

# **Declaration of Amended Restrictions, Covenants and Conditions of the Wild Horse Estates Subdivision**

## **Basic Information**

**Date:** May 24, 2021

**Declarant:** Beograd Homes, Inc.

**Declarant's Address:** 14572 Monroe Street, Midway, California 92655

**Property Owner Association:** Wild Horse Estates Association, a Texas nonprofit corporation.

**Property Owners Association's Address:** 13046 FM Road 346, Bullard, Texas 75757

**Property:** The Wild Horse Estates residential subdivision, as shown on the plat map filed April 13, 2021 in Cabinet 'F' Slide 241D, Document Number 202101014206, by Beograd Homes, Inc. in the Official Records of Smith County, Texas, the PLAT Records.

### **I. Imposition of Covenants**

Beograd Homes, Inc., Developer of the Wild Horse Estates Subdivision, and Declarant herein, is the record owner of all of those tracts and parcels of land in the Wild Horse Estates Subdivision. Declarant hereby imposes these Restrictive Covenants on the subdivision.

### **II. Purpose and Extent of these Restrictions, Covenants and Conditions**

These Restrictions, Covenants and Conditions are established for the purpose of carrying out a uniform plan for the continued improvement, development, and sale of the Wild Horse Estates Subdivision to the mutual benefit of the owners. These Restrictions, Covenants and Conditions shall be construed as covenants running with the Property described above and binding upon the Developer, its successors and assigns, all owners, or purchasers of said property, their heirs, successors, executors, administrators, and assigns as provided herein. Therefore, all Owners and other occupants of the Lots by, their acceptance

of their deeds, leases, or occupancy of any Lot, agree that their property and the subdivision are subject to the Restrictions, Covenants and Conditions

### **III. Definitions**

“ACC” means the Architectural Control Committee established in this Declaration.

“Assessment” means a regular assessment, special assessment, or other amount a property owner is required to pay the Property Owners’ Association under the dedicatory instruments or by law.

“Board” means the Board of Directors of the Property Owners Association.

“Bylaws” means the Bylaws of the Property Owners Association adopted by the Board.

“Common Area” means all property within the Subdivision not designated as a Lot on the Plat and that has not been dedicated to the public or accepted for maintenance by the applicable governmental body. The Common Areas are reserved for future use by the Developer/ Declarant. The Declarant will convey the Common Area to the Property Owners Association, Wild Horse Estates Association.

“County” means Smith County, Texas.

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

“Declarant” means Beograd Homes, Inc., and any successor that acquires all unimproved Lots owned by Declarant for the purpose of development and is named as successor in a recorded document.

“Declaration” means this instrument filed in the real property records of Smith County, Texas that includes restrictive covenants governing the Wild Horse Estates Subdivision.

“Dedicatory Instruments” means this Declaration and the Certificate of Formation,

Bylaws, rules of the Property Owners Association, and standards of the ACC, as amended.

“Development period” means a period stated in a declaration during which a Declarant reserves:

(A) a right to facilitate the development, construction, and marketing of the subdivision; and

(B) a right to direct the size, shape, and composition of the subdivision.

“Easements” means Easements within the Property for utilities, drainage, and other purposes as shown on the Plat, set out in this document, or otherwise of record.

“Long Term Renting” means granting the right to occupy and use a residence or Structure in exchange for consideration for a period of time greater than 180 days subject to all Restrictions, Covenants and Conditions contained herein.

“Lot” means each tract of land designated as a lot on the Plat, including any improvements on the designated parcel, but excluding lots or areas that are part of the Common Area.

“Member” means Owner.

“Owner” means every record Owner of a fee interest in a Lot.

“Plat” means the Plat of the Property recorded in the Plat records of Smith County, Texas, and any replat of or amendment to the Plat made in accordance with this Declaration.

“Property Owners’ Association” means the Wild Horse Estates Association.

“Regular assessment” means an assessment, a charge, a fee, or dues that each owner of

property within a residential subdivision is required to pay to the property owners' association on a regular basis and that is designated for use by the property owners' association for the benefit of the residential subdivision as provided by the restrictions.

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

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

“Restrictions” means one or more restrictive covenants contained or incorporated by reference in a properly recorded map, plat, replat, declaration, or other instrument filed in the real property records or map or plat records. The term includes any amendment or extension of the restrictions.

“Restrictive covenant” means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative.

“Short Term Renting” means granting the right to occupy and use a Residence or Structure in exchange for consideration for a period of time less than 180 days subject to all Restrictions, Covenants and Conditions contained herein.

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

“Special assessment” means an assessment, a charge, a fee, or dues, other than a Regular Assessment, that each owner of property located in a residential subdivision is required to pay to the property owners' association, according to procedures required by the dedicatory instruments, for:

(A) defraying, in whole or in part, the cost, whether incurred before or after the

assessment, of any construction or reconstruction, unexpected repair, or replacement of a capital improvement in common areas owned by the property owners' association, including the necessary fixtures and personal property related to the common areas;

(B) maintenance and improvement of common areas owned by the property owners' association; or

(C) other purposes of the property owners' association as stated in its articles of incorporation or the dedicatory instrument for the residential subdivision.

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

“Subdivision” means the Property as described above and also known as Wild Horse Estates Subdivision, and any additional property hereinafter acquired by Declarant and made subject to this Declaration.

“Vehicle” means any automobile, truck, motorcycle, boat, trailer, or other wheeled conveyance, whether self-propelled or towed.

#### **IV. Clauses and Covenants**

##### **A. Declaration Supercedes Former Restrictions and Covenants**

This Declaration amends and supercedes any Declarations previously filed of record which apply to the Wild Horse Estates Subdivision, including, but not limited to:

The Declaration of Restrictions, Covenants and Conditions of the Wild Horse Estates Subdivision filed by Beograd Homes, Inc., Developer, on or about May 11, 2021 recorded at 202101018509 of the Official Records of Smith County, Texas.

Beograd Homes, Inc., Developer of the Wild Horse Estates Subdivision, and Declarant herein, hereby imposes these Amended Restrictions, Covenants and Conditions on the Wild Horse Estates Subdivision, Declarant is the record owner of those tracts and parcels filed for record in the Official Records of Smith County, Texas Document (20200100036942) dated September 23, 2020 with an effective date of October 1, 2020 and designated herein as follows:

All that certain tract or parcel of land situated in the Elijah J. DeBard League, Abstract 6, Smith County, Texas, and being all of that certain called 27.446-acre tract, described in a Warranty Deed with Vendor's Lien from Spano Texas Ventures, LLC to 27 Flint Group, LLC, dated October 1, 2015, recorded in C.F.N. 20150100047682 of the Official Public Records of Smith County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at a 1/2" iron rod found for the southerly southeast corner of said called 27.446-acre tract, same being in the north right-of-way line of F.M. Road 346;

**THENCE**, South 83Q10'11" West, with said north right of-way line of F.M. Road 346, a distance of 661.31 feet to a 1/2" iron rod found for the southwest corner of said 27.446-acre tract.

**THENCE**, North 02°50'33" West, with the west line of said 27.446-acre tract (the adjoining tracts being described in deeds recorded in Vol. 2488, Pg. 1, S.C.L.R. and C.F.N. 20140100023241, O.P.R.S.C., for reference), a distance of 1,174.38 feet to a 1/2" iron rod found for the southeast corner of Lot IO, Block 1, Cross Creek Estates. according to the plat thereof recorded in Cabinet 'D', Slide 376-B of the Plat Records of Smith County, Texas;

**THENCE**, North 53°45'16" East, with the north line of said 27.446-acre tract, a distance of 645.60 feet to a 1/2" iron rod found for the easterly corner of said Lot 14-A, same being the southeast corner of Lot 1, Brumby's Acres Addition, according to the plat thereof recorded in Cabinet 'E', Slide 122-D of said Plat Records;

**THENCE**, North 52°42'(2" East, continuing with said north line of said 27.446-acre tract, a distance of 476.98 feet to a 1/2" iron rod found for the northeast corner of said 27.446-acre tract, same being the northwest corner of a called 22.000-acre tract described in a deed recorded in C.F.N. 2011-00038848 of the Official Public Records of Smith County, Texas;

**THENCE**, South 00°39'50" East, with the west line of said 22.000-acre tract, a distance of 508.93 feet to a 1/2" iron rod found for the northerly southeast corner of said 27.446-acre tract;

**THENCE**, North 88°54'57" West, a distance of 209.08 feet to a 1/2" iron rod found for an interior corner of said 27.446-acre tract;

1. All Owners and other occupants of their Lots by their acceptance of their deeds, leases, or occupancy of any Lot agree that the Subdivision is subject to the Covenants.
2. The Covenants run with the land and bind all Owners, their successors or assigns, occupants and any other person holding an interest in the Lot.
3. Each Owner, their successors or assigns, occupants and any other person holding an interest in the Lot agrees to comply with the Dedicatory Instruments and agrees that failure to comply may subject him/her to a fine, an action for amounts due to the Property Owners Association, damages, or injunctive relief.

#### **B. Plat and Easements**

1. The Plat, Easements, and all matters shown of record affecting the Property are part of this Declaration and are incorporated by reference.
2. Property Owners Association Easements- The Property Owners Association reserves a five (5) foot easement along the perimeter of each Lot for the purpose of construction and/or maintenance by utility services and lawn maintenance services. No other easement or right of way may be granted without written authorization of the Property Owners Association.



3. An Owner may use that portion of a Lot lying in an Easement for any purpose that does not interfere with the purpose of the Easement or damage any facilities. Owners do not own any utility facilities located in an Easement.
4. Neither Declarant and/or the Property Owners Association nor any Easement holder is liable for damage to landscaping or a Structure in an Easement.
5. Declarant and each Easement holder may install, maintain, and connect facilities in the Easements.
6. Declarant and/or the Property Owners Association reserve the right from time to time to make changes in the location, shape and size of, and additions to the easements for the purposes of more efficiently installing utilities.
7. The right to enter upon any lot or lots during the installation and/or maintenance of streets by the Property Owners Association for the purpose of performing street excavation, construction and paving is hereby reserved to Declarant and/or the Property Owners Association, its successors and assigns, and neither the Declarant and/or the Property Association nor its successors and assigns shall be liable for any damage done by any such party or parties or any of their agents or employees to shrubbery, trees, flowers or other property of the Owners which is necessitated by such street construction.
8. The right to enter upon Lots 1 and 2 during the installation and maintenance of the fence located on Lots 1 and 2 is hereby reserved to the Property Owners Association, its successors and assigns, and neither the Declarant and/or the Property Owners Association nor its successors or assigns shall be liable for any damage done by any such party or parties or any of their agents or employees to any property of the Owners which is necessitated by such fence installation and maintenance.

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

1. **Permitted Use- Permitted Use-**A Lot may be used only for Single Family residential use, including Renting, Long Term Renting and Short-Term Renting, of a Residence and Structures which met the standards set out in the



Restrictive Covenants in effect when built, or the standards set out herein, or have been approved by the Architectural Control Committee established herein.

- a. *Lots with more than one Residence.* If any lot has an additional Residence (such as a guest house, etc.) in addition to a main Residence, such additional Residence may only be used for short term, temporary use, and cannot be occupied on a permanent basis by anyone other than the Owner or members of an Owners' family.
- b. *Camping:* Each property owner will have the right to camp on their vacant lot for a period not to exceed 72 hours. An extension may be submitted and granted in writing by the Board. Before leaving the property, all trash and debris must be placed in a trash can or taken with the owner and disposed of properly.

2. **Prohibited Activities-** *Prohibited activities* are:

- a. any activity that is otherwise prohibited by the Dedicatory Instruments;
- b. any illegal activity;
- c. any nuisance, noxious, or offensive activity;
- d. any dumping of rubbish;
- e. any storage of:
  - i. building materials except during the construction or renovation of a Residence or a Structure;
  - ii. vehicles, except vehicles in a garage or Structure or operable automobiles on a driveway; or
  - iii. unsightly objects unless completely shielded by a Structure;
- f. any exploration for or extraction of minerals;
- g. any keeping or raising of animals, livestock, or poultry (chickens), except for common domesticated household pets, such as dogs (pit bull and pit bull mix dogs are excepted and are strictly prohibited) and

- cats, not to exceed two per resident, confined to a fenced yard or within the Residence;
- h. any commercial or professional activity except reasonable home office use;
  - i. the drying of clothes in a manner that is visible from any street;
  - j. the display of any sign except:
    - i. one not more than five square feet, advertising the Lot for sale or rent or advertising a garage or yard sale; and
    - ii. political signage not prohibited by law or the Dedicatory Instruments but only during election cycles;
  - k. installing a mobile home, manufactured home, manufactured housing, motor home, or house trailer on a Lot;
  - l. moving a previously constructed house onto a Lot;
  - m. interfering with a drainage pattern without ACC approval;
  - n. hunting and shooting;
  - o. occupying a Structure that does not comply with the construction standards of a Residence;
  - p. parking a semi-truck and/or trailer, Travel Trailer, Camper, Motor Home, other commercial vehicle on the street overnight or for more than two (2) hours during daylight.

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

##### **1. Lots**

- a. *Consolidation of Lots.* An Owner of adjoining Lots, with ACC approval, may consolidate those Lots into one site for the construction of a Residence. If combining adjoining lots is approved by the Wild horse Estates Association, a revised plat dividing the subdivision to reflect the combination of lots must be approved by the Wild Horse Estates Association and submitted to Smith County for approval. Upon approval,

the easements and setback lines along the side lot line between the lots being combined are automatically released.

- b. *Subdivision Prohibited.* No Lot may be further subdivided.
- c. *Easements.* No easement on a Lot may be granted without ACC approval.
- d. *Maintenance.* Each Owner must keep the Lot, all landscaping, the Residence, and all Structures in a neat, well-maintained, and attractive condition.
- e. *Trash:* No cans, bottles, paper, trash, rubbish, tires, or car parts may be placed, deposited, or accumulated on any lot. All garbage must be kept in a water-tight thirty (30) gallon maximum container and disposed of properly (such as a trash pick-up service).
- f. *Building materials* may only be stored on a lot during construction or renovation of a Residence or Structure.
- g. No unsightly objects may be stored on any lot unless completely shielded by a structure.
- h. The Property Owners Association shall privately maintain all streets and/or roads located in the Wild Horse Estates Subdivision.

## 2. **Residences and Structures**

- a. *Aesthetic Compatibility.* All Residences and Structures must be aesthetically compatible with the Subdivision, as determined by the ACC.
- b. *Requirement to obtain ACC approval.* No Residence or other Structure (including sidewalk, driveway, fence, tennis court, swimming pool, outbuilding, or recreational equipment, etc.) may be erected, placed, or altered on any lot until two copies of the construction plans and specifications, including all exterior materials, and a location plot showing placement of any structure has been submitted to and approved in writing by the Architectural Control Committee. Construction must be completed six (6) months from start date.
- c. *Maximum Height.* The maximum height of a Residence is two (2) stories.
- d. *Required Area.* The total area of a Residence, exclusive of porches,

garages, or carports, must be at least 1,850 square feet with a maximum of 2,150 square feet for all Lots.

- e. *Location on Lot.*
  - i. No Residence or Structure may be located in violation of the setback lines shown on the Plat.
  - ii. All Residences or Structures must be erected and maintained a minimum of thirty (30) feet from the front/street property line.
  - iii. Any Residence or Structure must be ten (10) feet from the side property line.
  - iv. Each Residence must face the front Lot line.
  - v. All Structures must be located behind the front wall of the Residence.
  - vi. All outbuildings, except garages, must not be visible from any street.
- f. *Garages.* Each Residence must have at least a one-car garage or carport accessed by a driveway. The garage may be a separate structure.
- g. *Moving existing Structures.* No existing building or part of an existing building or structure may be moved onto or placed on any lot without the approval of the Architectural Control Committee.
- h. *Mobile homes and travel trailers.* No mobile homes, manufactured homes, house trailers or buses may be moved onto or placed on any lot. One of the following will be allowed but cannot be used as a temporary or permanent residence: Travel Trailer, Camper or Motor Home not to exceed twenty-eight (28) feet in length.
- i. *Septic systems.* All plans for septic systems must be approved by the appropriate municipal or state agency and submitted to the Architectural Control Committee before commencement of construction.
- j. *Temporary structures.* No temporary structure or trailer may be placed on any lot during construction. No outdoor toilets may be constructed or placed on any lot. Self-contained portable toilets may be used during construction only.

- k. *Damaged or Destroyed Residences and Structures.* Any Residence or Structure that is damaged must be repaired within one hundred and eighty (180) days (or within a period approved by the ACC) and the Lot restored to a clean, orderly, and attractive condition. Any Residence or Structure that is damaged to the extent that repairs are not practicable must be demolished and removed within one hundred and eighty (180) days and the Lot restored to a clean and attractive condition.
- l. *Fences, Walls, and Hedges.* No fence, wall, or hedge may be located forward of the front wall line of the Residence, except for trellises and decorative fences that are approved by the ACC.
- m. *Traffic Sight Lines.* No landscaping that obstructs traffic sight lines may be placed on any Lot.
- n. *Sidewalks.* When the Residence is constructed, the Lot must be improved with sidewalks connecting with the sidewalks on adjacent Lots.
- o. *Landscaping.* Landscaping must be installed within sixty(60) days after occupancy.

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

- a. *Roofs.* Only asphalt or composite shingle roofs, which resemble the shingles used or otherwise authorized for use on property in the subdivision, may be used on Residences and Structures. All new roofing materials to be applied to existing Roofs or Structures must be submitted to the ACC for approval.
- b. *Air Conditioning.* Window or wall-type air conditioners may not be used in a Residence.
- c. *Exterior Walls.* All Residences must have at least fifty (50%) percent of their exterior walls, including exposed foundation, of stone or brick, minus windows, and doors, unless otherwise approved by the ACC.
- d. *Color Changes.* No change to the color of the exterior walls, trim, or roof of a Residence will be permitted, unless otherwise approved by the ACC.

- e. *Driveways and Sidewalks.* All driveways and sidewalks must be surfaced with concrete, unless otherwise approved by the ACC. Driveways and sidewalks may not be surfaced with dirt, gravel, shell, or crushed rock.
- f. *Lot Identification.* Lot address numbers and name identification must be aesthetically compatible with the Subdivision.

**4. Property Owners Association**

- a. *Establishment.* The Property Owners Association is established by filing its certificate of formation and is governed by the certificate, this Declaration, and the Bylaws. The filing of this Declaration establishes the Property Owners Association as the only Property Owners Association for the Wild Horse Estates Subdivision. The Property Owners Association has the powers of a nonprofit corporation and a Property Owners Association under the Texas Business Organizations Code, the Texas Property Code, and the Dedicatory Instruments.
- b. *Governance.* The Property Owners Association shall be governed by its Board of Directors. The number of seats on the Board and its members are determined by the Declarant/Developer, or its successors in interest.
- c. *Rules.* The Board may adopt rules and regulations for the use of lots and common areas of the Subdivision that do not conflict with law or the other Dedicatory Instruments. Owners will be provided a copy of any rules.
- d. *Membership.* Every Owner is a Member of the Property Owners Association. Membership is appurtenant to and may not be separated from ownership of a Lot.
- e. *Dissolution.* The Property Owners Association may be dissolved under the following circumstances only:

- i. A resolution to dissolve adopted at a meeting of the members at which a quorum was present and the resolution to dissolve received at least two-thirds (2/3) of the votes which members presented or represented by proxy at such meeting were entitled to cast; or
- ii. A resolution to dissolve was adopted by consent in writing by all members entitled to vote with respect thereto; or
- iii. A resolution to dissolve was adopted at a meeting of directors and received the votes of a majority of the directors in office, there being no members having voting rights in respect thereof.

**5. Architectural Control Committee**

a. Establishment

- i. *Purpose.* The ACC is established as a committee of the Property Owners Association to assist the Property Owners Association in ensuring that all Residences, Structures, and landscaping within the Subdivision are aesthetically compatible and conform to the Dedicatory Instruments.
- ii. *Members.* The ACC consists of at least three (3) persons, but no more than five (5) persons appointed by the Board, at least one of which is a Board member. The Board may remove or replace an ACC member at any time.
- iii. *Term.* ACC members serve until replaced by the Board or they resign but will not serve for less than one (1) year.
- iv. *Standards.* Subject to Board approval, the ACC may adopt standards that do not conflict with the other Dedicatory Instruments to carry out its purpose. These standards are not effective unless recorded with the county clerk. On request, Owners will be provided a copy of any standards.
- v. *Compensation: Fee for Review.*



b. Plan Review

i. *Required Review by ACC.* No Residence or Structure may be erected on any Lot, or the exterior altered, unless two (2) copies of plans, specifications, and any other documents requested by the ACC have been submitted to and approved by the ACC. The plans and specifications must show exterior design, height, building materials, color scheme, location of the Residence and Structures depicted horizontally and vertically, and the general plan of landscaping, all in the form and detail the ACC may require.

ii. *Procedures*

1. *Complete Submission.* Within thirty (30) days after the submission of plans and specifications by an Owner, the ACC must notify the submitting Owner of any other documents or information required by the ACC. In the absence of timely notice from the ACC requesting additional documents or other information, the submission is deemed complete.

2. *Deemed Approval.* If the ACC fails to give notice of disapproval of the plans and specifications to the submitting Owner within fifteen (15) days after complete submission, the submitted plans and specifications are deemed approved.

3. A notice of disapproval shall plainly state the reason(s) for such action and may indicate alterations in the plans and specifications which would result in approval of the submission.

iii. *Appeal.* An Owner may appeal any action of the ACC to the Board. The appealing Owner must give written notice of appeal to the Board within ten (10) days after receiving a notice of denial from the ACC. If the appeal is by an Owner who is not

the submitting Owner, the appealing Owner must also give written notice to the submitting Owner within ten days after the ACC's action. The Board shall determine the appeal within thirty days after timely notice of appeal is given. The determination by the Board is final.

- iv. *Records.* The ACC will maintain written records of all requests submitted to it and of all actions taken. The Board will maintain written records of all appeals of ACC actions and all determinations made. Any Owner may inspect the records of the ACC and Board, but no Owner may inspect or copy the interior floor plan or security system design of any other Owner.
- v. *No Liability.* The Property Owners Association, the Board, the ACC, and their members will not be liable to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any request.

## **6. Assessments**

- a. *Authority.* The Property Owners Association may levy Assessments to promote the recreation, health, safety, and welfare of the residents in the Subdivision, to fund operating expenses of the Property Owners Association, and to improve and maintain the Common Areas.
- b. *Personal Obligation.* An Assessment is a personal obligation of each Owner when the Assessment accrues.
- c. *Creation of Lien.* Assessments are secured by a continuing lien on each Lot, which lien is reserved by Declarant and hereby assigned to the Property Owners Association. By acceptance of a deed to a Lot, each Owner grants the lien, together with the power of sale, to the Property Owners Association to secure Assessments.

- d. *Commencement.* A Lot becomes subject to Assessments on conveyance of the Lot by Declarant to an Owner, or when first assessed by the Property Owners Association.
- e. *Regular Assessments*
  - i. *Rate.* Regular Assessments are levied quarterly by the Board to fund the anticipated operating and maintenance expenses of the Property Owners Association. Until changed by the Board, the Regular Assessment is \$30.00 per month or a total of \$90.00 per quarter.
  - ii. *Changes to Regular Assessments.* Regular Assessments may be changed annually by the Board. Written notice of the Regular Assessment will be sent to every Owner at least thirty (30) days before its effective date.
  - iii. *Collections.* Regular Assessments will be collected in advance, payable by the 1<sup>st</sup> day of each quarter (January, April, July and October).
- f. *Special Assessments.* In addition to the Regular Assessments, the Board may levy Special Assessments for the purpose of funding the cost of any construction, reconstruction, repair, or replacement of any capital improvement on the Common Area and/or streets and/or roads or for any other purpose benefitting the Subdivision but requiring funds exceeding those available from the Regular Assessments. Written notice of the terms of the Special Assessment will be sent to every Owner thirty (30) days before the date payment is due.
- g. *Fines.* The Board may levy a fine against an Owner for a violation of the Dedicatory Instruments, a violation of the rules and regulations of the Subdivision as adopted by the Board, or as permitted by law.
- h. *Subordination of Lien to Mortgages.* The lien granted and reserved to the Property Owners Association is subordinate to any lien granted by an Owner against a Lot not prohibited by the Texas Constitution. The

foreclosure of a superior lien extinguishes the Property Owners Association's lien as to Assessments due before the foreclosure.

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

**7. Remedial Rights**

- a. *Late Charges and Interest.* A late charge of eighteen percent (18%) of the assessment is assessed for delinquent payments of Regular or Special Assessments or Fines Assessed against an Owner. Delinquent Assessments accrue interest at the rate of five (5%) percent per year. The Board may change the late charge and the interest rate.
- b. *Costs, Attorney's Fees, and Expenses.* If the Property Owners Association complies with all applicable notice requirements, an Owner is liable to the Property Owners Association for all costs and reasonable attorney's fees incurred by the Property Owners Association in collecting delinquent Assessments, foreclosing the Property Owners Association's lien, and enforcing the Dedicatory Instruments.
- c. *Judicial Enforcement.* The Property Owners Association may bring an action against an Owner to collect delinquent Assessments, foreclose the Property Owners Association's lien, or enforce or enjoin a violation of the Dedicatory Instruments. An Owner may bring an action against another Owner to enforce or enjoin a violation of the Dedicatory Instruments.
- d. *Remedy of Violations.* Representatives of the Property Owners Association may enter onto an Owner's Lot to remedy a violation of the Dedicatory Instruments thirty (30) days after notice in writing is delivered to the Owner to remedy the violation.
- e. *Suspension of Rights.* If an Owner violates the Dedicatory Instruments, or the rules and regulations of the Subdivision as adopted by the Board, the Property Owners Association may suspend the Owner's

rights under the Dedicatory Instruments in accordance with law until such time as the violation is corrected.

- f. *Damage to Property.* An Owner is liable to the Property Owners Association for damage to Common Areas caused by the Owner or the Owner's family, guests, agents, independent contractors, and invitees in accordance with law. The Property Owners Association, pursuant to its authority to make assessments for the maintenance of the Common Area, may assess a reasonable amount to be paid by the Owner to release such liability as a Special Assessment under the terms set out in 6(f).

## 8. **Common Area**

- a. *Common Area Easements.* Each Owner has an easement in and to the Common Area, subject to the right of the Property Owners Association to,
  - i. charge reasonable admission and other fees for the use of recreational facilities situated on the Common Area, and if an Owner does not pay these fees, the Owner may not use the recreational facilities;
  - ii. suspend an Owner's rights to use a Common Area under the Dedicatory Instruments; and
  - iii. grant an easement approved by the Board over the Common Area for utility, drainage, or other purposes.
- b. *Permitted Users.* An Owner's right to use and enjoy the Common Area extends to the Owner's family, guests, agents, and invitees, subject to the Dedicatory Instruments.
- c. *Unauthorized Improvements in Common Area.* An Owner may not erect or alter any Structure on, or clear, landscape, or disturb, any Common Area except as approved by the Board.

**E. General Provisions**

1. **Term.** This Declaration runs with the land and is binding in perpetuity.
2. **No Waiver.** Failure by the Property Owners Association or an Owner to enforce the Dedicatory Instruments is not a waiver.
3. **Corrections.** The Board may correct typographical or grammatical errors, ambiguities, or inconsistencies contained in this Declaration, provided that any correction must not impair or affect a vested property right of any Owner.
4. **Interpretation of Covenants.** Except for judicial construction, the Declarants and/or Property Association shall have exclusive right to construe and interpret the provisions of this Declaration. In the absence of any judicial decision to the contrary by a Court of competent jurisdiction, the Declarant's and/or Property Owners Association's construction or interpretation of the provision hereof shall be final, conclusive and binding as to all persons and property benefited and bound by the covenants and provisions hereof.
  - a. *Conflict.* This Declaration controls over the other Dedicatory Instruments.
  - b. *Severability.* If a provision of this Declaration is unenforceable for any reason, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability does not affect any other provision of this Declaration, and this Declaration is to be construed as if the unenforceable provision is not a part of the Declaration.
  - c. *Notices.* All notices must be in writing and must be given as required or permitted by the Dedicatory Instruments or by law. Notice by mail is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address according to the Property Owners Association's records, or (b) to the Property Owners Association, the Board, the ACC, or a managing agent at the Property Owners Association's principal office or another address designated in

a notice to the Members. If transmitted by facsimile or email messaging, notice is deemed to be given on successful transmission of the facsimile or email. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient.

- d. *Annexation of Additional Property.* On written approval of the Board the Owner of any property who desires to subject the property to this Declaration may record an annexation agreement that will impose this Declaration and the Covenants on that property.
- e. *Disclaimer of Representations.* Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded Plat or other instrument recorded in the Official Records of Smith County, Texas, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the property can or will be carried out or that any land owned or hereafter acquired by it will be subject to this Declaration, or that any such land is or will be committed to or developed for a particular use, or that if such land is once used for a particular purpose, such use will continue in effect.
- f. *Limitations of Liability.* In the absence of gross negligence or gross misconduct attributable to Declarants and/or the Property Owners Association or its successors or assigns, neither Declarant and/or the Property Owners Association, nor Declarant's and/or the Property Owners Association's successors or assigns shall have any liability arising out of the performance or nonperformance of any of the rights and powers reserved unto Declarant and/or the Property Owners Association, its successors or assigns pursuant to this Declaration.
- g. *County Provisions.* All construction within the Property shall also comply with all applicable Smith County, Texas ordinances and regulations. If any ordinance or regulation imposed by the County requires more demanding, extensive, or restrictive requirements than those set forth in this Declaration, such requirements shall govern. No



ordinance or regulation adopted by Smith County, Texas shall lessen the requirements set forth in these Restrictions, Covenants and Conditions.

h. *Captions and Titles.* All captions, titles or headings in this Declaration is for the purpose of reference and convenience only, and is not to be deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

i. *Arbitration of Disputes.*

1. Dispute Resolution Procedure-The Declarant and or Property Owners Association and Owners, successors and assigns, Residents, Renters-Long Term or Short Term or any other person having an interest in the Lot will attempt in good faith to resolve promptly by negotiation any and all declarations, controversies and disputes arising under, out of or relating to the Contract or the relationships contemplated by hereby. If such negotiation is unsuccessful, any party by written demand may request the dispute be mediated, and all parties agree to participate in good faith in such mediation. The mediation shall be scheduled within seven (7) days after the requesting party's written demand. The mediation shall take place in Tyler, Texas and the mediator shall be an attorney practicing mediation in Tyler, Texas. If the parties are unable to jointly select the mediator, one shall be appointed by the Attorney Mediators Institute. The parties shall equally share any mediation fees and expenses. If such mediation does not result in a resolution of the decision, controversy or dispute, such decision, controversy, or dispute shall be settled by binding arbitration in accordance with the procedures and conditions set forth herein.

2. Except as modified herein, the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* shall apply to any arbitration hereunder.
3. Any arbitration proceedings hereunder shall be conducted in Tyler, Texas; **provided however**, the location of any depositions conducted in connection with any arbitration proceeding hereunder shall be governed by the Federal Rules of Civil Procedure as provided in Paragraph (h) hereof. The arbitration shall be administered by the American Arbitration Association (“AAA”), or its successor, pursuant to the expedited procedures (irrespective of the amount in controversy) of the AAA’s then-prevailing Commercial Arbitration Rules (the “Rules”), subject to the limitations and modifications set forth herein.
4. Notice of the demand for arbitration pursuant to this Procedure (the “Notice to Arbitrate”) shall be made in writing and delivered to the other party by personal delivery or by certified or registered mail, return receipt requested. The Notice to Arbitrate shall be accompanied by a short and plain statement of the party’s claim(s), the grounds for same and the relief sought. Within (7) days of receipt of the Notice to Arbitrate, the other party shall set forth in writing and deliver to the other party by personal delivery or certified or registered mail, return receipt requested, an answer setting forth its response to the claim for relief, as well as any affirmative defenses and counterclaims.
5. The arbitration shall be before one neutral arbitrator (the “Arbitrator”) to be selected in accordance with the Rules (as modified herein). In the event the parties cannot agree upon an Arbitrator within ten (10) business days from

receipt of the Notice to Arbitrate, the Arbitrator shall be selected in the following manner:

- a. The AAA shall submit to the parties an initial (or if needed subsequent) list of five (5) proposed arbitrators drawn from the AAA National Panel of Commercial Arbitrators. Each party may, within five (5) business days, exercise challenges for cause and up to two (2) peremptory strikes of the names appearing on the list.
  - b. In the event more than one name remains after the exercise of all strikes and challenges for cause, the AAA shall select the Arbitrator from among the remaining names.
  - c. In any event, no person shall serve as Arbitrator who has a bias, or financial or personal interest, in the result of the arbitration or any past or present relationship with the parties or their representatives, parents, subsidiaries or related entities, unless such relationship is disclosed in writing to the parties and all parties nevertheless approve in writing such person as Arbitrator.
6. It is the express intention of the parties hereto that, except as otherwise expressly provided herein and subject to the terms and provisions of the Contract, the Arbitrator shall be authorized and empowered to award any and all relief, at law or in equity, that could be granted by a court of competent jurisdiction. By way of example and not limitation, the Arbitrator may order or grant damages, specific performance of any obligation of any party, injunctive relief, pre- and post-judgment interest, attorneys'

fees, costs and/or sanctions for abuse or frustration of the arbitration process.

7. It shall be the responsibility of each party to timely comply with the Arbitrator's requests for payment of his or her fees. Any party who has not complied with any such request within ten (10) calendar days thereof shall be deemed in default of this Contract and the Arbitrator may enter default judgment against such party on the merits.
8. the parties shall have the right to conduct and enforce pre-hearing discovery in accordance with the Federal Rules of Civil Procedure then in effect for the Eastern District of Texas, including any Local rules (collectively, the "Court Rules"), subject to the following:
  - a. The parties shall make voluntary disclosures described in the Court Rules (except those applicable to expert witnesses) within thirty (30) days after the appointment of the Arbitrator. The identity and report of each expert witness, as well as all other disclosures described in the Court Rules, shall be disclosed to the other party no later than forty-five (45) days after the appointment of the Arbitrator.
  - b. Each party may serve a request for production of tangible and documentary evidence. Responses to a request for production shall be due fifteen (15) days after receipt.
  - c. Each party may serve no more than one set of interrogatories limited to no more than thirty (30) questions, including subparts. Answers to interrogatories shall be due fifteen (15) days after receipt.

- d. Each party may depose each expert witness and up to, but no more than, three (3) other witnesses; provided, however, each party will be limited to no more than a total of eighteen (18) hours of deposition time in the aggregate for non-expert witnesses.
  - e. All discovery must be completed within forty-five (45) days after appointment of the Arbitrator (the "Discovery Deadline").
  - f. The Arbitrator, for good cause shown, may, upon motion and three (3) days' notice to all parties, extend any of the discovery deadlines set forth herein for a period not to exceed fourteen (14) days.
  - g. The Arbitrator shall have the right and authority to decide any and all discovery disputes. The Arbitrator shall be empowered to issue subpoenas and any and all process and orders permitted under the Rules to compel cooperation in the discovery and other wise enforce the discovery rights and obligations of the parties.
9. The Arbitrator, within ten (10) days of his or her appointment, shall conduct a pre-hearing conference (the "Pre-Hearing Conference"). The parties shall be prepared to discuss discovery matters, schedule the Additional Conference and Arbitration Hearing, decide procedural matters and address all other questions that may be presented.
10. Within ten (10) days after the Discovery Deadline, the Arbitrator shall hold an additional conference (the "Additional Conference") to set dates for the exchange of witness and exhibit lists, deposition testimony designations,

testimony summaries and arbitration briefs, determine the length of the Arbitration Hearing, and address any and all other questions presented.

11. The arbitration hearing (the "Arbitration Hearing") shall commence within twenty (20) days of the Additional Conference, unless otherwise agreed by the parties. For good cause shown, the Arbitrator may grant no more than one (1) continuance per party of a duration not to exceed twenty (20) days each. Unless otherwise agreed by the parties or ordered by the Arbitrator for good cause shown, the Arbitration Hearing shall continue from day-to-day for such period of time (not to exceed five (5) days) as may be set by the Arbitrator. Each party shall have equal time for presentation and rebuttal, unless otherwise agreed by the parties. The parties may present evidence, at their option, in the form of testimony (live and/or by deposition), documents and other tangible evidence, or testimony summaries, or any combination thereof, provided, however, that the testimony of expert witnesses (other rebuttal testimony) shall be submitted solely in the form of written reports. The Arbitrator shall, upon timely request by a party or if otherwise required by law, require witnesses to testify under oath administered by a duly qualified person. Any party may, at its own costs and three (3) days notice to all other parties, arrange for a stenographic record of the proceedings. Such record shall be made available for inspection and copying by all other parties and the Arbitrator.
12. The Arbitrator shall issue and deliver to each party a written and signed award (the "Arbitration Award") within fourteen (14) days after the conclusion of the Arbitration

Hearing. The Arbitration Award shall contain the factual and legal basis for such award. The Arbitration Award shall, in addition to the relief granted therein, award attorneys' fees and costs to the prevailing party as the Arbitrator may determine in light of all circumstances. The term "costs" shall include, but is not necessarily limited to, court costs, the Arbitrator's fees, administrative fees, travel expenses and out-of-pocket expenses such as copying charges, telephone expenses and witness fees (including expert witness fees). The Arbitration Award shall be binding upon the parties in accordance with its terms provided that the Arbitration Award is rendered, and the Arbitration proceedings are conducted, in accordance with the terms and provisions of this Contract.

13. The Arbitration Award shall be presented by any party to the United States District Court for the Eastern District of Texas for entry of judgment thereon, or to vacate all or any portion thereof, in accordance with the Federal Arbitration Act. In the event that the Arbitration Award is vacated in part or in whole, then the parties each agree to promptly remit such vacated matters to the Arbitrator who issued the original Arbitration Award, provided, however, that if a basis for such vacatur is the Arbitrator's partiality, corruption or failure to follow the terms and provisions of this Contract, or if the original Arbitrator is not able to continue to serve, then the parties shall select a new Arbitrator in the manner provided in Paragraph (5) hereof.
14. Notwithstanding Declarant's and Owner's intent to submit any controversy or claim arising out of or relating to this Declaration to arbitration, in the event that a court of competent jurisdiction shall determine, or a relevant law



shall provide that a particular dispute is not subject to the arbitration provisions, then the parties agree to the following provision:

- a. EACH OWNER ACKNOWLEDGES THAT THIS DECLARATION IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS DECLARATION ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. EACH OWNER AGREES THAT ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS DECLARATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY.

Signed this \_\_\_\_\_ day of May, 2021.

Beograd Homes, Inc.

By: Beograd Homes, Inc.

\_\_\_\_\_  
By: Eric Tran

State of California §  
County of Orange §

This instrument was acknowledged before me on \_\_\_\_\_, 2021  
By: \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of California

Prepared by:  
Carey-Elisa Christie, Beard & Harris, P.C. Tyler, Texas.

After recording, please return to:  
Eric Tran  
14572 Monroe Street  
Midway City, CA 92655

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Signed this 11<sup>th</sup> day of May, 2021.

Beograd Homes, Inc.

By: Beograd Homes, Inc.

*Eric Tran*

By: Eric Tran

State of California §  
County of Orange §

This instrument was acknowledged before me on 08/11, 2021  
By: *Eric Tran*



*V. NGO*  
\_\_\_\_\_  
Notary Public, State of California

Prepared by:  
Carey-Elisa Christie, Beard & Harris, P.C. Tyler, Texas.

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