonry facade to match that used in the primary residence), and have specific approval by the Committee. Posts with carriage lights, both of an approved design, shall be placed at each side of the driveway. The post brick, stone or other masonry shall match that used in the primary dwelling. . One of the posts will be marked with a one foot by one foot black plate etched with the house number and street name. The exact planned/proposed location with dimensions relative to the driveway and the street must be included on the approved plans. Changes from the original approved location must have specific written approval of the Committee. It is a SPECIFIC MANDATORY REQUIREMENT that post lights shall be placed and maintained on a light sensor (electric eye) which shall be wired directly to a circuit breaker at the main control box. There shall not be a separate switch on the circuit. The lights shall be on during ALL HOURS OF DARKNESS and each carriage light shall radiate a minimum of forty (40) watts and shall not exceed one hundred twenty (120) watts. Should it be reported to, or should any member of the Association become aware that lights for any given Lot are not working, they shall notify the Owner accordingly. This will initially be done by telephone. Should a correction not be made and the lights not be on at night for more than three (3) consecutive nights after notification to the Owner, the Association shall have the right to change the bulbs and/or make any necessary repairs at the Owner's expense without further notification. At the time the repairs are made, a letter sent certified mail return receipt requested will be forwarded to the Owner advising of the action. Should it become necessary to enforce collection through legal action, the cost of such action shall be at the expense of the Owner.

**Section 2.6. Minimum Floor Area.** The total air-conditioned living area of the main residential structure constructed on each Lot as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall be not less than two thousand eight hundred (2,800) square feet or the minimum habitable floor area as specified by the City, whichever is the greater. In the event a house is a two-story house, the ground floor must contain at least one thousand eight hundred (1,800) square feet exclusive of open porches, garages, patios and detached accessory buildings. The Committee may grant a fifteen percent (15%) variance on a case by case basis.

**Section 2.7. Building Materials.** No exterior building walls erected or constructed shall be clad or covered with materials other than brick, brick veneer, stucco or stucco-like material, concrete siding in plank form with a maximum of 12" in width, stone or stone veneer. The above named materials shall constitute at least eighty percent (80%) of each outside wall (except for the outside back wall which such materials shall constitute at least seventy percent (70%)), excluding roofs, windows and doors, or unless otherwise approved by the Committee. A dwelling shall be placed on a Lot so as to face the street on which the Lot faces. The Committee reserves the right and authority to approve non-masonry materials for one hundred percent (100%) of the outside walls of any house if the Committee determines that the quality and style of the structure are architecturally significant.

**Section 2.8. Side Line and Front Line Setback Restrictions.** No building or other structure shall be closer than fifty (50) feet to a front property line, twenty-five (25) feet to a side property line, and thirty (30) feet to a back property line unless otherwise approved by the Committee. The Committee may grant variances with respect to such setback requirements at its sole discretion, and contemplates doing so with respect to Lots located adjacent to creeks, lakes and other Lots where drainage is a necessary concern. The Association may, from time to time, by appropriate instrument in writing and filed for record in Collin County, Texas, amend and alter the restrictions set out in this paragraph relative to the locations of improvements to be erected on the Lots.

**Section 2.9. Fences and Walls.** In all cases, fences must have specific approval from the Committee prior to construction. Primary side border fencing and cross fencing shall be black metal such as aluminum, steel or iron. Two-level, white PVC-clad ranch fencing with 5" x 5" posts and 2" x 6" rails is acceptable. Other styles of fencing are subject to approval by the Committee. Fencing may have "no climb" wire attached to restrain pets and children. Front yard fencing may be picket, wrought iron or acceptable "open" fencing style, including split-rail cedar. Chain link fences for dog runs are permitted so long as they are placed at the rear of a Lot in a manner not to be offensive to neighbors and provided the Owner plants climbing roses, hedges, or other evergreen shrubbery along the outside of the fence so that the fence is totally and permanently screened throughout the year from public view and adjacent property. Fences shall not exceed six (6) feet in height. Solid wood fences are strictly prohibited except around pools and only around pools on the condition the fence is constructed in a manner not to extend beyond the main building's exterior walls and providing the Owner plants climbing roses, hedges, or other evergreen shrubbery along the outside of the fence so that the fence is totally and permanently screened throughout the year from public view and adjacent property. No "chicken", "hog" or "barbed" wire fences shall be permitted.

**Section 2.10. Mailboxes.** Mailboxes shall be standardized and shall be constructed of iron, aluminum or steel and shall be painted black) or of masonry (brick, brick veneer, stone, stone veneer) and shall be of a design approved by the Committee. The approval process for the construction of mail boxes shall be the same as that for the driveway. The plot plan must include the exact location of the mailbox, providing a description and exact distance from the drive and edge of the street. Any deviation or variance must have specific written approval from the Committee.

**Section 2.11. Chimney Flues.** The area of a chimney flue that faces the front street (and the side street for corner Lots) shall be enclosed one hundred percent (100%) in brick, brick veneer, stone, stone veneer, stucco or hardi-plank or equivalent cementitious material, except for chimney flues located along the rear of any house.

**Section 2.12. Windows and Skylights.** Windows, jambs and mullions shall be composed of vinyl covered or clad aluminum or wood. No mill-finish windows will be permitted unless specifically approved by the ACC.

**Section 2.13. Cul-de-sac and Corner Lots.** On cul-de-sac and corner Lots, the placement of improvements on such Lots shall be subject to the special approval of the Committee.

**Section 2.14. No Duplication.** There shall be four (4) Lots between each of the like elevations. Corner Lots shall count as two Lots for this purpose. Like elevations may not be built directly across a street from each other.

**Section 2.15. Roofs.** All homes must have wood shingle roofs, simulated wood shingle roofs, tile roofs, simulated tile roofs, or composition shingles (of a random tab style and having at least a 300 weight), unless express approval to use other material is obtained from the Committee. **Wood shingle roofs must be fireproofed.** In the case wood shingles are utilized, a certificate from the manufacturer and/or supplier of the material stating the warranty of the fireproofing, shall be presented to the Committee, the Association or any neighbor upon request.

**Section 2.16. Outbuildings.** Outbuildings used for the purpose of housing domestic animals, storage, home shops and other related personal uses shall be constructed in a similar or compatible manner to compliment the main dwelling, and shall require specific approval of the Committee

**Section 2.17. Gas Tanks.** When butane or propane tanks are installed on a Lot, they must be totally and permanently screened from public view from the street and all adjoining properties. An Owner must plant climbing roses, photenias, hedge, or other perennial shrubbery so that tanks are totally and permanently screened throughout the year from public view and adjacent property.

**Section 2.18. Landscaping.** The front yards of all Lots shall be landscaped. Due to the size of the Lots, it is expected that the landscaping surrounding or in close proximity to the main residence, patios, walkways and driveways will be more highly developed and intensive in keeping with the type of residence to be built upon a Lot. Perimeter areas may be left natural or planted with appropriate grasses or ground cover but must be maintained according to the standards of this Declaration. All front yards and flower or shrubbery beds in the front and side yards shall be sprinklered.

**Section 2.19. Solar Panels:** The installation of solar panels for the generation of electricity is approved with the following provisions

- (a) Solar panels may not be installed on any roof that faces the street on which the Lot Faces

- (b) Solar panels installed on the ground must be installed in the back yard and must be shielded from view by fencing, shrubs or other plantings

Section 2.20. Specific Architectural Details. The Committee shall have the power to require specific architectural details, including but not limited to:

- (a) all shutters to appear functional and match the architecture of the windows;
- (b) all window frames and mullions to be of good quality and have the reasonable appearance of wood or clad windows;
- (c) roof pitches must be approved by the Committee unless they are 8/12 roof pitch (i.e., eight (8) inches of rise for every twelve (12) inches of run) on the major roof sections with lesser pitch allowable on shed, gable or porte-cochere sections;
- (d) architectural columns to be a minimum width/diameter of six (6) inches; and
- (e) exterior colors, including paint trim, brick, siding and other building materials are subject to the prior approval of the Committee, in its sole and absolute discretion. All exterior colors, textures and materials must be compatible not only with the design motif but also with adjacent and surrounding Lots, and overall community appearances. Colors which appear to be offensively or distressingly bright will not be approved. Any change of exterior color shall conform to these requirements.

Section 2.21. Construction Site Maintenance and Upkeep.

- (a) The Owner shall have the primary and ultimate responsibility for keeping the construction site in an acceptably neat and orderly manner. "NEAT AND ORDERLY" shall be defined as "a work-site where debris is not unnecessarily unsightly, annoying, a nuisance, a distraction to the neighboring homes, or an undue eyesore to any prospective buyer interested in the subdivision." This shall also include a responsibility for regular cleanup and the hauling off of all unusable debris and construction materials, and to keep all materials on site anchored or stored to keep them from blowing onto neighboring properties during normal weather conditions.
- (b) Construction site maintenance and upkeep: The Committee and the Association shall have the right to hire the work done on the site at the expense of the Owner and/or builder. The Committee or the Association will immediately notify the Owner or builder by telephone at the time they are made aware of a problem, whether such awareness is from a third party complaint or observance by any Committee member or member of the Board. Should the problem not be corrected within three (3) days from the deposit in the U.S. Postal Service of written notification via certified mail,

return receipt requested to the Owner or builder, the Committee or the Association may immediately make arrangements to correct the problem in the quickest and most practical manner, based on the sole judgment of the Committee or the Association. All such actions shall be at the expense of the Owner and/or builder, and enforced by the assessment provisions hereof if immediate reimbursement is not made.

(c)

(c) The Owner shall be responsible for ensuring that the builder is knowledgeable of all the covenants related to the construction on the Property and the conduct of the builder's employees.

Section 2.22. Uses Specifically Prohibited.

- (a) No temporary dwelling, shop, trailer, shack, tent, above-ground swimming pool mobile home of any kind or any other improvement of a temporary character except children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment ) may be placed on any Lot. Children's playhouses/playgrounds, dog houses, greenhouses, gazebos, utility trailers and buildings for storage of lawn maintenance equipment must be placed in the backyard. The backyard is that area starting at the rear of the home building and includes the entire area extending to both sides of the Lot property lines and to the back property line. No building material of any kind or character shall be placed or stored upon the Property until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Lot upon which the improvements are to be erected.
- (b) No boat, marine craft, aircraft, recreational vehicle, unattached pick-up camper, travel trailer, motor home, camper body, trailer (boat, horse, car, utility, cargo) or similar vehicle or equipment may be parked for storage in the driveway or front yard of any Lot or parked on any public street on the Property, nor shall any such vehicle or equipment be parked for storage in the side or back yard of any residence if visible when viewed from the street on which the Lot fronts. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a residence in the immediate vicinity or to the storage of functional trailers which are parked in the back yard. The back yard is defined in Section 2.22(a).

- (c) Trucks with tonnage in excess of one (1) ton and any vehicle with painted advertisement shall not be permitted to park overnight on the Property, except those used by a builder during the construction of improvements, unless completely concealed from public view.
- (d) No vehicle of any size which transports inflammatory or explosive cargo may be kept on the Property at any time.
- (e) No vehicles or similar equipment shall be parked or stored in an area visible from the street which the residence faces except passenger automobiles, passenger vans, motorcycles, pick-up trucks with or without attached bed campers that are in operating condition and have current license plates and inspection stickers.
- (f) No structure of a temporary character, such as a trailer, tent, shack, barn or other out-building, shall be used on the Property at any time as a dwelling house.
- (g) No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted in or on the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Property. No derrick or other structure designed for using a quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the Property.
- (h) Except as specifically permitted by this sub paragraph, no animals, livestock or poultry of any kind shall be raised, bred or kept on the Property except that dogs, cats or other household pets may be kept for the purpose of providing companionship for the private family. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the Property so that no person shall quarter on the premises, without approved accommodation, cows, bees, hogs, sheep, goats, horses, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with quietude, health or safety of the community. The Committee shall approve any structures to be placed on a Lot for the keeping of any livestock. The "reasonable person" rule shall apply to the type and number of any livestock that may be maintained on any Lot. The "reasonableness" of any request will be determined by the Board.
- (i) No Lot or other area on the Property shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment, disassembled or inoperative cars, other vehicles or discarded appliances and furniture. Trash, garbage or other waste shall not be kept except in sanitary containers and only on the rear portion of any of the Lots except on those days trash is picked up. All incinerators or other equipment for the storage or other disposal of such material shall be kept in a clean and sanitary condition and only on the rear portion of any of the Lots. Materials incident to construction of improvements may be stored on Lots during construction so long as construction progresses without undue delay.

- (j) No garage, garage house or other out-building shall be occupied by any Owner, tenant or other person prior to the erection of a residence.
- (k) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any front wall or window of a residence. No evaporative cooler shall be installed on the front wall or window of a residence.
- (l) All antennas shall be located inside the attic of the main residential structure except that two (2) antennas may be permitted to be attached to the roof of the main residential structure and to extend above said roof a maximum of five feet (5') and one (1) satellite dish or other instrument or structure may be placed in the backyard of each Lot so long as it is completely screened from view from any street, alley, park or other public area and does not extend above the fence.
- (m) Except as provided for in this sub paragraph, no Lot or improvement thereon shall be used for commercial or manufacturing purposes of any kind. No illegal, noxious or offensive activity shall be undertaken on the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as tutoring or giving art lessons or prohibit an Owner from boarding horses with the approval of the Association, so long as such activities do not materially increase the number of vehicles parked on the street or interfere with the other Owners' use and enjoyment of their Lots and residences.
- (n) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and six feet (6') above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet (10') from the intersection of the street right-of-way lines, or, in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot within ten (10) feet from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- (o) Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, no building previously constructed elsewhere, including existing houses, shall be moved onto any Lot, it being the intention that only new construction be placed and erected thereon.
- (p) No sign of any kind shall be displayed to the public view on any Lot, except one (1) professional security service sign of not more than one (1) square foot; one (1) sign of not more than five (5) square feet advertising the property for rent or sale, each of which shall, in any event, comply with all statutes, laws or ordinances governing sale.

Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one (1) or more political candidates or the sponsorship of a political party, issue or proposal provided that such sign shall not be more than four (4) square feet and shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within five (5) days after the election. One (1) sign advertising contractor services may be displayed from the time a service is contracted for until no later than five (5) days after the work is completed. Such sign shall not be more than four (4) square feet in size. The Association or its agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability or trespass or otherwise in connection with such removal. In addition, to protect the safety and harmony of the community, no person shall engage in picketing on any Lot, Common Area, or other public area within or adjacent to the Property, nor shall any vehicle, parked, stored or driven in or adjacent to the Property bear or display any signs, photographs, slogans, symbols, words or decorations intended to create controversy, invite ridicule or disparagement or interfere with the exercise of the property rights, occupancy or permitted business activities of any Owner.

- (q) The drying of clothes in full public view is prohibited. The Owners and occupants of any Lots at the intersections of streets or adjacent to parks, playgrounds or other facilities where the rear yard is visible to full public view shall construct a fence or other suitable enclosure to screen from public view the equipment and other items which are incident to normal residences, such as clothes drying equipment, yard equipment, wood piles, storage piles and the like.
- (r) No Owner shall perform, fail to perform or permit anything to be done or not done on his Lot which would violate any laws, statutes, ordinances or regulations of any kind or character.

### ARTICLE III ARCHITECTURAL CONTROL

**Section 3.1. Appointment.** Architectural control of the Lots and all improvements thereof shall be the responsibility of the Architectural Control Committee. The Committee shall use good faith and diligent efforts to promote and ensure a high level of taste, design, quality, harmony and conformity through the Property consistent with this Declaration. The Committee shall be composed of such persons as shall be designated by the Board from time to time. The Board shall have the right to remove any member of the Committee with or without cause and may appoint substitute or replacement members at its option. .

**Section 3.2. Authority.** No building, wall or other structure shall be commenced, erected, placed, maintained or altered on any Lot, nor shall any exterior painting (other than repainting a structure the same color) of, exterior addition to, or alteration of, such items be made, nor any construction commence, until all plans and specifications and a plot plan have been submitted to and

approved in writing by the Committee as to:

- (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, proper facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping in relation to the various parts of the proposed improvements and in relation to improvements on the Property; and
- (c) the other standards set forth within this Declaration (and any amendments hereto) or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

The Committee is authorized and empowered to consider and review any and all aspects of construction and landscaping which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one (1) or more Owners or the general value of the Property. In considering the harmony of external design between existing structures and the proposed building being erected, placed or altered, the Committee shall consider only the general appearance of the proposed building as can be determined from front, rear and side elevations on submitted plans.

**Section 3.3. Procedure for Approval.** Final plans and specifications shall be submitted in duplicate by certified mail, return receipt requested or by hand delivery to the Committee. The plans and specifications shall show the nature, kind, shape, height, materials and location of all landscaping and improvements, the location of the house relative to the existing trees, any planned or proposed outbuildings, the pool location and size, if any, including the approximate type and location of the pool fence, and the proposed location of the driveway, light posts, and mail box, plans for the septic tank (including specifications and location) and sprinkler plans. The documents shall specify any requested variance from the setback lines, garage location or any other requirement set forth in this Declaration. The Committee is authorized to request the submission of samples of proposed construction materials and such other information as they reasonably deem necessary to make their determination. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans shall be marked "Approved", signed by a representative of the Committee and returned to the Owner or his designated representative. If disapproved by the Committee, one set of such plans shall be returned marked "Disapproved" and shall be accompanied by reasonable statement of the reasons for disapproval, which statement shall be signed by a representative of the Committee. Any modification of the approved set of plans and specifications must again be submitted to the Committee for its approval. The Committee's approval or disapproval, required herein, shall be in writing. In no event shall the Committee give verbal approval of any plans. If the Committee fails to approve or disapprove any such plans and specifications or modification thereto within thirty (30) days after the date of submission, written approval of the matters submitted shall not be required and compliance with this Section 3.3 shall be deemed to have been completed. In case of a dispute about whether the Committee responded within such time period, the person submitting the plans shall have the burden of establishing that the Committee received the plans. The Committee's receipt of the plans may be established by a signed certified mail receipt.

**Section 3.4. Standards.** The Committee shall have the sole discretion with respect to taste, design and all standards specified herein. One objective of the Committee is to prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures from being built on the Property. The Committee shall also have the authority to require that the colors of roofing materials be earth tones and generally to require that any plans meet the standards of the existing improvements on the Property. The Committee may from time to time publish and promulgate bulletins regarding architectural standards, which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration.

**Section 3.5. Liability of the Committee.** To the fullest extent permitted by law, the Committee, and its officers, directors, employees and agents, shall have no liability whatsoever for decisions made by the Committee so long as such decisions are made in good faith and are not arbitrary or capricious. Any errors in or omissions from the plans or the site plan submitted to the Committee shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Committee shall have no obligation to check for errors in or omissions from any such plans, or to check for such plans' compliance with the general provisions of this Declaration, or any codes, ordinances, regulations or other laws, whether statutory or not, and whether the same relate to Lot lines, building lines, easements or any other issue.

**Section 3.6. Costs of the Committee.** In the event that the Committee incurs reasonable and necessary costs and expenses in carrying out its duties hereunder or in enforcing the provisions hereof, such costs and expenses shall be paid by the Association or reimbursed by the Association to the Committee or any member thereof. The Association shall be responsible for levying special individual assessments against any Owner, and collecting the same, in connection with amounts owed by an Owner to the Committee.

**ARTICLE IV**  
**SPECIAL FENCING AND LANDSCAPING**

**Section 4.1. Fences, Walls and Screening Landscaping.** The Association shall have the right, but not the obligation, to erect, install, maintain, repair and/or replace fences, walls and/or screening landscaping within (a) that portion of any Lot situated along the perimeter of the Addition, as shown on the Final Plat, or (b) on any portion of the Property not comprising any portion of a Lot or dedicated street or alley. Any fence, wall or sprinkler system shall be the property of the Owner of the Lot on which such fence, wall or sprinkler system is erected or installed, subject to the easements and rights of Declarant and the Association set forth below.

**Section 4.2. Landscaping.** The Association shall have the right to grade, plant and/or landscape and maintain, repair, replace and/or change such grading planting and landscaping on any portion of the Property not comprising any portion of a Lot or a dedicated street or alley or on any portion of a Lot over which an easement has been reserved for the benefit of the Association,

Section 4.3. Easement. The Association shall have, and hereby reserve, the right and easement to enter upon any portion of the Property for the purpose of exercising the discretionary rights set forth in this Article IV, except that as to any Lot situated along the perimeter of the Property, the Association shall only have the right to enter the portion of any Lot situated along the perimeter of the Addition, as shown on the Amended Final Plat.

Section 4.4. The Association's Discretion. Notwithstanding any provisions herein to the contrary, except for Article VII, the Association shall not be obligated to erect, install, maintain, repair or replace any fences, walls, sprinkler systems, grading, planting or landscaping on the Property.

## ARTICLE V GENERAL PROVISIONS

Section 5.1. Easements. Easements for the installation and maintenance of utilities and drainage facilities shall be reserved as shown on the Final Plat and shall be observed by each Owner and shall not be in any manner obstructed so as to hinder or defeat such easement. Easements are also reserved for the installation, operation, maintenance and ownership of utility service lines from the Property lines to the residences. The Association may reserve easements for the purpose of erecting and maintaining permanent fencing along adjacent roadways, landscaping along the same and entry features (landscaping features and the like) about the entrances to the subdivision. The Association reserves the right to make minor changes in and additions to the above easements for the purpose of most efficiently and economically installing improvements. By acceptance of a deed to any Lot, the Owner thereof covenants and agrees to mow weeds and grass and to keep and maintain in a neat and clean condition any easement which may traverse a portion of the Lot or be adjacent to the Lot, other than those easements constituting Common Properties which the Association elects to maintain.

Section 5.2. Utilities. Utility service connections, including but not confined to electric, cable, gas and telephone, shall be underground from the point of service to the residence. All septic systems must comply with or exceed city/county standards, with both city and county inspections and approvals.

Section 5.3. Recorded Final Plat. All dedications, limitations, restrictions and reservations that are shown on the Amended Final Plat shall be deemed to be incorporated herein and shall be construed as being adopted in each contract, deed or conveyance executed or to be executed, conveying Lots on the Property, whether specifically referred to therein or not.

Section 5.4. Lot Maintenance. Owner and occupant of each Lot shall at all times keep their individual Lot(s) mowed and free of debris, junk and unsightly objects, and maintain the yards in a sanitary and attractive manner and shall edge the streets that run along the boundary lines of the property.. Grass, weeds and vegetation on each Lot must be kept mowed at regular intervals so as to maintain the Lot in a neat and attractive manner. No vegetables shall be grown in any portion of a Lot yard that faces a street or is not screened by fencing built in accordance with the terms hereof.

No Owner shall permit weeds or grass to grow to a height of greater than six inches (6") upon his property.

**Section 5.5. Maintenance or Improvements.** Subject to the provisions of this Declaration, each Owner shall maintain the exterior of all buildings, fences, walls and other improvements on his Lot in good condition and repair, and shall replace worn and rotten parts, and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, walls, driveways, parking areas or other exterior portions of the improvements to deteriorate in an unattractive manner.

**Section 5.6. Special Enforcement Rights of the Association.** In the event that an Owner fails to comply with the provisions of this Declaration the Association shall give such Owner written notice of such failure by certified mail, return receipt requested. If the Owner shall not have corrected such failure within ten (10) days after the deposit of such notice with the U.S. Postal Service, the Association shall have the right, but not the obligation, to bring the Lot, and any improvements thereon, into full compliance with this Declaration. All costs and expenses incurred by the Association in connection with correcting any such failure shall be borne by the Owner. If any Owner does not promptly reimburse the Association for all such costs and expenses, including a twenty percent (20%) markup to cover necessary administrative costs as appropriate for the type of work conducted, the Association shall have the right to assess the Owner for same, such assessment being a special individual assessment under the provisions of Section 8.5 below.

**Section 5.7. Mortgages.** It is expressly provided that the breach of any of conditions contained herein shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, as to the same premises or any part thereof encumbered by such mortgage or deed of trust, but said conditions shall be binding thereto as to Lots acquired by foreclosure, trustee's sale or otherwise, as to any breach occurring or continuing after such acquisition of title. Furthermore, an action to abate the breach any of the covenants, conditions, restrictions, servitudes and reservations in this Declaration may be brought against any purchaser who acquires title through foreclosure of a mortgage or deed of trust (or through any equivalent proceedings), and the successors in interest to any such purchaser, even though the breach existed prior to the time the purchaser acquired an interest in the Lot.

**Section 5.8. Term.** The foregoing Covenants, Conditions and Restrictions shall run with and bind the land and shall remain in full force and effect for a term of twenty (20) years from the date this Declaration is recorded in the appropriate Real Property Records of the County and shall automatically be extended for successive ten (10) year periods, unless amended as provided herein.

**Section 5.9. Severability.** If any provision herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the final (i.e., non-appealable) judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

**Section 5.10. Binding Effect.** Each of the Covenants, Conditions and Restrictions and other provisions herein contained is made for the mutual benefit of, and is binding upon, each and every

person acquiring any part of the Property, it being understood that such Covenants, Conditions and Restrictions and other provisions are not for the benefit of the owner of any land except that which is a part of the Property and the owners of the Adjacent Lots. This Declaration, when executed, shall be filed of record in the appropriate Real Property Records of the County, so that each and every Owner or purchaser of any portion of the Property is on notice of the Covenants, Conditions and Restrictions and other provisions herein contained.

**Section 5.11. Enforcement.** The Association, the Committee (as applicable), the owners of the Adjacent Lots, as well as all Owners, shall have the right to have each and all of the Covenants, Conditions and Restrictions and other provisions herein faithfully carried out and performed with reference to each and every Lot, together with the right to bring any suit or undertake any legal process that may be proper to enforce the performance thereof, it being the intention hereby to attach to each Lot and the Adjacent Lots, without reference to when it was sold, the right to have such Covenants, Conditions and Restrictions and other provisions strictly complied with, such right to exist with the Owner of each Lot and the Adjacent Lots, and to apply to all other Lots whether owned by the undersigned, its successors, assigns or others. Failure by any Owner, the Committee or the Association, or the owners of the Adjacent Lots, to enforce any covenant, condition, agreement or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 5.12. Addresses.** Any notices or correspondence to an Owner shall be addressed to the street address of the Lot. Any notices or correspondence to the Association shall be addressed to such other address as is specified by the Association pursuant to an instrument recorded in the appropriate Real Property Records of Collin County, Texas.

**Section 5.13. Amendment.** At any time, the Owners of fee simple title to sixty-six and two thirds percent (66-2/3%) of the Lots (as shown by the appropriate Real Property Records of the County) may amend the Covenants, Conditions and Restrictions and/or any provision(s) set forth herein by executing an instrument containing such amendment(s) and recording same in the appropriate Real Property Records of the County. Notwithstanding the foregoing, no amendment hereto which would allow the subdivision of any Lot shall be effective unless the same is approved by a ¾ majority vote of the City Council (or equivalent governing body) of the City of Lucas, Texas or such other governmental authority as may have jurisdiction over the Property in the event that the Property no longer is a part of the City of Lucas, Texas.

**Section 5.14. NOTICE OF TRANSFER.** IF AT ANY TIME A LOT IS SOLD, THE NEW OWNER SHALL PROMPTLY NOTIFY THE ASSOCIATION OF THE NAME AND ADDRESS (IF OTHER THAN THE LOT) OF THE NEW OWNER.

**Section 5.15. No Liability for Trespass.** Whenever the Association, the Committee, or the Board of Directors exercises any right hereunder and in connection therewith enters upon any Lot, such parties shall not be liable for trespass upon such Lot.

## ARTICLE VI

## MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

**Section 6.1. Membership.** Every Owner of a Lot shall automatically be a Member of the Association. Membership shall be appurtenant to each Lot and may not be separated from ownership of any Lot which is subject to assessment hereunder.

**Section 6.2. Voting Rights:** Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership; provided, however, that in the event that more than one (1) person holds such interest or interests in any Lot, even though all such persons shall be Members, there shall be only one (1) vote for such Lot, which shall be exercised as they, among themselves, determine (but in no event shall more than one (1) vote be cast with respect to any such Lot).

### **Section 6.3. Quorum and Notice Requirements.**

- (a) Except as expressly provided herein to the contrary, any action of the Members shall require the assent of at least fifty-one percent (51%) of the votes of the Association's Members who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be given to all Members not less than ten (10) days nor more than thirty (30) days in advance and shall set forth the purpose of such meeting.
- (b) The quorum required for any action referred to in Section 6.3(a) shall be determined as set forth in this Section 6.3(b). The first time a meeting is called whether regular or special, the presence at the meeting of Members, or of proxies, entitled to cast ten percent (10%) of all of the votes of the Association's Members, shall constitute a quorum. If the required quorum is not present at the meeting, one (1) additional meeting may be called, subject to the notice requirement hereinabove set forth, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however, that no such second meeting shall be held more than sixty (60) days following the first meeting, or the process must then be repeated.
- (c) Any provision of this Declaration to the contrary notwithstanding, any action referred to in Section 6.3(a) may be taken with the assent given in writing and signed by the Members entitled to cast at least fifty-one percent (51%) of all of the votes of the Association's Members, at a duly called and conducted meeting of the Members.
- (d) Except as specifically set forth in this Declaration, notice, voting and quorum requirements of all action to be taken by the Association shall be set forth in its Articles of Incorporation (herein so called) and Bylaws (herein so called), as same may be amended from time to time.

**Section 6.4. Right of Inspection.** Each Owner shall have the right to inspect the books of the Association, during normal business hours and at the place where such books are kept, and upon reasonable prior notice to the Association.

**ARTICLE VII**  
**THE COMMON PROPERTIES**

**Section 7.1. Initial Common Properties.** The Common Properties shall consist of easement rights conveyed to and accepted by the Association over portions of the Property, which shall include: (a) The white PVC fence separating the Property from the adjacent sub-division to the East

(b) The white PVC fence along portions of Lewis Lane

(c) The Right-of-Way (ROW) easement between the Lewis Lane fence and the Lewis Lane pavement belonging to the City of Lucas

(d) The ROW easement belonging to the City of Lucas along W Lucas Rd between Lewis Lane and the eastern boundary of the Property and extending further to the fence line of the three adjacent properties. While not considered common property, but in recognition of the fact that the subdivision builder landscaped, added irrigation, and maintained the entire berm area to the fence and fence line of the three homeowners property adjacent to the berm, the HOA will maintain this area unless the homeowner requests that the HOA not maintain the area from the top of the berm to the fence or fence line at the bottom of the berm and the homeowner agrees to maintain that area in the same manner as outlined in the HOA landscape contract. The homeowner will make such a request to the HOA Board, in writing as outlined in Attachment 1 (Request to Maintain Berm), and it will become a binding contract upon signatures of both parties. Sale of property that is maintained by the homeowner will cancel the existing maintenance agreement and maintenance of the berm will revert to the HOA. If the maintenance agreement is breached in any way the HOA Board will have the right to cancel the agreement upon written notice to the homeowner, stating such reason(s) for the cancellation. Written notice will be provided at least 7 days in advance of the proposed date for commencing HOA maintenance in order to give the homeowner an opportunity to request reconsideration by the HOA Board. The homeowner may cancel this agreement by providing written notice to the Board at least 7 days prior to stopping maintenance. If the homeowner cancels the agreement they will not be able to request self-maintenance until the start of the following year HOA maintenance contract start date

(e) The Estates of Austin Trail monument at the corner of Lewis Lane and W Lucas Rd including all related stonework, screening plantings and decorative plantings

(f) The entrance areas on both sides of Bee Caves Rd at W Lucas Rd including all related stonework, screening plantings and decorative plantings

(g) The entrance area on both sides of Lamar Rd at Lewis Lane including all related stonework, screening plantings and decorative plantings

As the City has not agreed to maintain its Right of Way easements, it shall be the responsibility of the Association to maintain same.

Section 7.2. Additional Common Properties. Additional property may be added to the Common Properties hereunder only upon the approval of the affirmative vote of at least fifty-one percent (51%) of the votes which may be cast, in person or by proxy at a meeting of the Members of the Association duly called for that purpose.

Section 7.3. Easement Rights to the Common Properties. Easement rights to the Common Properties have been conveyed to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility and other easements and mineral interests outstanding and of record in Collin County, Texas.

Section 7.4. Member's Easements of Enjoyment. Subject to the provisions of Section 7.3, every Member and every tenant of every Member, who resides on a Lot, and each individual who resides with either of them, respectively, on such Lot shall have and share a non-exclusive right and easement of use and enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot; PROVIDED, HOWEVER, such easement shall not give such person the rights to use the Common Properties in a manner inconsistent with the use being made by the Association nor to make alterations, additions or improvements to the Common Properties.

Section 7.5. Extent of Members' Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Properties;
- (b) Subject to the affirmative vote of at least fifty-one percent (51%) of the votes of the Association's Members who are voting in person or by proxy at a meeting duly called for such purpose, to borrow money for the purpose of improving the Common Properties and facilities and in aid thereof to mortgage the Common Properties, and the rights of such mortgagee in the Common Properties shall be subordinate to the rights of the Owners hereunder;
- (c) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;
- (d) The right of the Association, as provided in its Bylaws, to suspend the voting rights of any Member and to suspend the right of any individual to use any of the Common Properties and/or common facilities for any period during which any assessment

against a Lot resided upon by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;

- (e) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities on the Common Properties, if any such recreational facilities are ever constructed; and
- (f) Subject to the affirmative vote of at least fifty-one percent (51%) of the votes of the Association's Members, who are voting in person or by proxy at a meeting duly called for such purpose, the right of the Association to acquire additional Common Properties as the Members of the Association may determine.

Section 7.6. Dedication of the Common Properties. The Board of Directors of the Association shall have the right to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and upon such conditions as the Board of Directors may determine.

Section 7.7. Certain Portions of the Drainage Easements as Part of the Common Properties. Only that portion of the drainage easements identified below shall be part of the Common Properties and the Association is hereby granted an easement for entry onto the Lots adjacent to such portions of these drainage easements as is reasonably necessary to maintain the same, landscape the same, or otherwise utilize the same at the Association's expense, The other portions of the drainage easements affecting these Lots as shown on the Final Plat are not part of the Common Properties and these other portions of the drainage easements shall be maintained by the respective Lot Owners and not by the Association. These drainage easements are

(a) The drainage easement extending from the northern boundary of the Property between Lots D 1 and D 2 bisecting Area C and between Lots D 11 and D 12 ending at the southern Property boundary as shown on the Amended Final Plat

(b) The drainage easement extending from Bee Caves Rd west between Lots D 22 and D 23 and ending at the southern Property boundary as shown on the Amended Final Plat

(c) The drainage easement extending from Bee Caves Rd west between Lots B 6, B 7 and B 8 and ending at the western boundary of the Property as shown on the Amended Final Plat

(Section 7.7 was originally added by the First Amendment)

## ARTICLE VIII COVENANT FOR MAINTENANCE ASSESSMENTS

Section 8.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to

covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association) the following: (a) annual assessments or charges; (b) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided; and (c) individual special assessments levied against individual Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner, his tenant(s) occupying his Lot, if applicable, and their respective family, agents, guests and invitees, or for costs incurred by the Association resulting from any Owner failing to comply with the terms and provisions hereof, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular annual assessments to be collected by the Association shall constitute the maintenance fund of the Association. The annual, special capital, and special individual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The annual assessment shall be payable in one annual installment as provided in this Article VIII.

**Section 8.2. Purpose of Assessments.** The assessments levied by the Association shall be used as follows: (a) for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property, and in particular for the improvement and maintenance of the Common Properties or any other properties, services and facilities devoted to this purpose and comprising or directly relating to the use and enjoyment of the Common Properties, including, but not limited to, the payment of taxes on and insurance in connection with the Common Properties, and the repair, replacement and additions thereto; (b) for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; (c) for carrying out the duties of the Board of Directors of the Association as set forth in Article IX hereafter including, but not limited to, the payment by the Association of all assessments and charges payable in connection with sewer, water and garbage pickup services and the installation and maintenance of lighting (if any) of the Common Properties; (d) for paying the cost of maintenance of the monument sign(s) and entryway(s) for the Property in the event the appropriate governmental authority refuses to maintain the same; (e) for carrying out the purposes of the Association as stated in its Articles of Incorporation; and (f) for paying the costs of the Committee.

**Section 8.3. Basis and Amount of Annual Assessments.**

- (a) As of the date hereof, the maximum annual assessment shall be Five Hundred and No/100 Dollars (\$500.00) for each Lot on which a home has been completed (determined by the issuance of a certificate of occupancy therefor). The Board of Directors may fix the annual assessment at any amount equal to or less than the maximum annual assessment for that year, as hereinabove provided. Commencing with the year beginning January 1, 2017, and each year thereafter, the Board of Directors may set the amount of the maximum annual assessment for the following year for each Lot, provided that the maximum annual assessment may not be

increased more than twenty-five percent (25%) above the maximum annual assessment for the previous year without a vote of the membership taken in accordance with the provisions of Section 8.3(b).

- (b) Commencing with the year beginning January 1, 2002, and in each year thereafter, the Board of Directors may set the maximum annual assessment for the following year for each Lot at an amount more than twenty-five percent (25%) above the maximum annual assessment for the previous year; PROVIDED THAT any such increased assessment shall be approved by the affirmative vote of at least fifty-one percent (51%) of the votes of the Association's Members who are voting in person or by proxy at a meeting duly called for such purpose.

**Section 8.4. Special Assessments.** In addition to the annual assessment authorized by Section 8.3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, maintenance, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto; PROVIDED THAT any such assessment shall be approved by the affirmative vote of at least fifty-one percent (51%) of the votes of the Association's Members who are voting in person or by proxy at a meeting duly called for such purpose.

**Section 8.5. Special Individual Assessments.** In the event that any Owner fails to comply with the provisions hereof and the Association or the Committee incurs any cost or expense in either enforcing the provisions hereof against any such Owner or in carrying out the obligations of any such Owner, the Association shall have the right to assess against such Owner a special individual assessment in the amount of all such costs incurred by the Association or the Committee, such special individual assessment to be paid by the applicable Owner upon demand by the Association.

**Section 8.6. Uniform Rate of Assessments.** Both annual and special assessments (excepting therefrom special individual assessments) must be fixed at a uniform rate for all Lots.

**Section 8.7. Date of Commencement and Due Dates of Assessments.** The annual assessments provided for herein shall be payable in advance, on the first (1<sup>st</sup>) business day of each January. The due date or dates, if it is to be paid installments, of any special assessment under Section 8.4 shall be fixed in the respective resolution authorizing such assessment.

**Section 8.8. Duties of the Board of Directors with Respect to Assessments.**

- (a) The Board of Directors of the Association shall fix the amount of the assessment against each Lot at least thirty (30) days in advance of each annual assessment period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.
- (b) Written notice of the assessment shall thereupon be delivered or mailed to every

Owner subject thereto.

- (c) The Board of Directors shall, upon demand, at any time furnish to any Owner liable for said assessments a certificate in writing signed by an officer or agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

**Section 8.9. Deed of Trust Assessment Lien to Secure Charges and Assessments.** All regular and special maintenance charges or assessments, and the special individual assessments, as hereinabove provided for, shall constitute and be secured by a separate and valid and subsisting deed of trust assessment lien, hereby created and fixed, and which shall exist upon and against each Lot and all improvements and fixtures thereon, for the benefit of the Association, and all Members thereof. Notwithstanding any other provision hereof, the lien to secure the payment of assessments or any other sums due hereunder and any other lien which the Association may have on any Lot pursuant to this Declaration shall be subordinated to the lien or equivalent security interest on any first lien mortgage or deed of trust on any Lot. Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party, shall extinguish the liens securing maintenance charges or assessments or any other sums due hereunder which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure be extinguished by any foreclosure, nor shall the lien for future assessments or charges be affected in any manner.

**Section 8.10. Effect of Nonpayment of Assessment.** If any regular or special charge or assessment or special individual assessment is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at the highest non usurious rate allowed under the laws of the State of Texas, or other applicable law, or if no such limitation is imposed, then at the rate of eighteen percent (18%) per annum, and if placed in the hands of an attorney for collection or if collected through probate or other judicial proceedings, there shall be reimbursed to the Association reasonable attorneys' and paralegals' fees and costs.

**Section 8.11. Collection and Enforcement.** The Association shall have a lien on each Lot and against the Owner of said Lot, securing payment of any regular or special charge or assessment, together with interest thereon as provided herein and reasonable attorneys' fees and costs incurred in the collection of same and the enforcement of said lien. The Board of Directors shall take such action as it deems necessary to collect assessments and may settle and compromise the same if it is in the best interest of the Association. Such liens shall be effective as and in the manner provided for herein and shall have the priorities established in the covenants, conditions and restrictions contained herein. The Board of Directors may bring an action at law against any Owner personally obligated to pay an assessment or foreclose the lien against such Owner's Lot, or both, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of assessment. Each

Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Board of Directors of the Association or its agent the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt and to enforce the aforesaid lien by all methods available be for the enforcement of such liens, including, but not limited to, nonjudicial foreclosure pursuant to Texas Property Code Section 51.002 in force and effect on the date of this Declaration, or in accordance with the prescribed manner for foreclosure of deed of trust liens provided by any future amendment to such Section 51.002 or any other statute or article enacted in substitution therefor, and such Owner hereby expressly grants to the Board of Directors a power of sale in connection with said lien. Fidelity National Title Agency, Inc. is hereby appointed trustee (the "Trustee"), unless and until the Board of Directors shall designate a substitute or successor trustee, as hereinafter provided, to post the required notices as provided by law and conduct such foreclosure sale. The lien provided for in this Section shall be in favor of the Association and shall be for the common benefit of all Owners and shall have the same effect as though each Owner had expressly granted to the Association for the benefit of the Owners a deed of trust lien as well as a security interest in said Lot to secure the payments of the assessments provided for herein. In addition to such notices as required by the aforesaid statute, the trustee shall mail to the Owner or Owners' mortgagee of a Lot for which the assessment has not been paid, a copy of the notice of trustee sale at or before the time of posting same by U.S. Postal Service, postage prepaid, certified, return receipt requested, at the Lot or such other address as the Board has been advised in writing for receipt of notices under this Declaration. At any foreclosure, judicial or nonjudicial, the Association shall be entitled to bid up to the amount of its lien, together with costs and attorneys' fees, and to apply as a cash credit against its bid all sums due the Association covered by the lien foreclosed. From and after any such foreclosure, the former Owner or Owners, their 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 their failure to surrender possession of said property upon demand, the purchaser, or 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 Lot or any part thereof, is situated. The Board of Directors in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act in the place of the trustee who posted the original notices without any formality other than the designation in writing of a substitute or successor trustee; and the authority hereby conferred by the Board of Directors shall extend to the appointment of other successor and substitute trustees successively until the delinquent assessment or assessments have been paid in full, or until said property is sold, and each substitute and successor trustee shall succeed to all the rights and powers of the original trustee appointed by the Board of Directors or its agents. Each Owner, for the purpose of better securing each and all monetary obligations described within this Declaration, and in consideration of the benefits received and to be received by virtue of the ownership of real estate within the Property, has granted, sold and conveyed and by these Declaration does grant, sell and convey unto the 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 this Declaration to and for the benefit of the Association as the Beneficiary.

**Section 8.12. Omission of Assessments.** The omission of the Board of Directors, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year but the assessment filed for the preceding year shall continue until a new assessment is filed.

**Section 8.13. Maintenance Fund: Working Capital Fund.**

- (a) The Association may establish and maintain a maintenance fund for the periodic maintenance of the Common Properties. Subject to the provisions of Section 8.3 above, the Board may at any time ratably increase or decrease the amounts of regular annual assessments in accordance with this Declaration to such level as shall be reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including provisions of reasonable reserves. The Board is obligated to maintain assessments at a level sufficient to enable payment of all costs which are the Association's obligations.
- (b) The Association may establish a working capital fund for the initial operation of the Common Properties in such amount as the Board shall determine.

**Section 8.14. Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use; and
- (b) All Common Properties.

**ARTICLE IX**  
**BOARD OF DIRECTORS OF THE ASSOCIATION**

**Section 9.1. Power and Duties.** The Board for the benefit of the Property and the Owners, shall have the right to do all things which are necessary or advisable in connection with enforcing the provisions of this Declaration. Such powers shall include, but shall not be limited to, the following:

- (a) Paving assessments and charges for sewer, water and garbage pickup services for the Property, installation and maintenance charges for street lighting for the Property, and taxes, assessments and other charges which shall properly be assessed or charged against the Common Properties.
- (b) Performing exterior maintenance on the Common Properties, which may include, without limitation, the following; (a) maintenance of any driveway, private roadways,

jogging paths, walkways and sidewalks; (b) maintenance of exterior grounds, including care of trees, shrubs and grass, lighting systems, sprinkler systems (if installed) and similar facilities on the Common Properties; and (c) maintenance of the entry monument(s) and any screening walls or fences constructed around the perimeter of the Property; PROVIDED, FURTHER, that in the event that the need for maintenance or repair is caused through the willful or negligent act of any Owner, his family, his tenants, his guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

- (c) Managing and maintaining the Common Properties and full maintenance of a utility service for the Common Properties; the furnishing and upkeep of any desired personal property for use in the Common Properties.
- (d) Purchasing a policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association, in an amount not less than \$300,000.00 to indemnify against the claim of one person, \$500,000.00 against the claims of two or more persons in any one occurrence, and property damage insurance in an amount not less than \$30,000.00 per occurrence; which policy or policies shall contain an endorsement providing that the rights of the named insured shall not be prejudiced with respect to actions against other named insureds; provided, that under no circumstances shall the Board be authorized to provide or pay for fire, casualty, or other insurance insuring the interest of any Owner in his Lot.
- (e) Executing all replats of the Property and to execute all declarations of ownership for tax assessment purposes with regard to the Common Properties on behalf of all Owners.
- (f) Borrowing funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.
- (g) Entering into contracts, maintain one or more bank accounts, and generally to have all the powers necessary or incidental to the operation and management of the Association, expressly including the power to enter into management and maintenance contracts.
- (h) Protecting or defending the Common Properties from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.
- (i) Making reasonable rules and regulations for the operation of the Common Properties and amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by the vote of at least fifty-one percent (51%) of the Members, or, with respect to a rule applicable to less than all of the Property, by the vote of at least fifty-one percent (51%) of the Members in the portions affected (without limiting the generality of the foregoing language, the

rules and regulations may provide for limitations on use of the Common Properties during certain periods by youthful persons, visitors or otherwise).

- (j) Adjusting the amount, collecting and using any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, assessing the Members in proportionate amounts to cover the deficiency.
- (k) Enforcing the provisions of this Declaration and any rules made hereunder and to enjoining and seeking damages from any Owner for violation of such provisions or rules.
- (l) Exercising the rights granted to the Association in this Declaration.

**Section 9.2. Board Power. Exclusive.** The Board shall have the exclusive right to contract for all goods, services and insurance, payment for which is to be made from the maintenance fund, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

**Section 9.3. Owner's Obligations to Repair.** Except for those portions of each Lot constituting the Common Properties, each Owner shall at his sole cost and expense, maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair. In the event that any Owner shall fail to maintain and repair his Lot and such improvements as required hereunder, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, subject to the notice and cure provisions of Section 5.6 above, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessments hereunder when due.

**Section 9.4. Maintenance Contracts with Owners.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by or for the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof (including, but not limited to, the maintenance and repair of fences owned by any such Owner), such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and to the best interest of the Association; provided, however, that same must be commercially reasonable in all circumstances.

## **ARTICLE X** **ADDITIONS TO THE PROPERTY**

Additional property(ies) may become subject to this Declaration and comprise a part of the

Property, in the following manner. At any time during the existence of this Declaration, an owner of any additional property who desires to add any such additional property to the Property and the concept of this Declaration, thereby subjecting it to the jurisdiction of the Association and the Committee, may do so, upon the affirmative vote of a majority (greater than fifty percent (50%)) of the votes which may be cast, in person or by proxy, at a meeting of the Members of the Association duly called for that purpose; and upon such vote, such owner and the Association on behalf of the other Owners shall file of record a supplementary declaration of covenants, conditions and restrictions extending this Declaration to such additional property. Any such additions to the Property, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association and the Committee to such additional property.

ARTICLE XI  
RESTRICTION ON FURTHER SUBDIVISION OF LOTS

Notwithstanding any to the contrary contained herein, no Lot shall be subdivided or split. Any person owning two (2) or more adjoining Lots may consolidate those Lots into building sites, with the privilege of constructing improvements, as permitted by this Declaration, on the resulting building site. Once consolidated, no Lots may be resubdivided or split. Notwithstanding the provisions of Section 5.13 above, or any other provision of this Declaration, the provisions of this Article XI may only be amended by complying with the terms and provisions of Section 5.13 above and by obtaining the approval by a ¾ majority vote of the City Council (or equivalent governing body) of the City of Lucas, Texas or such other governmental authority as may have jurisdiction over the Property in the event that the Property no longer is a part of the City of Lucas, Texas.

EXECUTED this 9 day of August, 2016  
ADDRESS: DECLARANT:

505 Bastrop Rd  
Lucas, TX 75002  
Phone: 972-442-4833

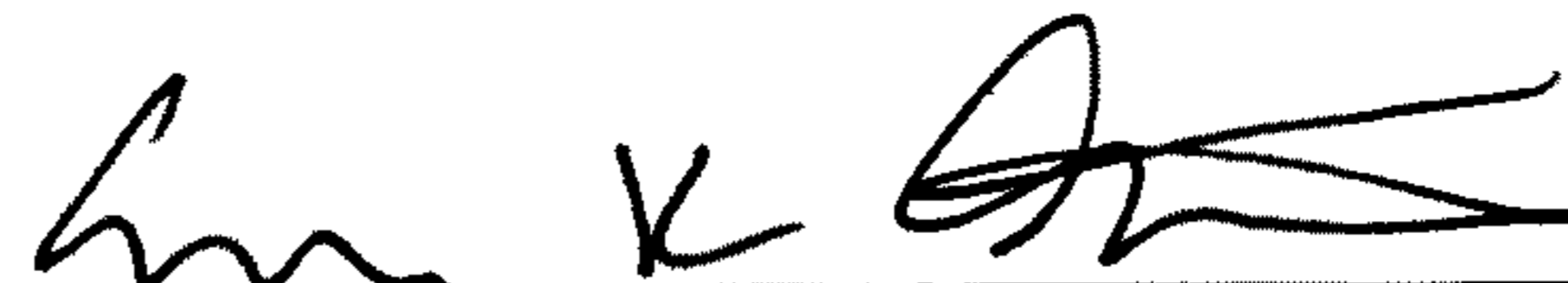
Estates of Austin Trail Homeowners Association, Inc.,  
a Texas Not-For-Profit Corporation

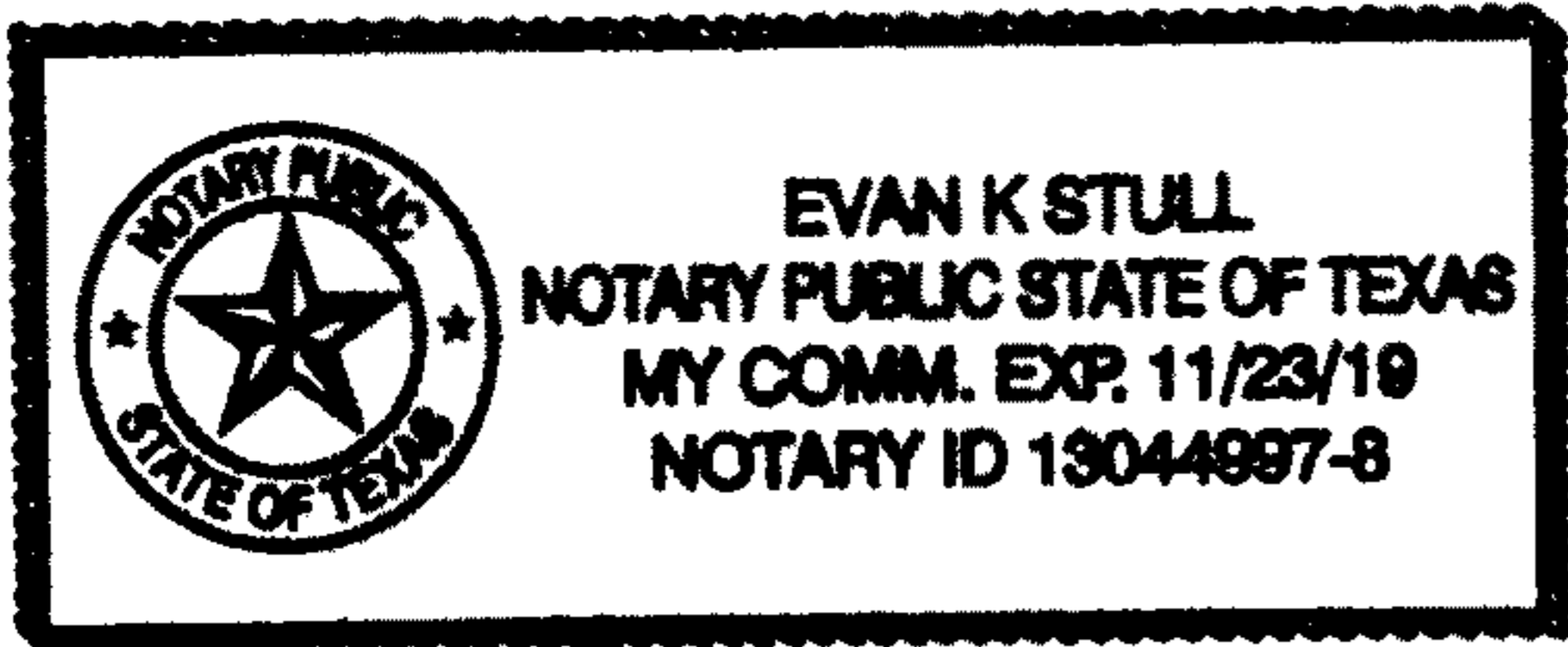
By: Joseph Juarez  
Joseph Juarez  
President, Estates of Austin Trail HOA

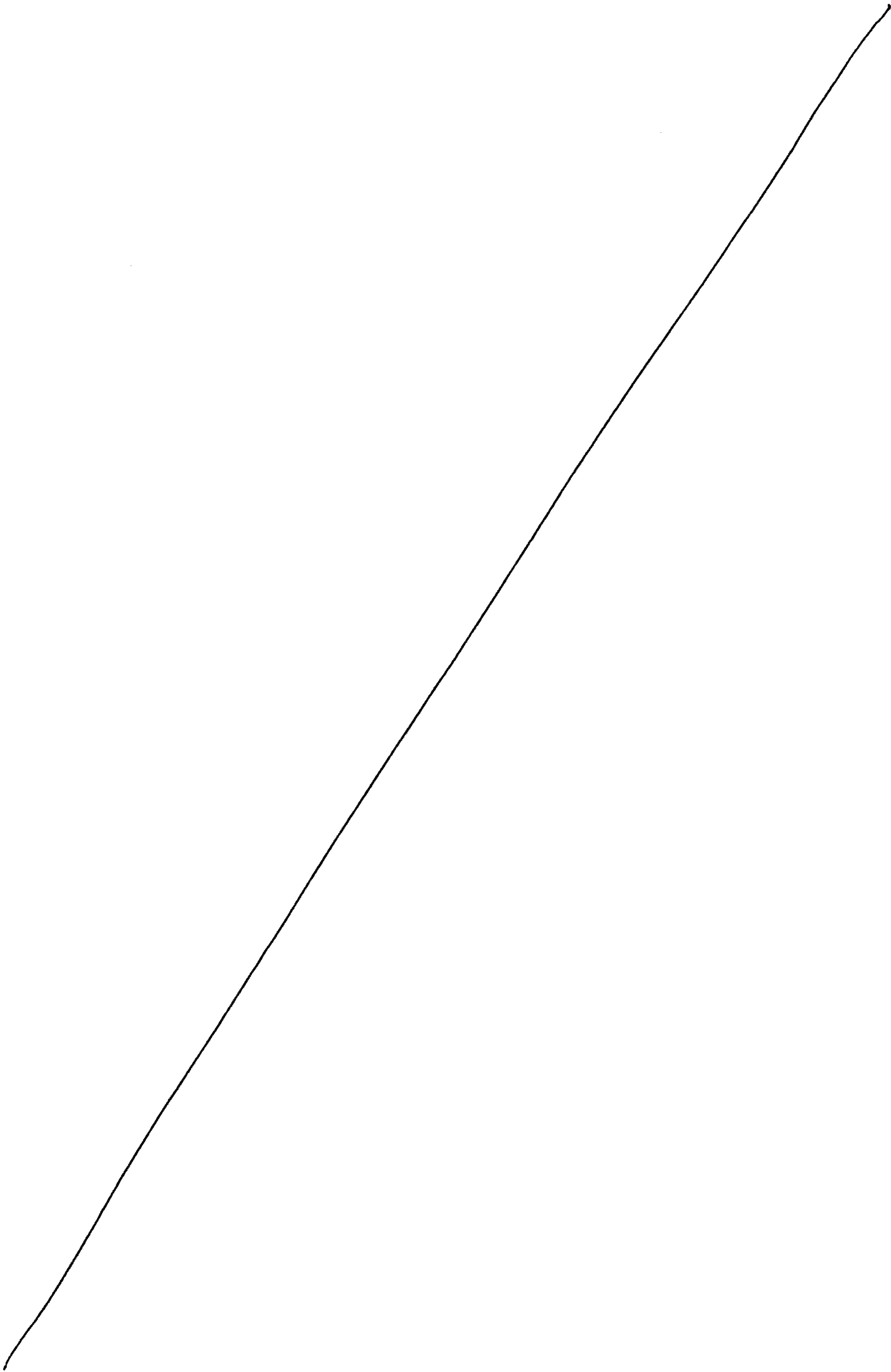
STATE OF TEXAS           §  
   §  
COUNTY OF COLLIN       §

BEFORE ME, the undersigned authority, appeared Joseph Jones, the President of The Estates of Austin Trail Homeowners Association, Inc., a Texas Non-Profit Corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacities therein stated, on behalf of such partnership.

GIVEN UNDER MY HAND AND OFFICE this 9 day of August, 2016.

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









**Attachment 1 – Request to Maintain Berm**

(Name of Owner

Address of Lot)

I/we request HOA Board approval to maintain the berm area adjacent to our property along Lucas Road, from the top of the berm to the north fence or fence line of our property. We agree to maintain shrubs, trees and mow/weed the grass as outlined in the HOA contract for such services. (HOA maintenance contract will be reviewed and initialed by homeowner and will become part of this agreement). If this maintenance agreement is breached in any way the HOA will have the right to cancel the agreement upon written notice to the homeowner, stating such reason(s) for the cancellation.

Written notice will be provided at least 7 days in advance of proposed date for commencing HOA maintenance in order to give the homeowner an opportunity to request reconsideration by the HOA Board. The homeowner may cancel this agreement by providing written notice to the Board 7 days prior to stopping maintenance. If the homeowner cancels the agreement they will not be able to request self-maintenance until the start of the following year HOA maintenance contract start date.

Per this agreement, homeowner maintenance will start on \_\_\_\_\_.

Owners signature: \_\_\_\_\_

Date: \_\_\_\_\_

HOA Presidents' signature: \_\_\_\_\_

Date: \_\_\_\_\_

Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Collin County, TEXAS  
08/10/2016 01:59:49 PM  
\$154.00 DFOSTER  
20160810001044510



A handwritten signature in cursive script that reads "Stacey Kemp".