

**2018 RESTATED AND AMENDED RESTRICTIONS FOR KICKAPOO FOREST
AND KICKAPOO FOREST NEW SUBDIVISIONS, POLK COUNTY, TEXAS**

STATE OF TEXAS *

COUNTY OF POLK *

WHEREAS E.E. COCHRAN, J.D. GALLOWAY, AND W.L. CRAWFORD, (referred to herein as “Developer”), was the developer of that certain subdivision situated in Polk County, Texas, known as the KICKAPOO FOREST and KICKAPOO FOREST NEW Subdivision, (and referred to herein collectively as “Kickapoo Forest” and/or the “Subdivision”), pursuant to those certain plats filed of record with the County Clerk of Polk County, Texas; and

WHEREAS L.T. Phillips, Chairman of the Civic Committee for Kickapoo Forest New and Kickapoo Forest, as Developer, impressed all lots within the Subdivision with certain reservations and deed restrictions (referred to herein as “Original Restrictions”), to be applied equally to all lots in said Subdivision, for the mutual protection and benefit of all future owners in said Subdivision to be considered as covenants running with the land and binding upon all future owners and enforceable by anyone of the land owners in the Subdivision, with Original Restrictions were filed at Volume 304, pages 236, et seq., Deed Records of Polk County, Texas: and

WHEREAS said Original Restrictions provided that they were established for the purpose of setting forth a substantially uniform plan of development, said Developer did thereby covenant and provide that he, his heirs, administrators and assigns, and all parties holding title by, through and under him shall hold such lands subject to the Original Restrictions, which Original Restrictions were deemed to be running with the land, which shall be observed by himself, his heirs, administrators and assigns, and shall run in favor of and be enforceable by any person who shall hereafter own any of said tracts of land above described.

WHEREAS SAID Original Restrictions provided as follows:

DURATION: These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them until August 1st., 1980, A.D. at which time said covenants shall be automatically extended for successive periods of five (5) years unless an instrument signed by a majority of the then owners of the tracts has been recorded agreeing to change said covenants in whole or in part; and

WHEREAS a document entitled “Reservations and Restrictions Effective August 1, 1980”, was executed by Lawrence T. Phillips, as “Chairman of Kickapoo Forest and Kickapoo Forest New Subdivision”, on April 24, 1980, and filed on April 29, 1980 at vol. 377, pages 355, et seq., Deed Records of Polk County, Texas; and

WHEREAS a document entitled "Reservations and Restrictions Effective July 6, 1985" was recorded and signed by majority August 1986; and

WHEREAS a document entitled "Reservations and Restrictions Effective August 1, 1990", was executed by L.R. Harris, Chairman Civic Committee, dated July 18, 1990 and filed at Vol. 771, pages 68, et seq., Official Public Records, Polk County, Texas; and

WHEREAS the "KICKAPOO FOREST CIVIC COMMITTEE INC." (herein referred to by name and/or as the "Association" and/or the "POA"), pursuant to Articles of Incorporation filed March 19, 1996 with the Texas Secretary of State, was incorporated as a non-profit corporation; and

WHEREAS a document entitled "Deed Restrictions Kickapoo Forest/Kickapoo Forest New", was signed July 13, 2000 by Jesse N. Walker, President of Kickapoo Forest Civic Association and other Board Members; filed August 16, 2000 at Vol. 2000-1185, pages 823, et seq., Official Public Records, Polk County, Texas; and

WHEREAS a document entitled "2012 Restated and Amended Restrictions for Kickapoo Forest and Kickapoo Forest New Subdivisions", Polk County, Texas, was signed _____ 2012, by Keith Burcher, President of Kickapoo Forest Civic Association; filed _____ at vol. 2012- _____, pages _____, et seq., Official Public Records, Polk County, Texas; and

WHEREAS the Board of Directors of the Association have determined that the deed restrictions should be amended as provided herein;

NOW, THEREFORE the Board of Directors of the Association hereby restate and amend the Restrictions applicable to Kickapoo Forest Subdivision, Polk County, Texas, voted on and approved by more than two-thirds vote of the Property Owners, pursuant to the Subdivision's Certificate of Formation filed August 10, 2016, and the Texas Property Code to be as follows:

Restrictions and Covenants

For the purpose of setting forth a substantially uniform plan of development, Developer, its successors and assigns, owners of said subdivision, does hereby covenant and provide that said Developer, its successors and assigns, and all parties holding title by, through and under it shall hold such lands subject to the following restrictions running with the land which shall be observed by Developer, its successors and assigns and shall run in favor of and be enforceable by the Civic Association as hereafter provided.

1. **Applicability.** Each Contract, Deed, and/or Deed of Trust which may be hereafter executed with respect to any property in the Subdivision shall be deemed and held to have been executed, delivered, and accepted subject to all of the provisions of this instrument, including, without limitation, the Restrictions and Covenants herein set forth, regardless of whether or not any of such provisions are set forth in said Contract, Deed or Deed of Trust, and whether or not referred to any such instrument. These restrictions, conditions, covenants and assessments are, and shall be, deemed and considered covenants running with the herein above-described lots, and the same shall be binding upon the lot owners and their heirs, executors, and administrators and assigns. All property owners are required to present changes of ownership to the Board of Directors whether the property has been sold by owner, realtor, conveyed, inherited, or by any other transference.

2. Single-Family Residential Use Only.

- a. The lots in such Subdivision shall be used for single-family residential purposes only, except those lots which are designated on the official plat of said Subdivision as being commercial lots, and except those lots which may from time to time be designated by the Developer for business, recreational, or commercial purposes.
- b. The term “residential purposes” as used herein shall be held and construed to exclude hospitals, clinics, nursing homes, duplex houses, apartment houses, boarding houses, hotels and all other commercial uses as all such uses of said property are hereby expressly prohibited. Rental or lease of the lot and the residence thereon for any period of time less than 180 days shall be prohibited. Any rental or lease shall provide, in writing, that the renter or lessee has received a copy of the Deed Restrictions and agrees to be bound by same and comply with all Deed Restrictions.
- c. Rental or lease of the lot and residence shall not relieve the Property Owner from compliance with these Deed Restrictions.

3. Architectural Control Committee.

- a. There shall be established an Architectural Control Committee (referenced at times as the “ACC”), composed of three (3) Members appointed by the Board of Directors of the Association to protect the owner of property hereunder against such improper use of lots as will depreciate the value of their property; to preserve, so far as practical, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures and structures built of improper or unsuitable materials; to obtain harmonious architectural schemes; to insure the highest and best development of said property; to secure and maintain proper setbacks from streets and adequate free spaces between structures; and, in general, to provide adequately for a high type of quality of improvements in said property; and thereby to enhance the value of investments made by purchasers of lots therein.
- b. No building, fence, or other structure of improvements shall be erected, placed or altered on any lot until two copies of the construction plans and specifications (including specifications of all exterior and roofing materials, color of paint or stain, a plan showing the proposed of location for the structure and such other matters as such ACC may reasonably request) have been submitted to and approved in writing by the ACC in all respects, including, but not limited to, harmony of external design with existing structures and locations with respect to topography and finish grade elevation. If such construction, placement or alteration is not commenced within eight (8) months of such approval, the approval shall be null and void unless an extension is granted in writing.
- c. Any building, structure or improvement commenced upon any lot shall be completed as to exterior finish and appearance within six (6) months from the commencement date.
- d. No building exceeding two (2) stories in height, with a maximum height of thirty-five (35) feet from the floor to the roof peak, shall be erected or placed on any lot except as approved by the ACC.

- e. Except as may be provided for in these Restrictions, and/or any waiver or approval by the ACC, the International Residential Code applies to all construction, alteration, remodeling, enlargement, and repair of all structures built in the Subdivision.
- f. All condemned homes must be removed from the property within six (6) months.

4. Construction Requirements.

- a. No building shall be erected or maintained thereon other than a private residence (with a minimum floor area of six-hundred (600) square feet on all lots hereunder), a storage building (with minimum floor area of thirty (30) square feet), a private garage and a private boathouse for sole use of the purchaser of such lot. The minimum floor area requirements stated hereinabove are exclusive of porches, stoops, open or closed carports, patios and garages.
- b. No used existing building or structure of any kind and no part of a used existing building or structure shall be moved onto, placed on, or permitted to remain on any lot.
- c. All construction must be of new material, except stone, brick, inside structural material, or other materials used for antique decorative effect if such use is approved in writing by the ACC.
- d. No tar roof or siding materials will be used on any structure.
- e. No building or frame construction shall be erected on any tract unless same shall at time of construction receive at least one coat of paint or stain, (excluding roof, glass and masonry), unless the ACC approves other arrangements in writing. All buildings and structures shall be completely underpinned and underskirted with no piers or pilings exposed to view except as approved by the ACC. No natural drainage shall be altered, nor shall any drainage ditch, culvert, or drainage structure of any kind be installed or altered, nor shall any driveway, curb or other such impediment to the free flow of water be installed or altered, without prior written consent of the ACC.
- f. Culverts for driveways on lots shall be mandatory (unless otherwise approved by the ACC) and shall be minimum of eighteen feet (18') in length. Each culvert will be a minimum of twelve inches (12") in diameter, galvanized, corrugated steel and eighteen (18) gauge minimum. Other types of culverts will be permitted if they are commonly used by the Texas State Department of Highways.
- g. No building material of any kind or character shall be placed or stored upon any tract until the owner is ready to commence construction and then such material shall be placed within the property lines of the tract or parcel of land upon which the improvements are to be erected, and shall not be placed in the streets.
- h. After improvements are begun, work in progress shall be continuous and shall be prosecuted with reasonable diligence until all improvements are completed in accordance with plans submitted and approved by the ACC.
- i. All residences shall be completed within six (6) months from date of beginning construction unless such period is extended in writing by the Association Board of Directors.

5. Fences. No fence, wall, hedge, detached improvement or large item of personal property such as a boat or trailer shall be erected, grown or maintained on any part of any tract forward of the front building line, unless approved in writing by the Board of Directors of the Association. Fences shall be permitted to extend to the side lot lines and back lot lines and to no less than fifteen (15) feet of the front lot lines, but without impairment of the easements reserved and granted in these restrictions.
6. Set Back Lines. All residents shall be located in accordance with the building lines shown on the plat of said subdivision. No residences shall be located nearer than five (5) feet to any side line or ten (10) feet of any street line, and such areas are reserved for utility easements. No fence, wall, hedge, detached improvement or large item of personal property such as a boat or trailer shall be erected, grown or maintained on any part of any tract forward of the front building line, unless approved in writing by the Board of Directors of the Association. "Side line", as used in this paragraph, in respect to any two or more contiguous whole and/or fractional lots owned by the same person or persons and used as a single building site, shall thereafter mean, respectively, each and/or either of the two outermost side lot lines, considering said contiguous whole and/or fractional lots as one lot. No building or structure shall be located nearer to the front lot line than ten (10) feet.
7. Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any residential tract, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. Any household pets allowed shall be raised or maintained on the property in such a manner, or with such lack of care, as to cause offensive odors or noises, or so as to otherwise be a nuisance or annoyance, or be raised for commercial purposes. Dogs shall be permitted only if continuously contained by leash or within a fenced area. No one will be allowed to keep livestock.
8. No Temporary Dwellings. Subject to the remaining provisions of this paragraph, no shack or any outbuilding (other than a private boathouse, garage, or storage building complying with these restrictions) shall be erected on any lot. A garage or storage building may be used as a temporary dwelling for property owner's personal use, family, or friends. At no time shall it be used as a permanent dwelling and may not be rented or leased. Travel trailers and RVs may also be used temporarily with approval of the ACC for placement and duration. All properties must have a single family residence (Refer to 2 (a)) of at least six-hundred (600) square feet (Refer to 4 (a)) before any temporary dwelling may be utilized.
9. Signs. All lots and residences may display one advertising (for services) sign behind the property line for a total of seven (7) days only. "For rent" and/or "for sale" may be displayed on the property owner's lot until said property is sold or rented. At no time may a "for sale" and/or "for rent" sign be posted at entrances or throughout the subdivision.
10. Plumbing and Sanitation.
 - a. No outside privies or toilets shall be permitted in the subdivision. All toilets shall be inside of the houses and prior to the occupancy the same shall be connected to a central sewage disposal system if there is one in existence at such time to serve the Subdivision, but if no central sewage system is in existence at such time then all toilets shall be connected to a

septic tank at the expense of the person building on the building tract, and such septic tank shall have a field line and shall be constructed and maintained in accordance with the requirement of the State Health Department and shall be subject to the inspection and approval of such authority, provided however, then whenever a central waste treatment plant and disposal system shall be established to serve the Subdivision, whether publicly owned or privately owned or operated, then all of the tract owners shall immediately subscribe to such service and shall connect their premises thereto to sewage disposal, paying the established rates and all connection fees or charges therefor at their expense, and from and after the time such sewage disposal service becomes available to any lot, no septic tank whether thereto for or thereafter built or installed, shall be used in connection with any tract. The drainage of sewage into a road, street, alley, ditch or any waterway either directly or indirectly, is prohibited. This shall not apply to the discharge of effluent from a sewage treatment plant serving the Subdivision.

b. All residences must connected to the Central Water System.

11. Lot Maintenance.

- a. No tract shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes, nor for storage of items or materials (except during construction of a building), and all lots shall be kept clean and free of any boxes, rubbish, trash, or other debris and inoperative cars, vans, or buses. Garbage and waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No lot or portion of any lot shall be used as a dumping ground for rubbish or trash.
- b. Grass and weeds may not exceed twelve (12) inches in height. Refrigerators and other large appliances shall not be placed outdoors.
- c. No noxious or offensive activity shall be carried upon any lot nor shall anything be done thereon which may be annoyance or nuisance to the neighborhood, such as allowing junk automobiles or excessive garbage and trash accumulation on the property.
- d. No unlicensed motorbikes or go-carts are allowed on Subdivision streets, as well as no loud modified mufflered vehicles of any kind. Golf carts and ATVs are acceptable. The speed limit for all vehicles shall not exceed twenty (20) miles per hour.
- e. Lot owners are allowed entrance to their property from Subdivision streets, but in no case should road drainage be blocked by that entrance. Culverts shall not be the full length of the property, preferably not more than twenty-four (24) feet.
- f. There shall be no hunting, shooting, nor other activity dangerous to the welfare of other individuals inside or outside the Subdivision.
- g. Grass and Weeds: The owner of each lot shall keep grass, weeds, and vegetation (except as part of a landscaping plan approved by the Board of Directors of the Association) trimmed or cut so that the same shall remain in a neat and attractive condition; upon any failure of the Property Owner to do so within ten (10) days after notice by registered mail to said owner of such condition, then the Board of Directors of the Association or its agents may enter upon said lot to remove the same at the expense of the owner at the current rate charged by the

Board of Directors of the Association or its agent, and in the event of that said Property Owner shall fail to pay the same, it shall become a lien against property.

- h. The Association shall have the right to enter the property where a violation exists under this paragraph and remove the incomplete structure or other items at the expense of the offending party.
 - i. Prior to such entry and correction of the restriction violation, the Property Owner shall be given thirty (30) days notice of the violation and an opportunity to cure the violation. If the violation is not corrected in that period of time, or such period as may be agreed upon by the Property Owner, the Association shall have the right to correct such deed restriction violation, and if the cost of such correction is not paid within thirty (30) days of invoice, then a contractual lien is retained against the property as security for such expense, together with any legal fees and costs incurred in enforcing this restriction, and the Association shall have the right to judicially foreclose the lien securing such expense, legal fees and costs incurred in enforcing this restriction.
- 12. Subdividing of Lot. No lot may be subdivided without the consent of the Association. No lot or any part of a lot shall be used for a street, access road of public thoroughfare without prior written consent of the Association.
 - 13. Culverts and Ditches. The ditches and culverts in front of each lot shall be kept open and only the size culverts recommended by the Polk County Commissioner shall be installed. Any culvert installed inadequately may be removed by the Association and replaced at the expense of the Property Owner.
 - 14. Timber. No merchantable timber upon any lot shall be cut or mutilated before said lot is paid for in full, except that a reasonable sized site for a house place may be cleared.
 - 15. Liability of Owners to Owner's Families and Guests. All Property Owners shall be liable for any injury to themselves, family, or guests while in or on any of the roads, lakes, playground, or property of said Subdivision or Association, and the Association nor its Board of Directors shall be liable for any such injury.
 - 16. Transport Vehicles. Trucks with tonnage in excess of one (1) ton shall not be permitted to park on the streets, driveways, or lots overnight, and no vehicle of any size which normally transports inflammable vs. inflammatory or explosive cargo may be kept in the Subdivision at any time.
 - 17. Drilling and Other Activities.
 - a. Drilling or exploration of oil or minerals is not allowed.
 - b. Water is furnished by the Onalaska Water system and no private water wells may be drilled on any lot within the Subdivision.
 - c. No Property Owner shall remove any timber except as the exact locations for a home and/or driveway. Any other removals must be approved in advance by the ACC.
 - 18. Property Owners' Association.

- a. "Property Owners' Association", and/or "Association", as such term is used herein, shall mean the Kickapoo Forest Civic Association, Inc., or such other non-profit association as may be established by the Developer to exercise the rights and duties set forth in these restrictions.
- b. Every Property Owner in Kickapoo Forest Subdivision shall be a member of the Association, and the Association shall be a Property Owners' Association as defined by the Texas Property Code. The Board of Directors of the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations now or hereafter imposed by these restrictions, and said lawsuit to be brought in the name of the Association, upon a vote by the majority of the Board at which a quorum of Directors is present, against any Property Owner who is delinquent is defined in these restrictions, and Bylaws of the Association, as well for enforcement of any other deed restriction violation.
- c. Any Property Owner who has not paid the annual maintenance fees applicable to the lots he/she owns, once such maintenance fees are payable as provided by these restrictions and the Bylaws, shall be considered in default. Any Property Owner delinquent in payment of any maintenance fees or other fees due on the record date of any meeting, as determined by the Bylaws of the Association, and/or as may otherwise be provided for by law, shall not be entitled to vote at any meeting of the Members, whether annual or special, and shall not be entitled to hold any directorship or office of the Association.

19. Recreational Restrictions.

- a. The use of the recreational facilities of the Subdivision shall be restricted to Property Owners, their families, and guests. All guests shall be required to show a "guest identification card" when asked to do so by any person designated by the Board of Directors of the Association. Failure to comply with this rule shall automatically exclude these persons from the use of the Subdivision Facilities. Property Owners are responsible for any misdemeanors or damage their guests may cause. The use of the recreational building (clubhouse) shall be obtained from the Board of Directors. Members in good standing may rent the clubhouse for a fee of FIFTY and no/100 Dollars (\$50.00), in addition to a cleaning deposit of ONE-HUNDRED and no/100 Dollars (\$100.00). The ONE-HUNDRED and no/100 Dollars (\$100.00) cleaning deposit will be refunded with a satisfactory cleanup approved by a Board Member.
- b. Any Property Owner who brings a lawsuit against the Association alleging a violation of any duty of the Association to enforce the deed restrictions, or alleging that the Association, or any Director, Officer, and/or agent of the Association, shall be liable to the Association for any legal fees and costs incurred in defending such lawsuit.
- c. Notwithstanding any provision to the contrary, nothing herein or in the plats above referenced shall be deemed, interpreted, or construed as imposing any obligation or obligations whatever upon the Association, and the Association shall not be liable under any provisions hereof or thereof for any charge, assessment, breach, act, or omission to act.
- d. Park Key Rules and Regulations.
 - i. Each Member in good standing will be issued one key to the park gate. If a Member were to lose the key, there is a FIFTY and no/100 Dollars (\$50.00) fee for a replacement key.

Issuance of a third key to a Property Owner must be decided by the Board of Directors at their next regular monthly meeting.

- ii. Vehicles must have a K.F.C.A. sticker and all guests must have a guest pass. K.F.C.A. stickers and guest passes can be obtained from any Board Member or the Secretary. The gate must be locked at all times; however, the gate may be left open for special occasions but only at the discretion of the Board of Directors. Children must be supervised, and swimming is at your own risk. Property Owners who lease their property must obtain a guest identification card for their lessee in order for the lessee to use the recreational facilities. The Property Owner is responsible for and will be held accountable for their lessee. Such identification cards can be obtained from a Board Member or the Secretary.
- iii. All Members in good standing must sign the park key rules and regulations form and return it to a Board Member or the Secretary.

20. Fees.

a. Adjusting Fees. The amount of any fee may be adjusted by a two-thirds (2/3) majority vote of the members, represented in person or by proxy, of the Association at the annual meeting of the Association, at which a quorum of the members, represented in person or by proxy, is obtained. Notice shall be given to all property owners of the annual meeting and of the proposed fees to be assessed during the next calendar year. In the event that the proposed fee(s) fails to obtain the necessary votes at the annual meeting, that fee shall remain the same amount as then currently set. Said assessments shall be in the form of a covenant to run with the ownership of said lots. If a property owner sells all of or any portion of their property, they are to notify the Association, within ten (10) days of the sale, of the name and address of the buyer so that the assessments may be collected.

b. Maintenance Fees. Maintenance fees shall be assessed as follows:

i. The owners of lots purchased in said subdivision shall pay a maintenance fee in the sum of one hundred and twenty dollars and zero cents (\$120.00) per lot, January 1st of each year, beginning on January 1, 2022, to the Association. The maintenance fee shall be deemed delinquent if not paid by February 28th of the year in which the Maintenance fee is due.

ii. Property owners 65 years or older that are permanent residents of said subdivision shall qualify for an annual maintenance fee cap when all of the following conditions are met:

1. The property is titled in their name.
2. Property owner must present valid driver's license or government issued identification in their name showing permanent residence and birth date.

The annual maintenance fee cap expires only when the resident moves, sells or conveys ownership of said property.

iii. The maintenance fee fund shall, to the extent available, be applied to the payment of maintenance expenses and/or construction costs incurred for any or all of the following purposes, as determined by the Board of Directors:

1. Lighting, constructing, improving and maintaining streets, sidewalks, paths, parkways, esplanades or swimming pools, if any.
 2. Improvements of any area between curbs and sidewalks.
 3. Collecting and disposing of garbage, ashes, rubbish and similar material as well as the maintenance of vacant lots.
 4. The construction of clubhouse facilities, ramps, boat landings, boat basins and other similar recreation facilities on areas so reserved by developer.
 5. Payment of legal fees and court costs of the Association.
 6. Any other expenses necessary or desirable in the opinion of the Board of Directors to keep the property neat and in good order or which is considered of general benefit to the owners or occupants of the subdivision including any expenses incurred in enforcing any provisions of the restrictions, including any amendments thereto, on file in the County Clerk's Office of Polk County, Texas.
- c. Late Fees. Beginning March 1st of the year in which a maintenance fee is delinquent a late fee of ten dollars and zero cents (\$10.00) per month thereafter will be assessed to each lot for which a maintenance fee is due. Once a property owner is more than sixty (60) days late, the Board may begin the process of filing a lien against the lot(s) on which the maintenance fee is due. Once the lien is filed the property owner will owe the maintenance fee, the late fees and any fees charged for filing the lien. The Board will recalculate all late fees currently due on June 12, 2021 at the ten dollars and zero cents (\$10.00) late fee per month rate.
- d. Transfer Fees. If a property owner sells a lot within the subdivision a five hundred dollar and zero cent (\$500.00) transfer fee shall be assessed to each sell in order to cover the expense of updating the Association records.
- e. Road Maintenance Fees. A five hundred dollar and zero cent (\$500.00) road maintenance fee shall be paid by any property owner building a new home or having a home placed on their property. This money is to be set aside and used for road repairs within the subdivision.

21. Enforcement of Deed Restrictions.

- a. Subject to the provisions of subsection (d) of this paragraph, if any person or entity, as defined hereinafter, whether or not lawfully in possession of any real property hereunder, shall either (1) violate or attempt to violate any restriction or provision herein or (2) suffer to be violated (with respect to the real property in which such person or entity has rights other than the rights granted by this sentence) any restriction or provision herein, it shall be lawful for the Association and/or any person or entity, as defined hereinafter, possessing rights with respect to any real property hereunder, to prosecute any proceedings at law or in equity against any such person or entity violating, attempting to violate and/or suffering to be violated any restriction or provision herein to (1) prevent such violation, (2) recover damages of other dues for such violation, and (3) recover court costs and reasonable attorney's fees incurred in such proceedings. "Person or entity", as used in the immediately preceding sentence hereof, shall include, but shall not be limited to, all owners and purchasers of any real property hereunder, as well as all heirs, devisees, assignees, legal representatives, and

other persons or entities who acquire any of the rights (with respect to the real property hereunder) of the owner or purchaser of any real property hereunder.

- b. The Association has the right, but not the exclusive duty, to take action to enforce any violation of these deed restrictions.
- c. Neither the Architectural Control Committee (ACC), nor members of said Committee, nor the Directors nor Officers of the Association, shall have any liability or responsibility at law nor in equity on account of the enforcement of, or on account of the failure to enforce, these restrictions. An exercise of discretionary authority by the Association concerning a restrictive covenant is presumed reasonable unless the court determines by a preponderance of the evidence that the exercise of discretionary authority was arbitrary, capricious, or discriminatory.
- d. Notwithstanding any other provisions hereof, the Association shall not be liable or subject to any proceeding at law or in equity on account of any violation or attempted violation of any restriction or provision herein which occurs during such time as there in in force a contract to purchase the property where such violation or attempted violation takes place.
- e. All deed restrictions and by-law violations shall be dealt with by demand letters. The first advisory demand letter will be mailed to the Property Owner describing the violation and stating that said Property Owner has ten (10) days to correct the violation. If the first letter is not adhered to, a second advisory demand letter will be mailed to the Property Owner allowing said Property Owner an additional ten (10) days to correct the violation. If the violation is still not corrected after ten (10) days has passed from receipt of the second letter, a Final Demand Notice declaring a ONE-THOUSAND and no/100 Dollars (\$1000.00) fine will be issued. ALL deed restriction and by-law violations are subject to a ONE-THOUSAND and no/100 Dollars (\$1000.00) fine if not handled properly within the time designated by the demand letters.

22. Duration and Amendment. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them until August 1st, 2023 A.D., at which time said covenants shall be automatically extended for successive periods of five (5) years unless an instrument signed by a majority of the then owners of the tracts has been recorded agreeing to change said covenants in whole or in part. Additionally, the Association, to be established as provided herein, shall have the right at any time hereafter to make such reasonable changes in or waivers of any or all of the above restrictions, conditions, covenants, as the Association in its sole discretion may deem reasonably necessary or desirable, subject to the approval of the Association's Members by a majority in favor of such change in or waivers of any or all of the restrictions, conditions, and covenants, by the Members of the Association at a special or annual *(reference number with year stamped at top of each page, successive numbers)* 2018-2166-459

meeting at which a quorum is had, and at which special or annual meeting specific notice of such reasonable changes in or waivers of any or all of the above restrictions, conditions, and covenants is given.

23. Partial Invalidity and Severability.

- a. It is understood that no act or omission upon the part of any party hereto or any person hereafter acquiring an interest in said property by, through, or under same shall ever be construed as a waiver of the operation or enforcement of these covenants and restrictions, and easements.
- b. In the event any portion of the provisions hereof shall become or be held invalid, whether by reason of abandonment, waiver, estoppel, judicial decision, or otherwise, such partial invalidity shall not affect, alter, or impair any other provision hereof, which was not thereby held invalid; and such provisions, including Restrictions and Covenants shall remain in full force and effect, binding in accordance with their terms.